

BILL ANALYSIS

Senate Research Center

S.B. 1005
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Government Organization
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Polygraph Examiners Board (PEB) aims to protect the public from untrained practice by testing and licensing polygraph examiners and by taking enforcement action against violators of the Polygraph Examiners Act. Housed within the Texas Department of Public Safety since 1891, PEB employs two staff members and operates with a budget of about \$103,000. In fiscal year 2008, PEB licensed 247 examiners and reported receiving 10 jurisdictional complaints, all of which PEB dismissed.

PEB is subject to the Texas Sunset Act and will be abolished on September 1, 2009 unless continued by the legislature. The Sunset review found that regulation of polygraph examiners continues to be needed. However, PEB's ability to protect the public is compromised by the real and potential conflicts of interests inherent in PEB's processes and administrative placement, ineffective enforcement, and the small size of the agency and number of licensees.

S.B. 1005 amends current law relating to the regulation of polygraph examiners by the Texas Department of Licensing and Regulation and the abolition of PEB.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Polygraph Examiner Board (PEB) is transferred to the Texas Commission of Licensing and Regulation (TCLR) and modified in SECTION 9 (Section 1703.203, Occupations Code) of this bill.

Rulemaking authority previously granted to PEB is transferred to TCLR in SECTION 14 (Section 1703.252, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1703.003, Occupations Code, by amending Subdivisions (1), (2), and (5) and adding Subdivision (1-a), to define "commission" and redefine "committee," "department," and "polygraph examiner internship."

SECTION 2. Amends the heading to Subchapter B, Chapter 1703, Occupations Code, to read as follows:

SUBCHAPTER B. POLYGRAPH ADVISORY COMMITTEE

SECTION 3. Amends the heading to Section 1703.051, Occupations Code, to read as follows:

Sec. 1703.051. COMMITTEE MEMBERSHIP.

SECTION 4. Amends Sections 1703.051(a), (c), (d), and (e), Occupations Code, as follows:

(a) Provides that the Polygraph Advisory Committee (committee) consists of five members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR), with the approval of TCLR, including one member, rather than three members, who represents the public. Deletes existing text providing that the Polygraph Examiners Board (PEB) consists of seven members appointed by the governor with the advice and consent of the senate. Makes a nonsubstantive change.

(c) Requires a polygraph examiner member to be actively engaged as a polygraph examiner on the date of appointment. Deletes existing text requiring a polygraph examiner to have been engaged as a polygraph examiner for at least five consecutive years before the date of the appointment. Makes nonsubstantive changes.

(d) Makes a conforming change.

(e) Requires that appointments to the committee, rather than PEB, be made without regard to the race, color, disability, sex, religion, or national origin of the appointee. Deletes existing text referring to the creed of the appointee.

SECTION 5. Amends Section 1703.054, Occupations Code, as follows:

(a) Makes a conforming change.

(b) Requires the presiding officer of TCLR, with TCLR's approval, if a vacancy occurs on the committee, to appoint a successor to fill the unexpired term. Deletes existing text requiring the governor, if a vacancy occurs on PEB, to appoint a successor to fill the unexpired term. Makes a conforming change.

SECTION 6. Amends Section 1703.055, Occupations Code, as follows:

Sec. 1703.055. New heading: PRESIDING OFFICER. Requires the presiding officer of TCLR, with TCLR's approval, rather than PEB, to appoint a member of the committee to serve as presiding officer of the committee for a two-year term, rather than elect from among its members a presiding officer, assistant presiding officer, and secretary.

SECTION 7. Amends Subchapter B, Chapter 1703, Occupations Code, by adding Section 1703.058, as follows:

Sec. 1703.058. COMMITTEE DUTIES. Requires the committee to advise TCLR on educational requirements for a polygraph examiner, the contents of a licensing examination, technical issues related to a polygraph examination, the specific offenses for which a conviction would constitute grounds for the Texas Department of Licensing and Regulation (TDLR) to take action under Section 53.021, and administering and enforcing this chapter.

SECTION 8. Amends Section 1703.202, Occupations Code, to require that an application for a polygraph examiner be made to TDLR in writing on a form prescribed by TDLR, rather than be made to PEB's secretary in writing under oath; be accompanied by the required nonrefundable fee; and include any information TDLR, rather than PEB, considers necessary to evaluate the applicant's qualifications.

