

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 370
By: Brown
Criminal Justice
4/7/1999
Committee Report (Substituted)

DIGEST

Currently, the Department of Public Safety (DPS) is subject to the Sunset Act and will be abolished on September 1, 1999 unless continued by the legislature. In 1998, DPS had a budget of approximately \$310 million and employed 7,000 people. This bill would amend Section 411.02(c), Government Code, to continue DPS for 10 years, until September 1, 2009.

PURPOSE

As proposed, S.B. 370 authorizes the continuation and functions of the Texas Department of Public Safety of the State of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Safety Commission in SECTION 7 (Section 411.0131(a), Government Code) and the Department of Public Safety in SECTIONS 13 and 17 (Sections 521.103 and 521.274, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 411.002(a) and (b), Government Code, to require the Department of Public Safety of the State of Texas (DPS) to have its principal office and headquarters in Austin. Provides that DPS is abolished and Subsections (a) and (b) expire September 1, 2009, rather than 1999, unless continued in existence by Chapter 325 (Texas Sunset Act).

SECTION 2. Amends Section 411.0036(c), Government Code, to set forth procedures for notifying the governor and the attorney general of a potential ground for removal of a member of Public Safety Commission (PSC).

SECTION 3. Amends Chapter 411A, Government Code, by amending Section 411.004 and adding Sections 411.0031 and 441.0041, as follows:

Sec. 411.0031. TRAINING FOR COMMISSION MEMBERS. Adds standard language developed by the Sunset Advisory Commission regarding the training for commission members.

Sec. 411.004. DUTIES AND POWERS OF COMMISSION. Deletes text regarding the required provision of information regarding qualifications for office.

Sec. 441.0041. OPEN MEETINGS EXCEPTION: CRIMINAL INVESTIGATIONS. Provides that a discussion or deliberation of PSC regarding an ongoing criminal investigation is not subject to the open meetings law, Chapter 551.

SECTION 4. Amends Sections 411.005(b) and (c), Government Code, to authorize the public safety director (PSD), rather than the PSC, to appoint assistant directors, with the advice of the PSC. Provides that an assistant director serves until removed by the PSD. Requires the PSD to select an assistant director on the basis of the person's qualifications for the position. Makes conforming changes.

SECTION 5. Amends Chapter 411A, Government Code, by amending Section 411.006 and adding Section 411.0061, as follows:

Sec. 411.006. DUTIES OF DIRECTOR. Adds standard language developed by the Sunset Advisory Commission regarding qualifications for office and employment. Authorizes the PSD to appoint the head of a division or bureau provided for by this chapter. Deletes text regarding the purchasing of supplies.

Sec. 411.0061. COMMERCIAL CARRIER INSPECTIONS: IMPLEMENTATION SCHEDULE FOR NONCOMMISSIONED PERSONNEL. Requires the PSD to develop a schedule to include the use of noncommissioned staff assigned to enforce commercial motor vehicle rules over a five-year period beginning January 1, 2000. Requires a report that provides details of the schedule and the status of its implementation to be filed with the Legislative Budget Board with each legislative appropriations request of the DPS. Prohibits DPS from reducing the number of commissioned officers to comply with this section. Provides that this section expires January 1, 2005.

SECTION 6. Amends Section 411.007, Government Code, to authorize the PSD to appoint, promote, reduce, suspend, or discharge any officer or employee of the DPS. Sets forth provisions regarding appointment or promotion of an officer or employee. Sets forth guidelines regarding personal conduct of an officer or employee of DPS. Requires the heads of divisions and bureaus to make a report to the PSD to be taken into consideration in matters of promotion and discharge. Requires PSC to establish necessary policies and procedures for the appointment, promotion, reduction, suspension, and discharge of all employees, rather than adopt rules governing employees.

SECTION 7. Amends Chapter 411A, Government Code, by adding Sections 411.0071 - 411.0074, 411.0098, 411.0099, and 411.0131, as follows:

Sec. 411.0071. DIRECT APPOINTMENT TO KEY POSITIONS BY DIRECTOR. Authorizes the PSD to designate a head of a division or a position that involves working directly with the director, other than the highest ranking officer of the Texas Rangers, as a key position. Authorizes the PSD to appoint a person to a key position under criteria determined by the PSD and approved by the PSC. Provides that the transfer of a person to or from a key position is not subject to Section 411.007. Requires a person to return to the position held prior to assignment to a key position or to a position of equivalent rank, upon removal from a key position. Provides that this subsection applies only to persons not removed for a formal charge of misconduct.

