

SUBJECT: Continuing Department of Public Safety and Texas Private Security Board

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — Merritt, Frost, Driver, P. King, Lewis, Vo

3 nays — Burnam, Mallory Caraway, Rodriguez

0 absent

WITNESSES: (*On original bill:*)

For — Randy Hooker, Texas Burglar and Fire Alarm Association; Randy Kildow, Texas Association of Licensed Investigators; (*Registered, but did not testify:* Randy Cain, Texas Fire Chiefs Association; James Harrington, Texas Civil Rights Project)

Against — None

On — Walter Roberts, Associated Security Services and Private Investigators of Texas (ASSIST); (*Registered, but did not testify:* John Chism, Private Security Board; Laura Martin, ACLU of Texas; Amy Trost, Sunset Advisory Commission)

BACKGROUND: In 1935, the 44th Legislature created the Department of Public Safety (DPS) by merging the State Highway Motor Patrol and the Texas Ranger Force. The DPS has been assigned additional law enforcement and regulatory duties and now has additional responsibility for disaster emergency management. The DPS assumed responsibility for regulating private security occupations when the Texas Commission on Private Security was abolished in 2003 and its staff became a division of DPS. DPS and the Private Security Board will be abolished on September 1, 2009, under the Sunset process unless continued by the Legislature.

The Public Safety Commission, which oversees the DPS, has five members who are appointed by the governor with the advice and consent of the Senate and serve staggered, six-year terms.

The House version of SB 1, the general appropriations bill, would appropriate \$1.8 billion to DPS for fiscal 2010-11 and provide for 8,717.4 full-time equivalent positions.

The Sunset Advisory Commission conducted its review of the DPS, including the Private Security Board, during the interim and issued its recommendations in September 2008. One major Sunset recommendation called for an additional independent management and organizational review of DPS. Deloitte Consulting completed a 10-week study and issued its report and recommendations in October 2008. In addition, there were studies of the DPS information technology system and an overall study of pay scales for commissioned officers in all state law enforcement agencies.

The Public Safety Commission adopted a provision of the Texas Administrative Code (37 TAC, part 1, sec. 15.171), which took effect on October 1, 2008, requiring anyone who is not a citizen or lawful permanent resident of the United States to present documentation proving lawful temporary admission to apply for a DPS driver's license or identification card.

**DIGEST:**

CSHB 2730 would continue the DPS until September 1, 2021. The bill also would:

- require an additional Sunset Advisory Commission review of the department's progress in implementing various management changes;
- create an inspector general's office;
- make conforming changes to reflect that the Governor's Office of Emergency Management and Private Security Board were divisions of DPS;
- revise the process of administrative suspension of driver's licenses; and
- include standard Sunset recommendations, including conflict of interest provisions for board members, appropriate use of technology solutions; and adoption of negotiated rulemaking and alternative dispute resolution policies.

The bill also would include a provision to require applicants for DPS driver's licenses and identification to show proof of United States citizenship or status as a refugee, asylee, or lawful permanent resident.

**Additional Sunset review.** The bill would require the Sunset Advisory Commission to review DPS's progress on implementing changes recommended in the original Sunset review, Deloitte report, and other recommendations, and to complete a draft report by December 1, 2010, and submit the report to the Legislature no later than February 15, 2011. This provision would expire on August 31, 2011.

The report also would consider adoption of a civilian business model for the DPS driver's license division that would focus on improving customer service by:

- using the best practices in call center technology and monitoring customer service calls;
- expanding operating hours at driver's license offices; and
- decreasing the time DPS takes to issue a replacement driver's license.

Another provision would require that the vehicle inspection program be managed by a program director who was not a commissioned DPS officer.

**Inspector general.** CSHB 2730 would require the commission to establish an inspector general's office with responsibility for acting to prevent and detect criminal conduct within the department. The inspector general's office, which would replace the current internal affairs division, would be required to independently and objectively investigate:

- criminal activity occurring in all divisions of the department;
- allegations of wrongdoing by department employees;
- crimes committed on department property; and
- serious breaches of department policy.

The Public Safety Commission would have direct oversight of the inspector general's office, including decisions about budget and staffing, and would appoint the inspector general.

**Private Security Board.** The bill would make conforming changes to reflect the transfer of the old Texas Commission on Private Security. The substantive changes include provisions that would:

- require board members who had investigated a complaint to recuse themselves on a vote on any action related to the complaint;

- eliminate the separate Sunset requirement and review the board as part of the DPS sunset;
- require that licensees pass a jurisprudence examination to ensure they had a clear understanding of laws and rules governing their profession;
- require licenses for alarm and firearm instructors;
- increase maximum penalties for violations of the Private Security Act from \$500 to \$5,000; and
- delete statutory requirements to set fees and allow them to be set by rule.

**Administrative license revocations.** The bill would provide that breath test operators in intoxication offenses could submit an affidavit rather than be required to attend a hearing of an administrative revocation of a driver's license. The affidavit would be considered admissible unless a judge ruled that it was necessary for the technician to be present. This provision would take effect on September 1, 2009.

**Other provisions.** The bill would require that all state law enforcement officers, including DPS officers, participate in physical fitness programs, but the physical fitness standards officers would be required to meet would have to apply directly to an officer's job duties and could include individual fitness goals specific to the officer's age and gender. Each state law enforcement agency would be required to provide a reward incentive of up to four days of administrative leave a year to participate in the program. It would also provide that inability to participate in a physical fitness program could result in discharge of the officer or a transfer into a non-commissioned position.

