

SUBJECT: Continuing the Texas Department of Public Safety

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 8 ayes — B. Turner, Keel, Berman, Carter, Driver, Gutierrez, Hupp, Najera
0 nays
1 absent — P. King

SENATE VOTE: On final passage, April 15 — voice vote

WITNESSES: For — Carl Parker, Texas State Troopers Association
Against — None
On — Duncan Fox, Lester Mills, Dudley Thomas, and Frankie Waller, Department of Public Safety; Toni Hunter, Office of the Attorney General; Jay Schmidt, Sunset Advisory Commission

BACKGROUND: The Legislature created the Texas Department of Public Safety (DPS) in 1935 by combining the Texas Highway Patrol, formerly part of the State Highway Department, and the Texas Ranger Force, formerly under the adjutant general. The department's mission was to enforce laws protecting public safety and to provide for the prevention and detection of crime. DPS now includes five major divisions:

- ! Traffic Law Enforcement, responsible for the State Highway Patrol, license and weight divisions, vehicle inspections, safety education, and Capitol police;
- ! Criminal Law Enforcement, responsible for narcotics investigations, special crimes, motor vehicle theft, the state crime lab, and polygraphs;
- ! Administration, responsible for inspection and planning, emergency management, crime records, and staff support;
- ! Driver's Licensing; and
- ! Texas Rangers.

DPS employs commissioned and noncommissioned peace officers. It also supports local law enforcement agencies by maintaining criminal history information, records, and warrant information.

DPS has more than 7,050 employees and a total budget for fiscal 1998-99 of \$666.4 million. Eighty percent of the agency's funding comes from the State Highway Fund, and the rest comes from federal funds, fee revenues, and other state funds.

The three-member Public Safety Commission governs DPS. The chair and two commissioners serve part-time and are appointed by the governor with the advice and consent of the Senate. Commission members serve staggered six-year terms. The commission is responsible for formulating plans and policies for enforcing the state's criminal, traffic, and safety laws, preventing crime, detecting and apprehending persons who violate laws, adopting agency rules, and educating citizens in the promotion of public safety and observance of laws. The commission also appoints the DPS director and assistant director.

DPS is subject to the Texas Sunset Act and last underwent sunset review in 1991. The agency will be abolished September 1, 1999, unless continued by the Legislature.

DIGEST:

CSSB 370 would continue DPS until September 1, 2009. It would require various changes on the part of the agency and the Public Safety Commission.

This bill would take effect September 1, 1999. The commission would have to adopt all necessary rules by January 1, 2000.

Open Meetings exception. The bill would exempt from the Open Meetings Act (Government Code, chapter 551) a commission discussion or deliberation regarding an ongoing criminal investigation, including a vote to issue a directive or take other action on the investigation.

Duties of the director. The bill would allow the DPS director to designate the head of a division or position that constituted membership in the director's management team. Criteria for the management team would be determined by the director and approved by the commission. Appointment to the management team or transfer from the management team to another position

would not be governed by Government Code, sec. 411.007, which regulates other employer-employee relationships at DPS.

A person removed from the director's management team would have to resume the position held immediately before appointment or a position of equivalent rank. In the case of a person removed as the result of a formal charge, the requirement would apply only if the person had been exonerated. This provision would apply only to an appointment or promotion made on or after the effective date of the bill.

The bill also would allow the director to appoint multiple assistant directors with the advice and consent of the commission. An assistant director would serve until removed by the director.

CSSB 370 would eliminate the responsibility of the director to issue and sign requisitions to buy department supplies and would eliminate the requirement that DPS keep all of its records in Austin.

Audit and review. CSSB 370 would require the Public Safety Commission to establish an office of audit and review to coordinate activities designed to promote effectiveness in departmental operations. This office's responsibilities would include:

- ! inspecting all DPS divisions to ensure that operations were conducted efficiently, uniformly, and in compliance with established procedures;
- ! recommending improvements in operational performance;
- ! auditing all DPS divisions to promote economy, effectiveness, and efficiency within the department;
- ! preventing and detecting fraud, waste, and abuse in DPS programs and operations;
- ! making recommendations about the adequacy and effectiveness of the department's system of internal control policies and procedures;
- ! advising in the development and evaluation of DPS performance measures;
- ! reviewing actions taken by DPS to improve program performance and making recommendations for improvement;
- ! reviewing and making recommendations to the commission and the Legislature regarding DPS rules, laws, and guidelines;

- ! keeping the commission, the DPS director, and the Legislature fully informed of problems in department programs and operations; and
- ! ensuring effective coordination and cooperation among the State Auditor's Office, legislative oversight committees, and other governmental bodies while attempting to avoid duplication.

