

- SUBJECT:** Requiring more detailed termination reports for peace officers
- COMMITTEE:** Law Enforcement — committee substitute recommended
- VOTE:** 7 ayes — Driver, Jackson, Burnam, Frost, Hegar, Hupp, Veasey
0 nays
- WITNESSES:** For — Tom Gaylor and Chris Heaton, Texas Municipal Police Assoc.; Ron Hickman, Justices of the Peace and Constables Assoc. of Texas; Cecil Lacey, Harris Co. Pct. 4 Constable; Randy L. Mican, Schulenburg Police Department; Troy Nehls, Fort Bend County Pct. 4 Constable; Debbie Russell, ACLU–Texas

Against — None
- BACKGROUND:** Occupations Code, ch. 1701, subch. J relates to employment records of peace officers. Sec. 1701.452 states that if an officer resigns, the head of the officer's law enforcement agency must submit a report to the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) explaining the circumstances under which the officer resigned or was terminated. The officer must receive a copy of this report. Sec. 1701.453 requires TCLEOSE to keep the report for at least 10 years, and sec. 1701.454 requires that such a report remain confidential unless the officer resigned or was terminated due to substantiated instances of excessive force or violations of the law other than traffic offenses.

An officer may consent to the release of the report to a law enforcement agency that is considering hiring the officer. Sec. 1701.456 states that if the officer consents to release, TCLEOSE is not liable for civil damages for providing the report, and the law enforcement agency that provided the report to TCLEOSE is not liable if the report was made by that agency in good faith. If the officer does not consent to release of the report, sec. 1701.455 states that the report may only be obtained by subpoena in a judicial proceeding. Sec. 1701.457 states that subch. J does not authorize TCLEOSE to review disciplinary action taken by the agency against the officer.

Sec. 1701.451 states that before a law enforcement agency may hire a peace officer, the agency must contact TCLEOSE to determine whether TCLEOSE has employment history records for the officer. TCLEOSE is authorized only to release information indicating the existence or non-existence of such information. A law enforcement agency may not use the existence of such information to affect the officer's eligibility for employment.

DIGEST:

CSHB 2677 would make changes affecting the requirements for agencies in the process of terminating or hiring an officer. It also would create a right of appeal for the officer.

Termination. A law enforcement agency that terminated an officer or accepted an officer's resignation would be required to file a report with TCLEOSE. The report would include an explanation of the circumstances under which the person resigned or was terminated and one of the following designations:

- retired — applying only to an officer who left the agency while in good standing and who was eligible to collect a pension;
- honorably discharged — applying only to an officer who left the agency while in good standing and who did not leave the agency while under investigation for a criminal violation or while facing disciplinary action;
- dishonorably discharged — applying only to an officer whose employment was terminated for a violation of law or department policy or for other substantiated misconduct;
- generally discharged — applying only to an officer who left an agency in lieu of disciplinary action while under investigation for a potential criminal violation or who left an agency for less than honorable reasons but did not leave because of pending or final disciplinary action;
- killed in the line of duty;
- died; or
- disabled.

An officer who left an agency would receive a copy of the termination report.

Hiring. The bill would require a law enforcement agency, before it hired an officer, to request any termination report regarding the officer from

TCLEOSE. The agency also would be required to submit confirmation to TCLEOSE that the agency had:

- conducted a criminal background check on the officer;
- obtained the officer's written consent for the agency to view the officer's employment records;
- obtained from TCLEOSE any education records regarding the officer; and
- contacted each of the officer's previous law enforcement employers.

TCLEOSE would be required to release the requested information to the agency.

Appeal. The bill would allow an officer to contest information in the officer's termination report within 30 days of the date of receiving the report. The terminating agency would be allowed to submit evidence to TCLEOSE supporting the information it included in the report. TCLEOSE could order the agency to correct the officer's report. If the agency did not wish to amend the report, the agency could request an administrative hearing. TCLEOSE could assess an administrative penalty against the head of an agency who failed to make a correction or request a hearing. If TCLEOSE refused to order the agency to correct the report, the officer would be entitled to an administrative hearing to dispute the information in the termination report.

The bill would take effect September 1, 2005, and the changes in law affecting employment termination reports would apply only to a resignation or termination that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 2677 would help law enforcement agencies easily determine whether a potential employee had a disreputable employment history. It especially would be helpful to smaller and rural agencies that lack the resources to conduct background checks on each applicant.

Peace officers often are able to move from agency to agency despite poor performance records or unethical behavior. Such officers are known as "gypsy cops," and have become a persistent problem in Texas. Under current law, an officer often is able to negotiate his resignation with an agency after a negative incident such that no official disciplinary action appears on his record. A terminating agency is required to file a report

with TCLEOSE when an officer resigns or is terminated, but a hiring agency may not view this report unless the officer consents or unless the officer resigned or was terminated due to substantiated instances of excessive force or violations of the law. Thus, while a hiring agency may know that TCLEOSE has a report on the officer, it might not see the report and could not allow its knowledge of the report's existence to affect its hiring decision.

By contrast, HB 2677 would require the terminating agency to include specific information about the applicant's employment record in the termination report. For example, while an officer and an agency still could negotiate a resignation in lieu of an investigation or disciplinary action, such a departure would be noted in the report as "generally discharged" rather than "honorably discharged," which would alert the hiring agency that the officer did not leave a preceding agency on good terms.

In addition to protecting the public from potentially dangerous officers, CSHB 2677 would protect the rights of peace officers and agencies. For example, a hiring agency would be required to obtain consent from the officer to view the officer's termination report. In addition, the bill would provide a formal administrative procedure through which an officer could dispute the officer's departure classification. Finally, terminating agencies would be protected from civil liability as long as the agency acted in good faith in categorizing the officer's departure from the agency.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

HB 2677 as introduced would have required a hiring agency to contact all of the officer's previous employers, rather than all of the officer's previous law enforcement employers. The original bill also would not have set a time limit by which an officer would be required to dispute information contained in the termination report. The bill as introduced also would not expressly have required a terminating agency ordered by TCLEOSE to correct a report to either make the correction or request a hearing.

In the fiscal note, the Legislative Budget Board notes that local law enforcement agencies might incur increased personnel costs as a result of the new termination report requirements. An agency also might incur some costs if an officer disputed a termination report filed by the agency.