

BILL ANALYSIS

Senate Research Center

H.B. 3389
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Government Organization
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. TCLEOSE's goal is to have highly trained and ethical law enforcement and county corrections personnel in Texas by ensuring that licensees are qualified, competent, and meet minimum licensure standards. To accomplish its mission, TCLEOSE licenses and certifies qualified individuals as peace officers, county jailers, and telecommunicators; approves and evaluates training providers; develops and maintains basic training and continuing education courses; and takes disciplinary action against licensees to enforce statute and rules.

The Sunset Advisory Commission found that Texas has a clear and ongoing need to train and regulate law enforcement and county corrections personnel, but that changes are needed to improve TCLEOSE's operations and the accountability of TCLEOSE's current responsibilities.

H.B. 3389 continues TCLEOSE for 12 years and sets forth new requirements of TCLEOSE.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Law Enforcement Officer Standards and Education in SECTION 7 (Sections 1701.1523, 1701.1524, and 1701.162, Occupations Code), SECTION 9 (Section 1701.202, Occupations Code), SECTION 13 (Section 1701.254, Occupations Code), SECTION 15 (Section 1701.3095, Occupations Code), SECTION 20 (Section 1701.451, Occupations Code), SECTION 23 (Section 1701.507, Occupations Code), and SECTION 28 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1701.002, Occupations Code, to provide that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is abolished and this chapter expires September 1, 2021, rather than September 1, 2009.

SECTION 2. Amends Section 1701.053, Occupations Code, as follows:

Sec. 1701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Redefines "Texas trade association" (association).

(b) Prohibits a person from being a TCLEOSE member and from being an employee of TCLEOSE employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person or the person's spouse is an officer, employee, or paid consultant of an association in the field of law enforcement or county corrections. Deletes existing text prohibiting an officer, employee, or paid consultant of an association in the field of law enforcement from being a TCLEOSE member and from being an employee of TCLEOSE who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) Redesignates Subsection (d) as Subsection (c). Prohibits a person from being, rather than serving as, a member of TCLEOSE or acting as the general counsel to TCLEOSE or the agency if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to TCLEOSE's operation. Deletes existing text prohibiting a person who is the spouse of an officer, manager, or paid consultant of an association in the field of law enforcement from being a TCLEOSE member and from being an employee of TCLEOSE who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

SECTION 3. Amends Section 1701.056(a), Government Code, to provide that it is a ground for removal from TCLEOSE that a member does not have at the time of taking office, rather than appointment, the qualifications required by Section 1701.051(a) (relating to the composition of TCLEOSE) or 1701.052 (Eligibility of Public Members); does not maintain during service on TCLEOSE the qualifications required by Section 1701.051(a) or 1701.052; is ineligible for membership under, rather than violates a prohibition established by, Section 1701.053; cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or is absent from more than half of the regularly scheduled TCLEOSE meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of TCLEOSE.

SECTION 4. Amends Section 1701.059, Occupations Code, as follows:

Sec. 1701.059. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of TCLEOSE from voting, deliberating, or being counted as a member in attendance at a meeting of TCLEOSE until the person completes a training program that complies with this section. Deletes existing text requiring a person appointed to TCLEOSE, to be eligible to take office as a member of TCLEOSE, to complete at least one course of a training program that complies with this section.

(b) Requires that the training program provide the person with information regarding the legislation that created TCLEOSE; the programs, functions, rules, and budget of TCLEOSE; the results of the most recent formal audit of TCLEOSE; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies adopted by TCLEOSE or the Texas Ethics Commission. Deletes existing text requiring that the training program provide information to a member regarding this chapter; the programs operated by TCLEOSE; the role and functions of TCLEOSE; the rules of TCLEOSE, with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for TCLEOSE; the results of the most recent formal audit of TCLEOSE; the requirements of Chapters 551 (Open Meetings), 552 (Public Information), and 2001 (Administrative Procedure), Government Code; and the requirements of the conflict of interest laws and other laws relating to public officials. Makes nonsubstantive changes.

(c) Entitles a person appointed to TCLEOSE to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office, rather than as provided by the General Appropriations Act, as if the person were a member of TCLEOSE.

SECTION 5. Amends Section 1701.153(b), Occupations Code, to require TCLEOSE to furnish each agency and licensed training school with the required reporting forms, including access to electronic submission forms when the system under Section 1701.1523 is established.

