

SUBJECT: Polygraph exams for certain DPS job applicants

COMMITTEE: Law Enforcement —favorable, as amended

VOTE: 6 ayes — Driver, Jackson, Frost, Hegar, Hupp, Veasey
0 nays
1 absent — Burnam

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association; Brian Hawthorne, Eric J. Holden, Mike Smith, Texas Department of Public Safety Officers Association.

Against — None

On — Tommy Davis, Frank Ditucci, Michael Gougler, Texas Department of Public Safety.

BACKGROUND: To be a polygraph examiner, an individual must be licensed by the Texas Board of Polygraph Examiners. Occupations Code, sec. 1703.306, prohibits polygraph examiners from disclosing information acquired from a polygraph examination to another person other than:

- the examinee or any other person specifically designated in writing by the examinee;
- the person that requested the examination;
- a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- another polygraph examiner in private consultation; or
- any other person required by due process of law.

The board or any other governmental agency that acquires information from a polygraph examination also is required to keep the results confidential.

Government Code, sec. 411, governs the employment of individuals to the Texas Department of Public Safety (DPS).

DIGEST:

HB 1589, as amended, would amend the Government Code to require an applicant for a DPS peace officer or police communications operator position to take a polygraph examination. The results of the exam would be used as a factor in determining whether to commission or hire the applicant.

The examination could be conducted only by a licensed examiner who was a peace officer commissioned by the department or a person with a minimum of two years of experience conducting pre-employment polygraph examinations for a law enforcement agency.

The department and the examiner would keep the results of the exam confidential, except that results may be disclosed in accordance with Occupations Code, sec. 1703.306. The department also could disclose any admission of criminal conduct to the appropriate governmental entity.

The manner and the time of the examination would be determined based on the rules of the department in accordance with the guidelines of the American Polygraph Association or the American Association of Police Polygraphists.

These changes would not apply to applicants who currently are DPS peace officers, nor to applicants for a police communications operator position who are currently employed by DPS in another police communications operator position.

The 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, 2005, and would apply only to individuals who apply to DPS on or after the effective date.

SUPPORTERS
SAY:

HB 1589 would create a more streamlined application process and enable DPS to do a more thorough investigation of its applicants before they were hired. The bill also would help ensure that only the most qualified applicants were hired and would increase public confidence in the integrity of DPS officers.

Polygraphs are an efficient, cost-effective way to investigate an applicant's background. In recent years, DPS has seen an increase in theft and sexual assault investigations among its officers. Use of the test would weed out

unqualified candidates by deterring those with questionable backgrounds from applying. It also would help to determine any background of criminal behavior such as narcotics use or violence among applicants that would otherwise be unavailable.

There is little risk that inaccurate polygraph exams would disqualify good candidates. Standard checks are in place to ensure that an applicant would not be denied a position solely due to an uncorroborated polygraph exam. Polygraph exams serve as guides to areas of a person's background that employers should investigate further rather than as the final determinant of whether to hire the applicant. If a response to a question appeared false, it would be further investigated, and if it remained unresolved, it would serve as just one factor in the screening process.

Checks in place ensure that results are accurate, and the bill would ensure that only the most qualified licensed examiners administered the exam. Each licensed examiner would have to be a peace officer or have a minimum of two years of experience conducting pre-employment polygraph examinations for a law enforcement agency. Every file then would be reviewed by another officer who also is a licensed examiner. Also, computers have standardized the process so little variance occurs in the results of the exam due to an examiner.

Polygraph examinations are used almost universally in law enforcement. Most law enforcement agencies in Texas and in other states, as well as federal law enforcement agencies, currently require pre-employment polygraph examinations. In addition, DPS officers support the use of polygraph exams.

**OPPONENTS
SAY:**

Polygraphs are an unreliable and inaccurate tool for determining an individual's truthfulness. Reliance on this test could exclude qualified candidates and result in hiring applicants with questionable backgrounds.

Realizing the unreliability of polygraph tests, federal and state laws limit the use of polygraph testing. Congress in 1988 enacted the Employee Polygraph Protection Act, which limits private employers from using the exam for pre-employment screening. In Texas, the results of a polygraph exam are inadmissible in a criminal proceeding in part because of their unreliability.

Polygraph results could be inaccurate for many reasons, including misinterpretation of the data on the charts, lack of training and experience of the polygraph examiner, equipment malfunction, failure properly to prepare the examinee, poorly worded test questions, and improper use of testing techniques. In addition, there are different ways of interpreting the data so that one examiner may interpret information a different way from another examiner. Given the unreliability of these exams, they should not be used as a factor to select applicants for DPS employment.

NOTES:

The committee amendment would specify that applicants would be required to take a polygraph exam before employment as a peace officer or police communications operator. The bill also was amended to require DPS to adopt reasonable rules to specify how and when the exam would be administered.

The companion bill, SB 732 by Williams, passed the Senate on the Local and Uncontested Calendar on April 7 and is pending in the House Law Enforcement Committee following a public hearing on April 25.