SECTION 9. Amends Section 1703.203, Occupations Code, as follows:

Sec. 1703.203. QUALIFICATIONS FOR LICENSE. (a) Provides that a person is qualified for a polygraph examiner license if the person has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner, rather than a misdemeanor involving moral turpitude or a felony; either holds a baccalaureate degree from a college or university accredited by an organization designated by TDLR that TDLR determines has accreditation standards ensuring a high level of student scholarship; or has active investigative experience during the five years preceding the application; either is a graduate of a TDLR-approved, rather than PEB-approved, polygraph examiners course and has satisfactorily completed at least six months of a polygraph examiner internship; or has satisfactorily completed at least 12 months of a polygraph examiner internship; and has passed an examination conducted by, under the supervision of, or approved by TDLR to determine the person's competency for a license. Makes conforming changes.

(b) Requires TCLR, rather than PEB, by rule to establish the specific offenses that disqualify an applicant under Subsection (a)(1) (relating to a person being

qualified for a polygraph examiner license if the person has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner). Makes a conforming change and a nonsubstantive change.

(c) Makes a conforming change.

SECTION 10. Amends Section 1703.205, Occupations Code, as follows:

Sec. 1703.205. ISSUANCE OF LICENSE; SURETY BOND OR INSURANCE POLICY REQUIREMENT. (a) Makes a conforming change.

(b) Requires that each license be issued by TDLR, rather than be signed by PEB members and issued under the PEB seal.

SECTION 11. Amends Sections 1703.206(a) and (c), Occupations Code, as follows:

(a) Requires an applicant for the issuance or renewal of a polygraph examiner license who is not a resident of this state, in addition to meeting all other requirements for a license to file with TDLR, rather than PEB, an irrevocable consent to have process in the action served on the applicant by leaving two copies of the process with TDLR, rather than PEB's secretary.

(c) Makes conforming changes.

SECTION 12. Amends Section 1703.207, Occupations Code, to authorize the executive director of TDLR, rather than PEB, to waive any license requirement for an applicant who holds a license from another state that has license requirements substantially equivalent to those of this state.

SECTION 13. Amends Sections 1703.208(b)-(d), Occupations Code, as follows:

(b) Authorizes TDLR to issue a polygraph examiner internship license to an applicant who applies for the license and pays the required fee. Deletes existing text authorizing the secretary of PEB on PEB approval, to issue a polygraph examiner internship license to an applicant who applies for the license and pays the required fee at least 10 days before the date the internship began. Makes a conforming change.

(c) Provides that a polygraph examiner internship license expires on the first anniversary of the date of issuance and may be renewed once. Deletes existing text providing that, on good cause shown to PEB, the license may be extended or renewed for not more than six months.

(d) Makes a conforming change.

SECTION 14. Amends Section 1703.252(a), Occupations Code, to authorize TDLR, rather than PEB, by rule to adopt a system under which polygraph examiner licenses expire on various dates during the year.

SECTION 15. Amends Section 1703.254(b), Occupations Code, to require a person eligible for license renewal under Subsection (a), before the second anniversary of the date of the service, training, or education terminates, to pay to TDLR, rather than PEB, the required renewal fee and certify to TDLR, rather than provide to PEB an affidavit stating, that the person was engaged in the service, training, or education, and termination of the service, training or education occurred under an honorable condition.

SECTION 16. Amends Section 1703.255(a), Occupations Code, to make a conforming change.

SECTION 17. Amends Section 1703.301, Occupations Code, as follows:

Sec. 1703.301. LICENSE HOLDER INFORMATION. Requires a polygraph examiner to notify TDLR, rather than the secretary of PEB, in writing of a change in the examiner's principal business location not later than the 30th day after the date the change is made.

Deletes designation of Subsection (a) and Subsection (b) and existing text providing that failure to notify the secretary as required by Subsection (a) results in automatic suspension of the examiner's license.

SECTION 18. Amends Section 1703.306(b), Occupations Code, to make a conforming change.

SECTION 19. Amends Subchapter G, Chapter 1703, Occupations Code, by adding Section 1703.307, as follows:

Sec. 1703.307. INFORMATION INCLUDED IN CONTRACT FOR SERVICES AND WAIVER OF LIABILITY. Requires that a written contract for a polygraph examiner's services and a waiver of liability signed by the subject of a polygraph examination inform the subject of the procedures to file a complaint against the examiner with TDLR and contain the name, mailing address, and telephone number of TDLR.

SECTION 20. Amends Section 1703.351, Occupations Code, as follows:

Sec. 1703.351. LICENSE DENIAL AND DISCIPLINARY ACTION. (a) Authorizes TDLR, rather than requires PEB, to take action authorized under Subsection (b) against an applicant or license holder who commits certain acts, including failing to provide within a reasonable time information requested by TDLR, rather than PEB's secretary, as the result of a formal complaint to TDLR, rather than PEB, alleging a violation of this chapter, or is convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner, rather than a misdemeanor involving moral turpitude or a felony.

