

SUBJECT: Continuing TCLEOSE

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 9 ayes — Merritt, Frost, Burnam, Driver, P. King, Lewis, Mallory
Caraway, Rodriguez, Vo

0 nays

WITNESSES: For — Chris Jones, Combined Law Enforcement Associations of Texas
(CLEAT)

Against — None

On — Timothy Braaten, Texas Commission on Law Enforcement Officer
Standards and Education; Tom Gaylor, Texas Municipal Police
Association; Sarah Kinkle, Sunset Advisory Commission

BACKGROUND: The Legislature established the Texas Commission on Law Enforcement
Officer Standards and Education (TCLEOSE) in 1965 to set voluntary
training and education standards for law enforcement. In 1969, standards
for peace officers were made mandatory, followed by regulation of county
jailers and telecommunicators. At the end of fiscal 2007, TCLEOSE
regulated 70,155 peace officers, 26,487 jailers, and 9,041
telecommunicators. Because some hold dual certification as peace officers
and jailers, TCLEOSE regulates 94,337 individuals. TCLEOSE will be
abolished on September 1, 2009, under the Sunset process unless
continued by the Legislature.

The House version of SB 1, the general appropriations bill, would
appropriate \$6.8 million to TCLEOSE for fiscal 2010-11, including
funding for 47 full-time equivalent positions.

In 2005, the 79th Legislature enacted HB 2677 by Driver, which amended
Occupations Code, ch. 1701 to require law enforcement agencies that
terminate an officer or accept an officer's resignation to file an F-5
discharge form with TCLEOSE. HB 2677 requires that a law enforcement
agency must request a copy of an F-5 discharge form from TCLEOSE

before hiring an officer. The bill also allows an officer to contest information in the officer's termination report.

DIGEST:

CSHB 3389 would continue TCLEOSE until September 1, 2021, and would adopt several Sunset Commission recommendations including:

- implementation of a technology review policy and redesign of its website;
- electronic submission of and access to forms submitted, including a system of verifying electronic requests for information;
- establishment of a comprehensive procedure for receiving and investigating complaints received by TCLEOSE that fall outside its jurisdiction;
- administrative penalties and allowing Travis County as a venue for prosecution of criminal violations of Occupations Code, ch. 1701;
- an amendment to state that TCLEOSE would not be a party in a State Office of Administrative Hearings in disputes about F-5 discharge form information;
- additional educational requirements for applicants with a high school equivalency certificate (GED);
- requirements that all law enforcement agencies require officers to pass a firearms proficiency test annually; and
- standard Sunset recommendations on qualification and training for members of the governing board, alternative dispute resolution, and guidelines on what types of offenses would require disciplinary action against a license holder.

Technology. CSHB 3389 would make several changes in information technology processes and procedures at TCLEOSE. It would require a review to improve access to its records by the public and law enforcement agencies and to improve the security of that data. Other provisions would require the development of a system to allow for the electronic submission of forms, data, and other records to the agency.

Complaint tracking and jurisdiction. The bill would require a procedure for receiving and tracking the number of types of complaints received by TCLEOSE, including complaints that fall outside the jurisdiction of the commission. The components of the process would be:

- complaint intake;
- investigation;
- adjudication and relevant hearings;
- appeals;
- imposition of sanctions; and
- public disclosure, including posting information on the agency website.

The bill also would specify that TCLEOSE would not be a party to any F-5 officer termination complaints held before the State Office of Administrative Hearings. It would allow alternative methods to resolve disputes between terminated law enforcement officers and their former law enforcement agencies about those records.

In conjunction with the complaint process, the bill also would authorize TCLEOSE to impose administrative penalties for violations of up to \$1,000 per day of violation and would allow prosecutions to be conducted in Travis County as well as in the county where the violation was alleged to have occurred.

Education. The bill would require that an applicant who held a GED complete 12 hours of study at a college or university before becoming eligible to receive a TCLEOSE license as a peace officer.

Other provisions. CSHB 3389 would repeal provisions of Occupations Code, ch. 1701 that:

- require the commissioner of higher education, the commissioner of education, the Department of Public Safety director, the executive director of the Criminal Justice Division of the Governor's Office, and the attorney general to serve as ex officio members of the TCLEOSE board;
- require transfer of any unexpended or unencumbered balances in the Law Enforcement and Standards Fund to the General Revenue Fund at the end of a fiscal year;
- allow TCLEOSE to have access to personnel records of local law enforcement agencies, including information about age, education, physical standards, citizenship, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing of an officer or county jailer; and
- require TCLEOSE licensing of jail employees other than jailers.

CSHB 3389 would allow TCLEOSE access to personnel records of local law enforcement agencies, including information about age, education, physical standards, citizenship, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing as an officer or county jailer, and as part of a requirement that the commission audit each law enforcement agency at least once every five years. The commission would be required to develop rules for conducting these audits, including what type of documents would be subject to audit and what factors, such as prior violations or inspection history, would give priority to a particular agency for auditing, and sanctions for noncompliance.

The bill would take effect on September 1, 2009, and TCLEOSE would have to develop rules to implement the bill's provisions by March 1, 2010.

**SUPPORTERS
SAY:**

CSHB 3389 would continue the very necessary operations of TCLEOSE and help the agency to achieve its mission of ensuring that Texas continues to have highly trained and ethical law enforcement personnel. The bill would help TCLEOSE modernize its information technology systems and would help conform its regulatory activities to standard practices identified and developed by more than three decades of sunset reviews.