Sec. 411.0072. HEARING BEFORE COMMISSION SUBCOMMITTEE. Authorizes the PSC to authorize a subcommittee composed of PSC members to conduct public hearings to which an officer or employee is entitled. Requires a subcommittee to recommend to the PSC an outcome in a dispute and requires an approval from a majority of the PSC to become effective.

Sec. 411.0073. EMPLOYMENT-RELATED GRIEVANCES AND APPEALS OF DISCIPLINARY ACTIONS WITHIN THE DEPARTMENT. Defines "disciplinary action" and "employment-related grievance." Requires the PSC to establish procedures and practices that govern an appeal of a disciplinary action within the DPS and through which DPS will address an employment-related grievance. Requires the DPS to annually submit to the PSC a report on DPS's use of the employment grievance process. Requires the report to include certain information.

Sec. 411.0074. MEDIATION OF PERSONNEL DISPUTES. Requires the PSC to establish procedures for an employee to appeal a disciplinary action or resolve an employment-related grievance through mediation if the employee chooses. Requires the procedures to include mediation procedures and circumstances under which mediation is appropriate for an employment-related grievance. Provides that Chapter 2008, as added by Chapter 934, Acts of the 75th Legislature, Regular Session, 1997, does not apply to the mediation, except for Section 2008.054. Requires a mediator to be trained in mediation techniques. Provides that an employee who chooses to use mediation to resolve an employment-related grievance waives the right to use the grievance process established under Section 411.0073.

Sec. 411.0098. COORDINATION WITH DEPARTMENT OF TRANSPORTATION. Requires DPS and the Texas Department of Transportation (TxDOT) to establish procedures to ensure effective coordination of the development of transportation infrastructure projects that affect both agencies. Requires the procedures to allow each agency to provide comments and advice to the

other agency, define the role of each agency in transportation infrastructure efforts, and require DPS and TxDOT to develop a plan regarding federal funds that affect enforcement efforts. Requires DPS and TxDOT to update the procedures as necessary and to file a report describing procedures established with the presiding officer of each house of the legislature not later than January 15 of each odd-numbered year.

Sec. 411.0099. NEEDS ASSESSMENT FOR ENFORCEMENT OF COMMERCIAL MOTOR VEHICLE RULES. Requires DPS to conduct a long-term needs assessment for the enforcement of commercial motor rules that considers certain items at a minimum. Requires DPS to submit a biennial report, in conjunction with a DPS legislative appropriations request, to legislative committees with primary jurisdiction over state budgetary matters and the Texas Transportation Commission that reflects the results of the needs assessment.

Sec. 411.0131. USE OF SEIZED AND FORFEITED ASSETS. Requires the PSC, by rule, to establish a process for approving DPS's disposition of seized or forfeited assets. Requires the PSC to adopt rules under this section in accordance with Chapter 2001. Requires the PSC to consider how the disposition supports priorities in the strategic plan of DPS and determine if such disposition complies with applicable federal guidelines. Requires DPS to annually file a report, required to include certain information, with the governor and presiding officer of each house of the legislature. Requires DPS to report and justify certain dispositions within 30 days after the end of each quarter.

SECTION 8. Amends Section 411.0195, Government Code, by amending Subsections (c) and (d) and adding Subsection (e), to require DPS to maintain a file, required to include certain information, on each written complaint filed with DPS. Requires DPS to provide to parties involved with a complaint a copy of DPS policies and procedures relating to complaint investigation and resolution. Requires DPS to notify parties involved in a complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Deletes text regarding information kept in a complaint file. Deletes provision regarding required DPS notice of final disposition.

SECTION 9. Amends Section 411.023, Government Code, by adding Subsection (f), to require the PSC to authorize a badge designated as "Special Ranger."

SECTION 10. Amends Chapter 411B, Government Code, by adding Section 411.024, as follows:

Sec. 411.024. SPECIAL TEXAS RANGERS. Authorizes the PSC to appoint a certain officer as a special Texas Ranger, who is subject to the orders of PSC and the governor. Sets forth provisions regarding the jurisdiction and commission of a special Texas Ranger.

SECTION 11. Amends Chapter 411, Government Code, by adding Subchapter I, as follows:

SUBCHAPTER I. INTERNAL OVERSIGHT

Sec. 411.241. OFFICE OF AUDIT AND REVIEW. Requires PSC to establish the office of audit and review (OAR) which is required to coordinate activities designed to promote effectiveness in departmental operations and to keep PSC and the legislature fully informed about deficiencies with DPS. Sets forth required duties of OAR.

