

BILL ANALYSIS

C.S.H.B. 3042
By: Bonnen, Greg
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that a law enforcement agency intending to hire a person licensed as a law enforcement officer is required, in conjunction with a request to the Texas Commission on Law Enforcement (TCOLE) for any employment termination report regarding the person that is maintained by TCOLE, to confirm to TCOLE that the agency contacted each of the person's previous law enforcement employers. These parties assert that, absent any specific direction as to the nature of the contact or the information to be discussed during this contact, this requirement is insufficient in ensuring that law enforcement agencies are fully aware of the prospective employee's law enforcement history but that a review of the prospective employee's personnel file would provide a more accurate representation of the prospective employee's work history and qualifications. C.S.H.B. 3042 seeks to uphold the integrity of the law enforcement profession by helping to ensure the hiring of the best candidates.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Law Enforcement in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 3042 amends the Local Government Code to change from a personnel file to a department file the type of file a fire or police department may maintain on a fire fighter or police officer employed by the department. The bill entitles a police officer to view the contents of the officer's department file and entitles the officer, on request, to a copy of any document in the officer's department file and specifies that this entitlement applies with respect to the entire contents of a department file regardless of the date on which a document or other information was placed in the file. The bill requires a police department to include in a police officer's department file any statement that the officer requests to be included in that file.

C.S.H.B. 3042 amends the Occupations Code to replace the requirement that the head of a law enforcement agency or the agency head's designee, before the agency may hire a person licensed as a law enforcement officer, submit to the Texas Commission on Law Enforcement (TCOLE) on the form prescribed by TCOLE confirmation that the agency contacted each of the person's previous law enforcement employers with the requirement that the agency head or designee submit confirmation on that form that the agency reviewed the person's employment records from each such previous employer. The bill requires TCOLE by rule to prescribe the manner by which a law enforcement agency shall make a person's employment records available to a hiring law enforcement agency. The bill requires TCOLE, not later than December 1, 2015, to adopt the rules and update forms as necessary to comply with those requirements. The bill establishes that

a law enforcement agency's failure to review such employment records or failure to make a person's employment records available to a hiring law enforcement agency on request constitutes grounds for imposing an administrative penalty. These provisions apply only to the hiring of a person by a law enforcement agency that occurs on or after December 1, 2015.

C.S.H.B. 3042 establishes that Occupations Code provisions relating to a preemployment request for a law enforcement officer's employment termination report and the submission of a background check confirmation form, as amended by the bill, control over Local Government Code provisions relating to personnel files of certain municipal fire fighters and police officers, as amended by the bill, to the extent of any conflict.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3042 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 143.089, Local Government Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) A fire or police department may maintain a department ~~[personnel]~~ file on a fire fighter or police officer employed by the department for the department's use. Except as provided by Subsection (h), ~~[but]~~ the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's department ~~[personnel]~~ file.

(h) A police officer is entitled to view the contents of the officer's department file maintained under Subsection (g) and is entitled, on request, to a copy of any document in the officer's department file.

(i) A police department shall include in a police officer's department file maintained under Subsection (g) any statement that the officer requests to be included in the file.

SECTION 1. Section 1701.451, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) Before a law enforcement agency may

SECTION 2. Section 1701.451, Occupations Code, is amended by amending Subsections (a) and (a-1) and adding Subsections (d) and (e) to read as follows:

(a) Before a law enforcement agency may

hire a person licensed under this chapter, the agency head or the agency head's designee must:

- (1) make a request to the commission for any employment termination report regarding the person that is maintained by the commission under this subchapter; and
- (2) submit to the commission on the form prescribed by the commission confirmation that the agency:
 - (A) conducted in the manner prescribed by the commission a criminal background check regarding the person;
 - (B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;
 - (C) obtained from the commission any service or education records regarding the person maintained by the commission; and
 - (D) reviewed the person's employment records from [eontacted] each of the person's previous law enforcement employers.

(d) A law enforcement agency's failure to review a person's employment records as required by Subsection (a)(2)(D) or to make a person's employment records available as required by Subsection (a-1) constitutes grounds for imposing an administrative penalty under Section 1701.507.

(e) To the extent of any conflict between this section and Section 143.089, Local Government Code, this section controls.

No equivalent provision.

hire a person licensed under this chapter, the agency head or the agency head's designee must:

- (1) make a request to the commission for any employment termination report regarding the person that is maintained by the commission under this subchapter; and
- (2) submit to the commission on the form prescribed by the commission confirmation that the agency:
 - (A) conducted in the manner prescribed by the commission a criminal background check regarding the person;
 - (B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;
 - (C) obtained from the commission any service or education records regarding the person maintained by the commission; and
 - (D) reviewed the person's employment records from [eontacted] each of the person's previous law enforcement employers.

(a-1) A law enforcement agency that obtains a consent form described by Subsection (a)(2)(B) shall make the person's employment records available to a hiring law enforcement agency on request. The commission by rule shall prescribe the manner by which a law enforcement agency shall make a person's employment records available to a hiring law enforcement agency.

(d) A law enforcement agency's failure to review a person's employment records as required by Subsection (a)(2)(D) or to make a person's employment records available as required by Subsection (a-1) constitutes grounds for imposing an administrative penalty under Section 1701.507.

(e) To the extent of any conflict between this section and Section 143.089, Local Government Code, this section controls.

SECTION 3. The changes in law made by this Act to Section 143.089, Local Government Code, apply to a request to view or obtain a copy of information made on or after the effective date of this Act. Section 143.089(h), Local Government Code, as added by this Act, applies to the entire contents of a department file regardless of the date on which a document or other information was placed in the department file.

SECTION 2. (a) Not later than December 1, 2015, the Texas Commission on Law Enforcement shall update forms as necessary to comply with Section 1701.451, Occupations Code, as amended by this Act.

(b) Section 1701.451, Occupations Code, as amended by this Act, applies only to the hiring of a person by a law enforcement agency that occurs on or after December 1, 2015. The hiring of a person by a law enforcement agency that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 4. (a) Not later than December 1, 2015, the Texas Commission on Law Enforcement shall **adopt rules and** update forms as necessary to comply with Section 1701.451, Occupations Code, as amended by this Act.

(b) Section 1701.451, Occupations Code, as amended by this Act, applies only to the hiring of a person by a law enforcement agency that occurs on or after December 1, 2015. The hiring of a person by a law enforcement agency that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 5. Same as introduced version.