The commission would appoint the director of the audit and review office, who would serve until removed by the commission. The audit and review director would be considered the agency's internal auditor and would have to satisfy the requirements for an internal auditor listed under Government Code, sec. 2102.006(b).

DPS would have to give the audit and review director access to any necessary records, data, or other information. The audit and review director, with the advice and consent of the commission, would have to determine which audits and inspections to perform and could publish findings and recommendations.

The audit and review director would have to report to the commission regarding planned audits and inspections and their status and findings and would have to report to the DPS director for administrative purposes.

Internal affairs. CSSB 370 would require the DPS director to establish an office of internal affairs with original jurisdiction over all investigations occurring on DPS property or involving DPS employees. Only the DPS director or the commission could initiate an investigation. The office would coordinate all investigations but would not necessarily conduct them.

The DPS director would appoint the head of the internal affairs office, who would serve until removed by the director and would report directly to the director. At each regularly scheduled commission meeting and at other appropriate times, this official would have to summarize information relating to investigations and recommend ways to avoid future complaints.

Employee relations. CSSB 370 would eliminate the requirement that the commission approve the appointment, promotion, reduction, suspension, or discharge of any DPS officer or employee. Consideration of promotions and appointments would have to include education and experience. Considerations based on age and physical condition would have to be appropriate and consistent with federal law. The bill would remove existing

provisions that require the commission to establish grades and positions for DPS employees and training and education prerequisites.

CSSB 370 would remove the requirement that an appointment or promotion be determined by examination. The bill would specify that every applicant with an application on file for a nonappointed or nonpromotion position for which an examination was required would be entitled to written notice of the time and place of those examinations.

DPS, with the advice and consent of the commission, would have to establish procedures for promoting commissioned officers not subject to a direct appointment by the director. These procedures would have to be based on merit and applied consistently. The bill would prohibit suspending, terminating, or discriminating against any commissioned officer for refusing to take a polygraph test.

The bill would transfer from the commission to the director the receipt of yearly reports by division heads regarding employee efficiency. The reports would have to be kept in the permanent files of DPS rather than of the commission, as under current law.

The commission would have to affirm or deny a discharge on the basis of evidence. If the commission affirmed a discharge, the discharged officer or employee could seek judicial review in a district court. This provision would apply only to a discharge on or after the effective date of the bill.

The bill would specify that noncommissioned employees of DPS are on probation during their first year of service. Officers would be on probation from their date of induction until one year after the date of commission. This provision would apply only to a person inducted on or after the effective date of the bill.

Grievance proceedings. The bill would require the commission to establish procedures governing the appeal of a disciplinary action at DPS and how DPS would address an employment-related grievance. The grievance procedures would have to include:

- ! a form on which an employee could state a grievance and request a specific corrective action;

- ! time limits for submitting a grievance and for management to respond;
- ! a multilevel process in which an employee's grievance would be submitted to the lowest appropriate level of management, with each subsequent appeal submitted to a higher level in the chain of command;
- ! an assurance of confidentiality for all parties, except to the extent that information was subject to public disclosure or had to be released in an open records request, and assurance that retaliation against an employee who filed a grievance would be prohibited; and
- ! a program to advertise and explain the grievance procedure to all employees.

DPS would have to submit to the Public Safety Commission, both annually and as part of its biennial report to the Legislature, a report on its use of the grievance process. The report would have to include the number of grievances filed, a brief description of the subject of each grievance, and the final outcome of each grievance.

An employee could choose to resolve a grievance through mediation. The commission would have to establish procedures for the mediation, and these procedures would have to define the circumstances under which mediation would be appropriate.

Special Rangers. The Public Safety Commission could appoint an honorably retired or retiring commissioned officer as a special Texas Ranger, if that officer had been a Texas Ranger immediately before retirement.

A special Texas Ranger would be subject to the orders of the commission and the governor for special duty like other law officers. However, a special Texas Ranger could enforce only laws designed to protect life and property, not those regulating the use of a state highway by a motor vehicle. A special Ranger could not be connected with a ranger company or with a uniformed unit of DPS.

Before issuance of a commission, a person would have to enter into a bond of \$2,500 approved by the DPS director, indemnifying all persons against damages resulting from an unlawful act of the special Ranger.

A special Texas Ranger would not be entitled to compensation from the state. A commission would expire on January 1 of the first odd-numbered year after

appointment. The commission could revoke the commission of a special Ranger who violated a DPS rule for which an active-duty Ranger would be discharged.