Sec. 411.242. DIRECTOR OF AUDIT AND REVIEW. Requires the PSC to appoint a director of OAR (director) to serve until removed by PSC. Requires the director to satisfy the requirements to be the agency's internal auditor under Section 2102.006(b) and is considered to be the agency's internal auditor for the purposes of Chapter 2102. Requires DPS to provide the director with any information necessary to fulfill the purposes of this section and Section 411.243. Requires the director to determine which audits and inspections to perform, with the consent of PSC, and may publish findings and recommendations. Requires the director to report to the PSC regarding planned audits and inspections and their status, and to report to the director for administrative purposes (DAP) and keep DAP informed of the OAR's findings.

Sec. 411.243. POWERS AND DUTIES. Sets forth required duties of OAR.

Sec. 411.244. INTERNAL AFFAIRS. Requires PSC to establish the office of internal affairs

(OIA). Authorizes OIA to have original jurisdiction over all criminal investigations occurring on DPS property or involving DPS employees. Requires OIA to coordinate all investigations under this section. Requires the commission to appoint a head of the OIA (head) to serve until removed by the PSC. Requires the head to report to PSC on investigations, to the report to DAP and provide information regarding information as appropriate.

SECTION 12. Amends Subsections (a) and (b), Article 60.061, Code of Criminal Procedure, to require certain state boards, including the Texas State Board of Pharmacy, to provide DPS with certain information, and update the information quarterly. Requires DPS to perform a computer match comparing certain lists at least quarterly. Authorizes DPS to charge a fee to cover costs incurred in performing a computer match.

SECTION 13. Amends Chapter 521E, Transportation Code, by adding Section 521.103, as follows:

Sec. 521.103. RENEWAL BY MAIL OR ELECTRONIC MEANS. Authorizes DPS, by rule, to provide that the holder of a personal identification certificate may renew the certificate by mail, by telephone, over the Internet, or by other electronic means. Authorizes a rule under this section to prescribe eligibility standards for renewal under this section.

SECTION 14. Amends Section 521.125, Transportation Code, as follows:

Sec. 521.125. New heading: MEDICAL AND EMERGENCY INFORMATION ON LICENSE. Sets forth the required format for text on the reverse side of a driver's license.

SECTION 15. Amends Section 521.141(a), Transportation Code, to require an applicant for an original or renewal of a driver's license to comply in a manner prescribed by DPS, rather than on a certain form.

SECTION 16. Amends Section 521.143(a), Transportation Code, to authorize DPS to require an application for a renewal of a driver's license to be accompanied by evidence of financial responsibility or a statement that the applicant does not own a motor vehicle for which evidence of financial responsibility is required.

SECTION 17. Amends Section 521.274, Transportation Code, as follows:

Sec. 521.274. New heading: RENEWAL BY MAIL OR ELECTRONIC MEANS. Authorizes DPS to provide, by rule, that a holder of a driver's license may renew the license by telephone, over the Internet, or by other electronic means. Authorizes a rule adopted under this section, rather than subsection, to prescribe eligibility standards for renewal under this section. Deletes text prohibiting renewal of certain licenses under this subsection.

SECTION 18. Amends Chapter 521R, Transportation Code, by adding Section 521.427, as follows:

Sec. 521.427. METHOD OF PAYMENT OF FEES. Authorizes PSC to adopt rules regarding the method of payment of a fee for a license or personal identification card. Authorizes the rules to authorize payment by certain means, under circumstances prescribed by DPS. Authorizes the rules to require the payment of a discount or a service charge for a credit card payment in addition to a fee.

SECTION 19. Amends Section 644.103, Transportation Code, by adding Subsections (d) and (e), to authorize a noncommissioned DPS employee certified by the public safety director and supervised by an officer, to enter into a vehicle that is subject to this chapter. Requires a supervising officer to take action if an employee's inspection shows that enforcement action is warranted. Requires the training and requirements for a noncommissioned DPS employee under this section to be the same as those for officers who enforce this chapter, except for those regarding peace officers.

SECTION 20. Amends Section 644.104, Transportation Code, by adding Subsections (c) and (d), to authorize DPS to use an officer to conduct an inspection if the inspection involves a situation determined by DPS to require the use of an officer. Makes a conforming change.