(b) Requires TDLR, on determining that an applicant or license holder has engaged in an act listed under Subsection (a), to deny, rather than refuse to issue, a license to the applicant; revoke or suspend the person's license; or reprimand the person. Makes a conforming change.

(c) Makes a conforming change.

SECTION 21. Amends Section 1703.353, Occupations Code, as follows:

Sec. 1703.353. SURRENDER OF LICENSE. Requires a license holder whose license is suspended or revoked to immediately surrender the license to TDLR. Deletes designation of Subsection (a) and Subsection (b) and existing text requiring PEB's secretary to restore a suspended or revoked license to the license holder on PEB's written recommendation. Makes a conforming change.

SECTION 22. Amends Section 1703.354, Occupations Code, to make conforming changes.

SECTION 23. Amends Section 1703.355, Occupations Code, as follows:

Sec. 1703.355. New heading: ADMINISTRATIVE PROCEDURE. Provides that the administrative procedures under Sections 51.310 (Administrative Procedure), 51.353 (Administrative Sanctions), and 51.354 (Right to Hearing; Administrative Procedure) apply to a disciplinary action taken under this chapter. Deletes existing text authorizing a person to appeal an action of PEB, including the refusal to issue a license to the person or the suspension or revocation of the person's license, by timely filing a petition in a district court in the county in which the person resides or Travis County. Deletes existing text providing that an appeal of PEB action is governed by Chapter 2001 (Administrative Procedure), Government Code.

SECTION 24. Amends Subchapter H, Chapter 1703, Occupations Code, by adding Section 1703.356, as follows:

Sec. 1703.356. APPEAL. (a) Provides that an appeal of a TDLR action under this chapter is governed by Chapter 2001, Government Code.

(b) Provides that the standard of review is under the substantial evidence rule.

SECTION 25. Amends Section 1703.401(a), Occupations Code, to require TDLR, rather than PEB's secretary on direction of a majority of PEB, if a person violates this chapter, through the attorney general, to apply in the state's name in district court for an order to enjoin the violation of or to enforce compliance with this chapter if a person violates this chapter.

SECTION 26. Amends Section 411.122(d), Government Code, to delete existing text providing that PEB is one of the state agencies subject to this section. Makes nonsubstantive changes.

SECTION 27. Amends Section 2054.352(a), Government Code, to delete existing text providing that PEB is a licensing entity required to participate in the system established under Section 2054.353 (Electronic System for Occupational Licensing Transactions). Makes nonsubstantive changes.

SECTION 28. Repealer: Section 1703.005 (Application of Sunset Act), Occupations Code.

Repealer: Section 1703.052 (Eligibility of Public Members), Occupations Code.

Repealer: Section 1703.053 (Membership and Employee Restrictions), Occupations Code.

Repealer: Section 1703.056 (Grounds for Removal), Occupations Code.

Repealer: Section 1703.057 (Per Diem; Reimbursement), Occupations Code.

Repealers: Subchapter C (Board Powers and Duties) and Subchapter D (Public Interest Information and Complaint Procedures), Chapter 1703, Occupations Code.

Repealer: Section 1703.204 (Examination Results), Occupations Code.

Repealer: Section 1703.253 (License Renewal), Occupations Code.

Repealer: Section 1703.352 (Administrative Hearing), Occupations Code.

SECTION 29. Requires the presiding officer of TCLR, as soon as possible after the effective date of this Act, to appoint the members of the committee in accordance with Chapter 1703, Occupations Code, as amended by this Act. Requires the presiding officer, in making the initial appointments, to designate two members for terms expiring February 1, 2011, two members for terms expiring February 1, 2013, and one member for a term expiring February 1, 2015.

SECTION 30. (a) Provides that PEB is abolished but continues in existence until January 1, 2010, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to TDLR. Provides that TDLR assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of PEB as it exists immediately before the effective date of this Act. Provides that all unexpended funds appropriated to PEB are transferred to TDLR. Requires that the transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of PEB to TDLR be completed not later than January 1, 2010.

(b) Provides that all rules of PEB are continued in effect as rules of TCLR until superseded by a rule of TCLR. Provides that a license issued by PEB is continued in effect as provided by the law in effect immediately before the effective date of this Act. Provides that a complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. Provides that an activity conducted by PEB is considered to be an activity conducted by TDLR.

(c) Provides that a reference in another law or an administrative rule to PEB means TDLR.

(d) Requires the Department of Public Safety of the State of Texas (DPS) and TDLR, before July 15, 2009, to develop and enter into a memorandum of understanding relating to the transfer of functions relating to polygraph examiners from DPS to TDLR as provided by this Act. Requires that the memorandum include a transition plan with a timetable with specific steps and deadlines needed to complete the transfer.

SECTION 31. Effective date: upon passage or September 1, 2009.