SECTION 6. Amends Sections 1701.157(b) and (c), Occupations Code, as follows:

(b) Requires a local law enforcement agency, to provide the necessary information for an allocation of money under Subsection (a), to report to the comptroller not later than November 1 of the preceding calendar year, rather than of each calendar year, the number of agency positions described by Subsection (a)(2) reserved as of January 1 of the year the report is due; the number of agency positions described by Subsection (a)(2) filled as of January 1 of the year the report is due; the percentage of the money received by the agency under Subsection (a) pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due that was used by the agency before the date of the allocation made by the comptroller under Subsection (a) on or before March 1 of the year the report is due; the number of training hours received during the 12-month or approximately 12-month period described by Subdivision (3) (relating to the percentage of money received) that were funded by money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due; and that the agency has complied with the requirements of this section regarding the use of any money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due. Makes nonsubstantive changes.

(c) Requires the head of a law enforcement agency to maintain a complete and detailed record, rather than detailed written record, of money received and spent by the agency under this section.

SECTION 7. Amends Subchapter D, Chapter 1701, Occupations Code, by adding Sections 1701.1521-1701.1524, 1701.162, and 1701.163, as follows:

Sec. 1701.1521. USE OF TECHNOLOGY. Requires TCLEOSE to implement a policy requiring TCLEOSE to use appropriate technological solutions to improve TCLEOSE's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TCLEOSE on the Internet.

Sec. 1701.1522. ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TCLEOSE to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TCLEOSE rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TCLEOSE's jurisdiction.

(b) Requires that TCLEOSE's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TCLEOSE to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a); serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures, as implemented by TCLEOSE.

Sec. 1701.1523. ELECTRONIC SUBMISSION OF FORMS, DATA, AND DOCUMENTS. Requires TCLEOSE by rule to develop and establish a system for the electronic submission of forms, data, and documents required to be submitted to TCLEOSE under this chapter, and once that system is established, require law enforcement agencies to submit to TCLEOSE electronically any form, data, or document required to be submitted to TCLEOSE under this chapter.

Sec. 1701.1524. RULES RELATING TO CONSEQUENCES OF CRIMINAL CONVICTION OR DEFERRED ADJUDICATION. (a) Requires TCLEOSE by rule to establish guidelines consistent with this chapter that are necessary to comply with Chapter 53 (Consequences of Criminal Conviction) to the extent that chapter applies to persons licensed under this chapter.

(b) Requires TCLEOSE, in its rules under this section, to list the offenses for which a conviction would constitute grounds for TCLEOSE to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License) or for which placement on deferred adjudication community supervision would constitute grounds for TCLEOSE to take action under this chapter.

Sec. 1701.162. RECORDS AND AUDIT REQUIREMENTS. (a) Entitles TCLEOSE to access records maintained under Sections 1701.303 (License Application; Duties of Appointing Entity), 1701.306 (Psychological and Physical Examination), and 1701.310 (Appointment of County Jailer; Training Required) by an agency hiring a person to be an officer or county jailer, including records that relate to 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.

(b) Requires TCLEOSE to audit the records described by Subsection (a) of each law enforcement agency at least once every five years.

(c) Requires TCLEOSE by rule to develop and establish a framework for the audits conducted by TCLEOSE under Subsection (b) that addresses the types of documents subject to audit; provides a schedule for additional risk-based inspections based on whether there has been a prior violation by the law enforcement agency, the inspection history of the agency, and any other factor TCLEOSE by rule considers appropriate; provides timelines for complying with an audit request or correcting a violation found during the audit process; and establishes sanctions for failing to comply with an audit request or to correct a violation found during the audit process.

Sec. 1701.163. INFORMATION PROVIDED BY COMMISSIONING ENTITIES. (a) Provides that this section applies only to an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ officers on or after September 1, 2009.

(b) Requires the entity to submit to TCLEOSE on creation of the law enforcement agency or police department information regarding the need for the law enforcement agency or police department in the community; the funding sources for the law enforcement agency or police department; the physical resources available to officers; the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, and public area; certain law enforcement policies of the law enforcement agency or police department; the administrative structure of the law enforcement agency or police department; liability insurance; and any other information TCLEOSE requires by rule.

SECTION 8. Amends Subchapter D, Chapter 1701, Occupations Code, by adding Section 1701.164, as follows:

Sec. 1701.164. COLLECTION OF INFORMATION REGARDING RACIAL PROFILING. Requires TCLEOSE to collect and maintain information submitted to TCLEOSE under Article 2.134, Code of Criminal Procedure.