Driver's licenses and identification cards. DPS by rule could allow a driver's license or personal identification card to be renewed by telephone, via the Internet, or by other electronic means. DPS also could adopt rules regarding the method of payment of a fee for a license, identification card, or license record. The bill would eliminate the current requirement that an application for renewal of a driver's license include evidence of financial responsibility or a statement of vehicle nonownership. Instead, the bill would allow DPS to require this by rule for a renewal.

DPS would have to include a space on every driver's license for an emergency contact telephone number. The bill would increase the fee for reinstatement of a suspended or revoked license from \$50 to \$100.

Coordination with other agencies. CSSB 370 would require DPS and the Texas Department of Transportation (TxDOT) to establish procedures to ensure effective coordination of the development of infrastructure projects that affect both agencies. These procedures would have to:

- ! allow each agency to provide comments and advice to the other agency on an ongoing basis regarding statewide transportation planning efforts that affect traffic law enforcement;
- ! define the role of each agency in transportation infrastructure efforts; and
- ! require DPS and TxDOT to develop a plan for applying for and using federal funds to address infrastructure needs that affect enforcement efforts.

DPS and TXDOT would have to revise and update these procedures as necessary. They also would have to file a report describing the procedures and their implementation with the presiding officer of each house of the Legislature by January 15 of each odd-numbered year.

Information from other agencies. An agency required to submit to DPS information on persons licensed by that agency would have to submit the information only quarterly, as opposed to monthly under current law. DPS

would have to perform a quarterly, rather than monthly, match of those names against convictions. DPS could charge the licensing agency a fee not to exceed the actual direct cost of performing a computer match and reporting to the agency.

Disclosure of information to insurers or auto clubs. CSSB 370 would allow DPS to contract with an eligible auto insurance company or motor vehicle support organization to provide information for underwriting an existing motor vehicle insurance policy. DPS could negotiate the contract price and could require payment in the form of a certified check, cashier's check, or bond.

The contract would require that the person receiving the information provide DPS with a list of the driver's license numbers or the full names and dates of birth of each individual about whom information was requested. DPS would have to search its driver's license database to locate convictions, suspensions, or revocations and notify the requestor of that information. The information provided would have to relate to traffic law convictions or accidents that occurred during a 30-day period specified in the contract.

Use of seized and forfeited assets. The bill would require the Public Safety Commission to establish by rule a process under which the commission would approve DPS dispositions of assets seized or forfeited under state or federal law and received by or appropriated to DPS. Before approving a disposition, the commission would have to consider how the disposition supported DPS priorities and whether it complied with applicable federal guidelines. These rules would have to be adopted in accordance with the Administrative Procedure Act (Government Code, chapter 2001).

DPS would have to report and justify dispositions within 30 days after the end of each quarter if those dispositions were not planned and were used for a purpose not considered a priority or not required by law or applicable federal guidelines.

DPS would have to file with the governor and the presiding officers of the House and Senate an annual report on seized and forfeited assets. The bill would specify information that the report must include.

Commercial vehicle inspections. CSSB 370 would require the DPS director to use noncommissioned staff to supplement commissioned officers' enforcement of commercial vehicle inspections. The director would have to design a schedule to phase in the noncommissioned staff over a five-year period beginning January 1, 2000. The director would have to submit to the Legislative Budget Board a report detailing that schedule with every request for appropriations. Unless otherwise directed by the general appropriations act, DPS could not hire additional commissioned officers to conduct these inspections until the schedule had been implemented fully. Likewise, DPS could not reduce the number of commissioned officers unless directed by the general appropriations act. The provision requiring implementation of a schedule for commercial vehicle inspections would expire on January 1, 2005.

CSSB 370 would require that DPS training and requirements for certification of noncommissioned employee inspectors be the same as the requirements for peace officers.

The bill would require DPS to conduct a long-term needs assessment for the enforcement of commercial motor vehicle rules. The assessment would have to consider, at minimum:

- ! the inventory of current facilities and equipment used for enforcement, including types of scales, structures, space, and other equipment;
- ! enforcement activity, including trend information, at fixed-site facilities;
- ! staffing levels and operating hours for each facility; and
- ! needed infrastructure improvements and the associated costs and projected increase in activity that would result from the improvements.

DPS would have to submit a report on the needs assessment biennially to the legislative committees with primary jurisdiction over budgetary matters and to the Texas Transportation Commission.

The bill would expand inspections of vehicles owned by state agencies or political subdivisions to include inspection of fuel-tank caps and emissions-control equipment.