Technology. CSHB 3389 would encourage development of an information technology system that would be more user-friendly to law enforcement agencies, TCLEOSE staff, and the public. Currently, the agency contracts with Productivity Center, Inc. to manage its database, the Texas Commission on Law Enforcement Data Distribution System. While TCLEOSE does not pay for the system, local law enforcement agencies pay between \$138 and \$5,460 per year to access the system. Some smaller agencies cannot afford to subscribe. Also, there have been concerns about security of the system after an agency laptop was stolen from PCI's office in May 2007. The laptop contained Social Security numbers and mailing addresses of 229,000 licenses and proficiency certificates. So far no cases of identity theft have been reported, but the incident has led to a class-action suit against PCI. Changes in the information system could help resolve risks associated with contracting with a small firm and could improve access and security.

Requiring electronic submission of all forms and data would improve TCLEOSE operations and service to licensees, law enforcement agencies,

and the public. Not all information currently is submitted electronically, and TCLEOSE must hand-key into the system data submitted at the end of the fiscal year. The change to electronic submission already is underway, and CSHB 3389 would facilitate the transition to all information being submitted electronically.

Redesign of the TCLEOSE website would be easily accomplished and would make it easier to use. Such changes would help prevent situations like that in late 2007, when a hacker posted unauthorized content to the agency website and forced TCLEOSE to shut down the site for 45 days for repairs and updates. Also, having the information on the website could reduce the volume of calls to ask for basic information.

Complaint tracking. CSHB 3389 would clarify TCLEOSE's role in providing F-5 termination files and eliminate its status as a third party in disputes between officers and their former employers. The Legislature enacted HB 2677 in 2005 to remedy the problem with "gypsy cops" — those peace officers who move from agency to agency despite poor performance records or unethical behavior. The unintended consequence was to increase the workload of TCLEOSE in adjudicating these disputes. The bill would encourage alternative means to resolve these cases and keep the agency out of the administrative hearings process.

The bill also would allow for tracking of complaints received by TCLEOSE that fall outside its jurisdiction, such as complaints about actions of particular peace officers. The bill would allow the complaints to be heard by the appropriate authorities, but would provide for a record of resolutions of the complaints.

CSHB 3389 would provide TCLEOSE appropriate authority to pursue and sanction violators. The option of seeking venue in Travis County could be a remedy in cases where local politics or personalities preclude the county district attorney from prosecuting a case involving a peace officer. TCLEOSE also would have the same ability as other regulatory agencies to impose \$1,000-a-day administrative penalties for violations.

Firearms proficiency. The bill would ensure that all law enforcement officers demonstrate proficiency with their weapons and would end the exemption for agencies with only one officer. These officers would have to place more reliance on their own skills and judgment on the use of

deadly force than an agency with more officers. Any training or access to firing ranges could be coordinated with other law enforcement agencies.

Education. Applicants who hold GEDs should be required to complete a semester's worth of college credits to apply for a TCLEOSE license. Those who did not complete high school because they may have been bored or lost interest in academics should demonstrate that they can succeed in a structured educational setting. Completing college courses would be a good indicator of someone's future at a law enforcement training academy. Also, there is positive correlation between additional college education and fewer disciplinary troubles with peace officers.

CSHB 3389's education requirement would not cause a problem with smaller jurisdictions in recruiting peace officers. What hurts these agencies are low pay scales. All recruits must be at least 21 years of age, and larger police departments require a bachelor's degree. The number of recruits available to all agencies tends to ebb and flow. With the current economic problems, many more applicants want to be peace officers.

Other provisions. CSHB 3389 would appropriately remove the higher education and education commissioners, the DPS director, the executive director of the governor's Criminal Justice Division, and the attorney general as ex officio members of the TCLEOSE board. Most of these ex officio members have had no consistent presence at the board meetings. The board could obtain expertise from its 19 informal advisory committees.

The bill would continue TCLEOSE oversight of county jailers, but it would not have to license other personnel such as cooks, clerks, and maintenance personnel. Compliance with TCLEOSE standards can be burdensome for these other jail employees, and the counties would retain authority to set standards higher than the minimum TCLEOSE standards for all jail employees, including jailers.

**OPPONENTS
SAY:**

Technology. The information system provided by the public-private partnership with PCI has cost the state nothing to operate and maintain for the past decade. Any responses to risks posed by the size of the company or by security breaches could be handled through negotiations with the vendor.

Firearms proficiency. Requiring annual firearms proficiency qualification would be burdensome and expensive for one-officer agencies. In most cases, these agencies serve small or rural jurisdictions with limited budgets for public safety and other government services.

Education. CSHB 3389 would create an unfair and unjustifiable separate standard between those who complete high school by attending classes and those that complete an examination. All applicants must be 21 years of age and could be expected to gain life experience, such as service in the military, which would be comparable to taking 12 hours of college courses.

Requiring additional educational requirements could also reduce the available recruitment pool for smaller police departments or sheriff's departments in rural counties.

OTHER
OPPONENTS
SAY:

Technology. CSHB 3389 would be an example of making policy changes without providing the appropriations to fund it. The House included \$1.6 million for the TCLEOSE information technology program in Article 11 of SB 1, the general appropriations bill. While the project would be eligible for funding, the agency likely would not receive that appropriation.

NOTES:

The committee substitute differs from the original bill by including provisions that would restore the current statutory provisions that recruits with GEDs must complete college courses; would require firearms proficiency training all law enforcement agencies; and would permit Travis County as a venue for prosecuting criminal violations of Occupations Code, ch. 1701.

The companion bill, SB 1018 by Deuell, was heard and left pending by the Senate Government Organization Committee on April 6.