

BILL ANALYSIS

Senate Research Center
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S.B. 370
By: Brown
Criminal Justice
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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 SECTIONS 8, 17, and 19 (Sections 411.0072(a) - (c), 411.0074(a), 411.0131(a), Government Code, and Sections 521.427(a) and 644.104(c), Transportation Code); the Department of Public Safety and the Texas Department of Public Safety in SECTION 8 (Sections 411.0098(a) and (c), Government Code), and the Department of Public Safety in SECTION 12 (Section 521.103, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.002(c), Government Code, to provide that the Department of Public Safety of the State of Texas (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 Sections 411.003(b), and (c), Government Code, to provide that the Public Safety Commission (PSC) is composed of six, rather than three, citizens of this state. Provides that terms of two members expire January 1 of each year, rather than one member's term. Makes a conforming change.

SECTION 3. 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.

SECTION 4. Amends Chapter 411A, Government Code, by adding Section 411.0031 and amending Section 411.004, 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.

SECTION 5. Amends Sections 411.005(b) and (c), Government Code, to authorize the public safety director (PSD), rather than the PSC, to appoint an assistant director, with the advice of the PSC. Provides that the assistant director serves until removed by the PSD. Requires the PSD to select the assistant director on the basis of the person's qualifications for the position. Makes conforming changes.

SECTION 6. Amends Chapter 411A, Government Code, by amending Sections 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.

Sec. 411.0061. COMMERCIAL CARRIER INSPECTIONS: IMPLEMENTATION SCHEDULE FOR NONCOMMISSIONED PERSONNEL. Requires the PSD to develop a schedule to phase in 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 to be filed with the Legislative Budget Board with each legislative appropriations request of the DPS. Provides that this section expires January 1, 2005.

SECTION 7. Amends Section 411.007(e), Government Code, to prohibit the DPS from discharging, suspending, or demoting a commissioned officer except for the violation of a specific PSC rule, except as provided by Subsection (f). Makes a nonsubstantive change.

SECTION 8. 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, by rule, to authorize a subcommittee composed of PSC members to conduct public hearings to which an officer or employee is entitled or regarding any other disputed personnel action that the PSC has discretion to hear. 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, by rule, 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, by rule, to provide a means for an employee to appeal a disciplinary action or resolve an employment-related grievance through mediation if the employee chooses. Requires the rules to establish 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. Entitles an employee who chooses mediation to services of a mediator not employed by the DPS. Provides that an employee who chooses to use mediation to appeal a disciplinary action or resolve an employment-related grievance waives the right to appeal under Section 411.007 or 411.0073 or to use the grievance process established under Section 411.0073.

Sec. 411.0098. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF TRANSPORTATION. Requires DPS and the Texas Department of Transportation (TxDOT) to adopt, by rule, a memorandum of understanding on coordinating the development of transportation infrastructure projects that affect both agencies. Requires the memorandum to allow DPS to provide comments to TxDOT regarding planning efforts that affect traffic law enforcement, require DPS and TxDOT to define their respective roles in transportation efforts, and require DPS and TxDOT to develop a plan regarding federal funds that affect enforcement efforts. Requires DPS and TxDOT to update the memorandum of understanding as necessary and adopt all revisions to the memorandum by rule.

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 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 9. 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 10. Amends Chapter 411, Government Code, by adding Subchapter I, as follows:

SUBCHAPTER I. INTERNAL OVERSIGHT

Sec. 411.241. OFFICE OF AUDIT AND REVIEW. Requires DPS 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). Provides that OIA has original jurisdiction over all criminal investigations occurring on DPS property or involving on-duty 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 11. Amends 521.101(d), Transportation Code, to delete text regarding a renewal or duplicate personal identification certificate.

SECTION 12. 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 13. Amends Section 521.141(a), Transportation Code, to delete text regarding a renewal of a driver's license.

SECTION 14. Amends Section 521.1425, Transportation Code, to make conforming and nonsubstantive changes.

SECTION 15. Amends Section 521.143(a), Transportation Code, to make a conforming change.

SECTION 16. 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 17. 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 18. 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 19. Amends Section 644.104, Transportation Code, by adding Subsections (c) and (d), to prohibit DPS from using an officer to conduct an inspection unless the inspection involves a situation determined by PSC to require the use of an officer. Makes a conforming change.

SECTION 20. Requires the governor to appoint three new members to PSC with one term expiring January 1, 2000, another January 1, 2002, and the last expiring January 1, 2004. Provides that a quorum of PSC is a majority of the number of members who have taken office, until all members are appointed. Requires PSC and TxDOT to adopt rules necessary to implement the changes in law made by this Act before January 1, 2000. Requires PSC to adopt rules regarding the use of mediation as added by this Act before 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.

SECTION 21. Effective date: September 1, 1999.

SECTION 22. Emergency clause.