**Driver's licenses.** CSHB 2730 would require proof of citizenship or lawful presence and proof of Texas residency to receive a DPS-issued driver's license or identification card. The license or identification card for anyone older than 21 years of age would be required to have the same format, appearance, and orientation and contain the same information as other DPS licenses and identification cards. Licenses for citizens, legal permanent residents, or lawful refugees or asylees would expire every six years, as provided in current law. Those who were not legal permanent residents would have licenses that expired when their authorized stay expired or in two years, if there were no definite expiration date for the applicant's authorized stay in the United States.

Other provisions would extend the period for an out-of-state person moving to Texas to receive a DPS driver's license from 30 to 90 days. It also would provide that a failure to report a change of address to the DPS with an intent to defraud would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill also would repeal Transportation Code, sec. 522.029 (j), which requires \$120 for a nonresident commercial driver's license and \$20 for a temporary nonresident commercial driver's license.

The driver's license provisions would take effect on September 1, 2009.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 2730 would help institutionalize and continue ongoing efforts to transform the culture of the DPS and modernize its operations. The department's new board members and management team have made great strides since last fall, and the bill would provide a statutory framework to implement the recommendations from the Sunset Commission and the Deloitte report. The bill would require additional review by the 82nd Legislature while maintaining the agency on the usual 12-year cycle for Sunset review.

**Driver's licenses.** CSHB 2730 would continue efforts to establish a civilian management model of driver's license operations and would lead to a more customer-friendly approach recommended by the Sunset and Deloitte reports. Adoption of best practices and other changes could remedy complaints about long lines, unclear directions to services, limited hours and waits to receive driver's licenses and identification cards.

The bill appropriately would keep the driver's license operations under DPS control, even with civilian management. There would remain an important law enforcement aspect to issuing driver's licenses and identification cards. Also, DPS troopers still would be needed to provide security at some driver's license offices.

Provisions added by the committee substitute would help implement the driver's license and identification card requirements necessary for compliance with the federal Real ID Act of 2005. The provisions of the

bill would strengthen identity and card issuance requirements for these documents. While requirements that the state comply with the federal standards have been delayed until 2011, Texas should take steps to ensure that DPS driver's licenses and identification cards would be proper credentials for boarding commercial airline flights and entering government buildings.

CSHB 2370 would provide needed policies and penalties to help prevent efforts to fraudulently acquire a Texas driver's license. For example, from 2003 until 2005, an Israeli immigrant who obtained legal permanent residency assisted more than 350 individuals, mostly foreign nationals who subsequently overstayed their tourist visas, to obtain Texas driver's licenses. That person has since been arrested and charged for the offenses, but the risk remains of others obtaining Texas driver's licenses by fraud.

**Inspector general's office.** CSHB 2370 would reform and strengthen current efforts to root out criminal activity and other violations of DPS policies. The inspector general's office would be modeled on similar positions in other federal and state agencies and would answer to the Public Safety Commission, rather than the DPS chain of command. The resignation of the DPS director after allegations of impropriety demonstrates how resistant the agency can be to change. DPS has enjoyed a well-deserved reputation for integrity and service to the citizens of Texas in the past, and this bill would help restore that tradition.

**Administrative license suspensions.** CSHB 2730 would prevent the waste of government resources in conducting hearings on administrative license revocations and allow for the submissions of affidavits. Similar administrative hearings can be conducted by telephone.

**Other provisions.** The bill would provide for strict but fair standards for assessing the physical fitness of all state law enforcement officers. Current versions of the DPS test tend to wash out too many female troopers. Most can pass all tests except for a segment where they are required to push a vehicle from the road — a task unlikely to be required of a trooper while on duty. The bill would allow for incentives to reach realistic goals and would provide an option for an older officer to accept a non-commissioned position to qualify for a state pension.

OPPONENTS  
SAY:

Problems within the DPS culture may be too entrenched as demonstrated by the response to the fire at the governor's mansion or the recent abrupt

resignation of the director because of alleged violations of department policy. CSHB 2370 should tighten the review of future DPS actions and conduct a full Sunset before 2012.

**Driver's licenses.** The provisions added by the committee that would codify current rules to require proof of citizenship to receive driver's licenses and identification cards should be removed from the bill. Such requirements would be contrary to the goal of providing customer-friendly service at DPS driver's licenses. Too many applicants cannot easily find their legal permanent residence cards and might not have the kind of documentation that a particular DPS office would accept as proof of legal status. The lack of a clear standard for proper credentials and shorter expiration dates for driver's licenses could cause hardships for many legal residents. The new rules, which could discriminate against minorities, are already under court challenge and should not be placed into statute.

The proposed driver's license rules could encourage more Texans to drive without a license. The experience with the driver's responsibility program, which provides penalties for driving without a license or a suspended license, shows that drivers will ignore rules against such behavior. It seems counterintuitive to discourage people who are in the country legally and want to follow the law by applying for a driver's license.

Many states have openly rejected efforts to make them comply with REAL ID, and the law seems likely to be repealed by Congress.

NOTES:

The companion bill, SB 1017 by Hinojosa, has been referred to the Senate Government Organization Committee.