Vehicle inspectors. DPS could revoke, suspend, or deny certification of a vehicle inspector if the inspector or inspector's station failed to conduct an

inspection in violation of DPS rules. If DPS revoked a certification for a violation of emissions-inspection rules, the suspension could not be probated or deferred.

If a revoked certification resulted in a hearing before the State Office of Administrative Hearings and the judge's decision supported the decision of DPS, the decision could recommend only the denial of an application for certification or revocation or suspension of a license. The decision could not recommend a reprimand or a probated or deferred action. The DPS director could make findings of costs, fees, and expenses part of the final order of the proceeding.

The bill would eliminate the provision in current law that an inspector who was dissatisfied with the department's action could appeal the action by filing a petition in district court without filing a motion for rehearing.

A stay imposed on the revocation or denial of a certification could not be effective for more than 90 days after a petition for appeal had been filed. On expiration of the stay, the director's action would be reinstated or imposed. Neither DPS nor the court could extend the stay or grant another one.

Inspection fees. CSSB 370 would allow DPS to set vehicle inspection fees by rule by September 1 of every year. Fees set by the department would have to be based on the costs of producing certificates, providing inspections, and administering inspection programs. The fee could not be less than \$12.50. The inspection fee would remain at \$10.50 until a new fee was set. DPS could set and collect a new fee before September 1, 2000.

Vehicle emissions. CSSB 370 would add new provisions governing vehicle emissions. A hearing for a citation issued for excessive emissions would have to be heard by a justice of the peace in any precinct in the county where the vehicle was registered.

DPS by rule could require that a vehicle determined by on-road testing to have excessive emissions be assessed a testing fee not to exceed the fee charged by a certified testing facility. Enforcement of the remote-sensing component of the emissions inspection and maintenance program could not include a fee charged to the registered owner of the vehicle.

DPS by rule could establish a process for reimbursing a fee for a required emissions verification test if the vehicle passed the test within 30 days after the owner first received notice of excessive emissions and if the vehicle had not been repaired between the date of detection of excessive emissions and the date of the verification test.

The bill would authorize DPS to allow by rule alternative vehicle-emissions testing. This could include onboard diagnostic testing if the technology provided accurate and reliable results, was widely and readily available, and was not likely to affect federal approval of the state's air-quality implementation plan.

Vehicle licenses. CSSB 370 would make it an offense, punishable by a fine of up to \$200, to apply a sticker, decal, or other insignia not authorized by law and that interfered with the legibility of a license plate. It also would be an offense to display a license plate or registration tag with a coating, covering, or protective material that distorted visibility or detectability.

The bill also would add standard sunset provisions on removal and training of members of the policymaking body, standards of conduct, and complaints.

SUPPORTERS
SAY:

Public Safety Commission. The current size of the commission makes it an efficient, effective body, and its membership should remain at three. Although backlogs of appeal cases have posed problems historically, there is no backlog now, nor will there be one in the foreseeable future. Increasing the size of the commission would lead to politically motivated appointments favoring certain constituencies or regions. Commissioners should not represent a particular group but should represent Texas as a whole.

Internal oversight. The new audit and review and internal affairs offices proposed by CSSB 370 would improve the agency's internal oversight. The current oversight programs are inadequate and lack independence and accountability. Other law enforcement agencies have centralized oversight functions to monitor agency operations, and DPS should also.

The internal affairs office should take over responsibilities now held by the commission. Civilian members of the commission should not have the authority or responsibility to initiate investigations of DPS officers or

employees. This process should be handled by a more qualified entity in the chain of command that reports to the DPS director.

Employee relations. DPS needs a formal procedure for handling employee grievances. This bill would formalize and make more consistent the current process and would make it known to all employees. Currently, DPS is not required to notify its employees of its grievance procedure. Employees should have access to and knowledge of an efficient complaint process. CSSB 370 would establish a process modeled closely on those of other state agencies.

This bill also would require DPS to track complaints and appeals more closely and to prepare an annual report on its grievance proceedings. These requirements would ensure that the agency learns from its employee-relations experiences.

Using mediators in the complaint process would not circumvent the chain of command. Rather, it would facilitate communication between employers and employees and eventually a mutually agreeable solution to a complaint. Alternative resolution would give employees an additional appeal option and would reduce the time spent on these matters by DPS and the commission.

The DPS director should be able to make management assignments but cannot do this now. Although most state employees work at will and can be terminated for any appropriate reason, DPS employees can be terminated, demoted, or reassigned only for a specific violation or rule, policy, or law. Promotions usually are based on performance in an examination. These requirements make it difficult for the director to perform standard personnel actions, such as promoting or demoting key staff on the basis of job performance.