SECTION 9. Amends Section 1701.202, Occupations Code, as follows:

Sec. 1701.202. COMPLAINTS. (a) Requires TCLEOSE by rule to establish a comprehensive procedure for certain phases of TCLEOSE's complaint enforcement process, rather than to provide TCLEOSE's policies and procedures relating to complaint investigation and resolution to a person filing a complaint and to each person that is the subject of the complaint.

(b) Authorizes a license holder, on request, to obtain information regarding a complaint made against the license holder under this chapter, including a complete copy of the complaint file. Requires TCLEOSE, on receipt of a request under this subsection, to provide the requested information in a timely manner to allow the license holder time to respond to the complaint.

(c) Requires TCLEOSE to ensure that detailed information regarding TCLEOSE's complaint enforcement process described by this section is available on any publicly accessible Internet website and in any appropriate printed materials maintained by TCLEOSE.

SECTION 10. Amends Section 1701.203, Occupations Code, as follows:

Sec. 1701.203. RECORDS OF COMPLAINTS. (a) Requires TCLEOSE to maintain a system to promptly and efficiently act on complaints filed with TCLEOSE and to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring TCLEOSE to keep an information file about each written complaint filed with TCLEOSE that TCLEOSE has authority to resolve and requiring that the information file include the date the complaint is received, the name of the complainant, a record of each person contacted in relation to the complaint, and an explanation of the reason that a complaint was closed without action by TCLEOSE. Makes nonsubstantive changes.

(b) Requires TCLEOSE to make information available describing its procedures for complaint investigation and resolution.

(c) Creates this subsection from existing text. Requires TCLEOSE to periodically notify the parties to the complaint of the status of the complaint until final disposition. Deletes existing text requiring TCLEOSE, at least quarterly and until final disposition of the complaint, to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 11. Amends Subchapter E, Chapter 1701, Occupations Code, by adding Section 1701.2035, as follows:

Sec. 1701.2035. TRACKING AND ANALYSIS OF COMPLAINT AND VIOLATION DATA. (a) Requires TCLEOSE to develop and implement a method for tracking complaints filed with TCLEOSE through their final disposition, including certain information for each complaint, and tracking and categorizing the sources and types of complaints filed with TCLEOSE and of violations of this chapter or a rule adopted under this chapter.

(b) Requires TCLEOSE to analyze the complaint and violation data maintained under Subsection (a) to identify trends and areas that may require additional regulation or enforcement.

SECTION 12. Amends Section 1701.253, Occupations Code, by adding Subsection (k), to require TCLEOSE, as part of the minimum curriculum requirements, to establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

SECTION 13. Amends Section 1701.254, Occupations Code, by adding Subsection (d), to require TCLEOSE by rule to establish a system for placing a training provider on at-risk probationary statutes. Requires that the rules prescribe certain information.

SECTION 14. Amends Section 1701.255(c), Occupations Code, to delete the existing requirement that a person have completed at least 12 hours at an institution of higher education with at least a 2.0 grade point average on a 4.0 scale to enroll in a peace officer training program under Section 1701.251(a) (relating to training programs).

SECTION 15. Amends Subchapter G, Chapter 1701, Occupations Code, by adding Section 1701.3095, as follows:

Sec. 1701.3095. EDUCATION REQUIREMENT. Requires TCLEOSE by rule to require a person who has obtained a high school equivalency certificate (GED) but does not hold a high school diploma to complete at least 12 hours of study at an accredited college or university as a prerequisite to obtaining a license as a peace officer.

SECTION 16. Amends Section 1701.351, Occupations Code, by adding Subsection (a-1), to require a peace officer, as part of the continuing education programs under Subsection (a), to complete a training and education program that covers recent changes to the laws of this state and of the United States pertaining to peace officers.

SECTION 17. Amends Section 1701.352, Occupations Code, by amending Subsection (b) and adding Subsection (g), as follows:

(b) Requires TCLEOSE to require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each officer with a training program at least once every 48 months that is approved by TCLEOSE and consists of, for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by TCLEOSE regarding de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. Makes nonsubstantive changes.

(g) Prohibits the training and education program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments under Subsection (b)(2)(B) (relating to de-escalation and crisis intervention techniques) from being provided as an online course. Requires TCLEOSE to determine best practices for interacting with persons with mental impairments, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas, and to review the education and training program under Subsection (b)(2)(B) at least once every 24 months.

SECTION 18. Amends Section 1701.402, Occupations Code, by adding Subsections (h) and (i), as follows:

(h) Requires an officer, as a requirement for an intermediate proficiency certificate, to complete an education and training program on investigative topics established by TCLEOSE under Section 1701.253(b).