SECTION 21. Requires PSC to adopt each rule and establish all procedures necessary to implement the

changes in law made by this Act not later than January 1, 2000. Provides that Section 411.0031, Government Code, does not apply to a PSC member appointed before the effective date of this Act during the term the member is serving on that effective date. Provides that changes made by Section 411.0071, Government Code, apply only to appointments made after the effective date. Provides that a person appointed to a key position before the effective date retains all rights related to the position after the effective date. Provides that commissions issued under Section 411.023, Government Code, prior to the effective date of this Act, are not affected.

SECTION 22. Effective date: September 1, 1999.

SECTION 23. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 411.002(b), Government Code, to require DPS to have its principal office and headquarters in Austin.

SECTION 2.

Amends Section 411.0036(c), Government Code, to set forth procedures for notifying the governor and the attorney general of a potential ground for removal of a member of PSC. Deletes a provisions regarding the composition of PSC.

SECTION 3.

Amends Chapter 411A, Government Code, by adding Section 411.0041, to exempt certain discussions or deliberations of PSC from the open meetings law.

SECTION 4.

Amends Section 411.005(b), Government Code, to authorize PSD to appoint assistant directors.

Amends Section 411.005(c), Government Code, to make conforming changes.

SECTION 5.

Amends Section 411.006(a), Government Code, to require PSD to appoint the head of a division or bureau provided by this chapter. Deletes text regarding the purchasing of supplies. Make a conforming change.

Amends Section 411.0061, Government Code, require PSD to use noncommissioned staff and sets forth guidelines for the use of noncommissioned staff to enforce commercial motor vehicle rules.

SECTION 6.

Amends Section 411.007, Government Code, to set forth provision regarding the hiring, promotion, suspension, or discharge of an officer or employee of DPS.

SECTION 7.

Amends Section 411.0072, Government Code, to remove rulemaking authority from PSC. Deletes provision regarding other disputed personal action.

Amends Section 411.0073, Government Code, to redefine "employment-related grievance." Removes rulemaking authority from PSC.

Amends Section 411.0074, Government Code, to require PSC to establish procedures for an

employee to appeal a disciplinary action or resolve an employment-related grievance through mediation if the employee chooses. Deletes a provision regarding an employee recommended for discharge.

Amends Section 411.0098, Government Code, to amend the section heading. Requires DPS and TxDOT to establish procedures to ensure effective coordination of the development of transportation infrastructure projects that affect both agencies. Sets forth requirements for the procedures. Requires TxDOT to update the procedures and file a report with each presiding officer of each house of the legislature.

Amends Section 411.0131, Government Code, to require PSC to adopt rules under this section in accordance with Chapter 2001.

SECTION 8.

Amends Section 411.0195, Government Code, to notify certain parties of the status of an investigation of a complaint.

SECTION 9.

Amends Section 411.023, Government Code, to require PSC to authorize a badge for Special Rangers.

SECTION 10.

Amends Chapter 411B, Government Code, by adding Section 411.024, to authorize PSC to appoint a special Texas Ranger.

SECTION 11.

Amends Section 411.241, Government Code, to require PSC to establish OAR.

Amends Section 441.244, Government Code, to authorize OAR to have original jurisdiction over certain criminal investigations.

SECTION 12.

Amends Section 60.061, Code of Criminal Procedure, to require certain state boards to provide DPS with certain information, and update the information quarterly. Requires DPS to perform a computer match comparing certain lists at least quarterly. Authorizes DPS to charge a fee to cover costs incurred in performing a computer match.

SECTION 14.

Amends Section 521.125, Transportation Code, to set forth the required format for text on the reverse side of a driver's license.

SECTION 15.

Amends Section 521.141(a), Transportation Code, to require an applicant for an original or renewal of a driver's license to comply in a manner prescribed by DPS.

SECTION 16.

Amends Section 521.143(a), Transportation Code, to require an application for a renewal of a driver's license to be accompanied by evidence of financial responsibility or a statement that the applicant does not own a motor vehicle for which evidence of financial responsibility is required.

SECTION 20.

Amends Section 644.104, Transportation Code, to authorize DPS to use an officer to conduct an inspection if the inspection involves a situation determined by DPS to require the use of an officer.

SECTION 21.

Requires PSC to adopt each rule and establish all procedures necessary to implement the changes in law made by this Act not later than January 1, 2000. Provides that commissions issued under Section 411.023, Government Code, prior to the effective date of this Act, are not affected. Deletes a provision regarding the appointment of a new member to PSC. Deletes a provision regarding a memorandum of understanding. Deletes a provision regarding the mediation for employment-related grievances.