Seized assets. Current oversight of seized assets or funds is inadequate. The use of seized funds does not require approval by the commission or the Legislature, even though these funds are intended to be spent on public safety needs. Putting the disposition of seized funds under the oversight of the commission would lessen the risk of the funds being spent inappropriately. Requiring that reports be spent to the governor and Legislature would enable legislative oversight.

Driver's license transactions. DPS should have the statutory authority to conduct driver's license transactions electronically. The agency issues more than 680,000 new driver's licenses and 3 million renewals every year. One-quarter of DPS staff is dedicated to licensing. Most license holders are aware of the long delays that often accompany license transactions. Allowing electronic renewals would make the process more efficient for everyone.

DPS should eliminate verification of proof of financial responsibility from license-renewal transactions. TxDOT already requires an annual check of proof of financial responsibility, both when a vehicle is inspected and when it is registered. Eliminating this verification would further speed license transactions.

Vehicle inspection fees. These fees have not increased in several years. The proposed \$2 increase would go directly to the inspectors, whose income has remained stagnant.

Commercial vehicle inspections. DPS should use trained noncommissioned officers to aid commercial vehicle inspections. The North American Free Trade Agreement has increased truck traffic greatly on Texas highways. Using noncommissioned officers would be more cost-efficient, since these officers do not have to go through a trooper's training. Allowing DPS to use civilian inspectors also would result in more inspections and therefore safer highways.

OPPONENTS
SAY:

Public Safety Commission. The bill should increase the size of the Public Safety Commission, which is now the only three-member, part-time board that oversees such a large agency with a wide variety of responsibilities. When the commission was established in 1935, three commissioners better represented the state's population. Today, more than 60 years later, the three-member commission is an anachronism.

Also, no other commission hears the kind of disciplinary appeals that the Public Safety Commission hears. These kinds of administrative tasks burden the small commission.

The commission's size limits its oversight of DPS and its representation of the state. A three-member commission cannot address accurately the needs of

Texas' diverse, geographically spread-out population. Furthermore, Open Meetings Act restrictions severely limit informal discussion between any two members of the commission. The commission also cannot form subcommittees to discuss issues such as employee appeals.

Internal oversight. The internal oversight functions proposed by this bill should remain outside the chain of command and not under the DPS director. The audit and review and internal affairs offices should report to the commission for greater independence and authority. This also would provide the commission with better information with which to monitor the agency. There should be no fear of the commission's handling sensitive information, since information discussed by the commission would be exempt from the Open Meetings Act if it related to an investigation.

Employee relations. The bill should require all personnel complaints to be investigated by the internal affairs office. Employee relations at DPS have been tense historically. Employees sometimes feel that, because of the hierarchical chain of command, their complaints are not always given due consideration. The internal affairs office could help mediate that process.

The grievance process now used by DPS is unfair to employees and should be changed. It relies exclusively on the chain of command, even though a majority of DPS employees are noncommissioned officers not accustomed to the chain-of-command supervisory style. Furthermore, if an employee encounters a problem with the employee's own supervisor, the problem must be reported to that supervisor.

DPS should be required to create an office of employee relations to oversee grievance and appeal proceedings. DPS employees' dissatisfaction with the current process makes this necessary.

Seized assets. Seized assets should be subject to oversight by an independent auditor. This would better prevent fraud and misuse of funds than would oversight by the Public Safety Commission.

NOTES: The committee substitute added to the Senate-passed bill provisions that would:

- ! provide a one-year probationary period for noncommissioned employees;
- ! eliminate language that would have prevented the director from appointing the highest ranking officer of the Texas Rangers as a management team position;
- ! provide that the director of internal affairs report to the DPS director and present reports to commission members at regularly scheduled meetings;
- ! prohibit the obscuring of a license plate;
- ! authorize contracts for disclosure of information to insurers or auto clubs;
- ! authorize renewal of driver's licenses or identification cards by mail or electronic means;
- ! require space for an emergency contact number on driver's licenses;
- ! authorize DPS to require proof of financial responsibility when obtaining a driver's license;
- ! increase the reinstatement fee for a suspended or revoked driver's license;
- ! expand commercial vehicle inspection criteria;
- ! add additional requirements to the enforcement of vehicle emissions inspections and grounds for removal of inspectors;
- ! increase the fee for vehicle inspections; and
- ! allow noncommissioned officers to perform commercial vehicle inspections.