(i) Requires an officer, as a requirement for an intermediate proficiency certificate, to complete an education and training program on civil rights, racial sensitivity, and cultural diversity established by TCLEOSE under Section 1701.253(c).

SECTION 19. Amends Section 1701.355(a), Occupations Code, to require an agency that employs one or more peace officers, rather than at least two peace officers, to designate a firearms proficiency officer and require each peace officer the agency employs to demonstrate weapons proficiency to the firearms proficiency officer at least annually.

SECTION 20. Amends Sections 1701.451(a)-(c), Occupations Code, as follows:

(a) Requires the agency head or the agency head's designee, before a law enforcement agency is authorized to hire a person licensed under this chapter, to perform certain actions, including to make a request, rather than a written request, to TCLEOSE for any employment termination report regarding the person that is maintained by TCLEOSE under this subchapter.

(b) Requires TCLEOSE by rule to establish a system for verifying an electronically submitted request required by Subsection (a), rather than requiring that the written

request be on the agency's letterhead and be signed by the agency head or the agency head's designee.

(c) Makes a conforming change.

SECTION 21. Amends Section 1701.4525, Occupations Code, by adding Subsection (g), to provide that TCLEOSE is not considered a party in a proceeding conducted by the State Office of Administrative Hearings under this section.

SECTION 22. Amends Section 1701.453, Occupations Code, to make a conforming change.

SECTION 23. Amends Subchapter K, Chapter 1701, Occupations Code, by adding Section 1701.507, as follows:

Sec. 1701.507. ADMINISTRATIVE PENALTIES. (a) Provides that in addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by TCLEOSE not to exceed \$1,000 per day per violation. Requires that the administrative penalty be assessed in a proceeding conducted in accordance with Chapter 2001, Government Code.

(b) Requires that the amount of the penalty be based on certain requirements.

(c) Requires TCLEOSE by rule to establish a written enforcement plan that provides notice of the specific ranges of penalties that apply to specific alleged violations and the criteria by which TCLEOSE determines the amount of a proposed administrative penalty.

SECTION 24. Amends Subchapter L, Chapter 1701, Occupations Code, by adding Section 1701.554, as follows:

Sec. 1701.554. VENUE. Provides that venue for the prosecution of an offense that arises from a violation of this chapter or in connection with the administration of this chapter lies in the county where the offense occurred or in Travis County.

SECTION 25. Amends Article 2.132(b), Code of Criminal Procedure, as follows:

(b) Requires that the policy on racial profiling require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual and require the agency to submit to TCLEOSE, and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency, an annual report of the information collected under Subdivision (6) (relating to collection of information), rather than an annual report if the agency is an agency of a county, municipality, or other political subdivision of the state.

SECTION 26. Amends Article 2.134(b), Code of Criminal Procedure, to require each law enforcement agency, rather than each local enforcement agency, not later than March of each year, to submit a report containing the information compiled during the previous calendar year to TCLEOSE and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency, rather than served by the agency in a manner approved by the agency.

SECTION 27. Repealers: Sections 1701.051(d) (relating to certain officers as ex officio members of TCLEOSE), 1701.156(c) (Law Enforcement Officer Standards and Education Fund), 1701.315 (Records), and 1701.406 (County Jail Personnel), Occupations Code.

SECTION 28. (a) Makes application of Sections 1701.053, 1701.056, and 1701.059 of this Act prospective.

(b) Requires TCLEOSE, not later than March 1, 2010, to adopt rules and policies required under Sections 1701.202, 1701.254, and 1701.451, Occupations Code, as amended by this Act, and Sections 1701.1521-1701.1524 and 1701.162, Occupations Code, as added by this Act.

(c) Makes application of the changes in law made by this Act with respect to conduct that is grounds for the imposition of a disciplinary sanction, including an administrative penalty, of this Act prospective.

(d) Requires TCLEOSE to modify the training program required by Section 1701.352(b), Occupations Code, as amended by this Act, and ensure that the modified program is available not later than January 1, 2010.

(e) Requires a law enforcement agency affected by the change in law made by this Act to Section 1701.355(a), Occupations Code, to designate a firearms proficiency officer not later than March 1, 2010. Provides that for purposes of this section, a state or local governmental entity that employs one or more peace officers is a law enforcement agency.

(f) Makes application of Section 1701.157(b), Occupations Code, prospective to January 1, 2011.

SECTION 29. Makes application of Articles 2.132(b) and 2.134(b), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 30. Effective date: September 1, 2009.