

BILL ANALYSIS

C.S.S.B. 1263
By: Whitmire
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Independent oversight of laboratories, facilities, and entities that conduct forensic analyses for use in courts improves the quality and credibility of forensic science or medical examiner services. Effective oversight includes a process by which independent, external investigation can be made into allegations of professional negligence or misconduct substantially effecting the integrity of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the state that processes criminal forensic evidence used in criminal proceedings.

C.S.S.B. 1263 creates the Texas Forensic Science Commission, a body of 11 members charged with the tasks of developing and implementing a system for reporting professional negligence and misconduct, investigating credible allegations, and making recommendations to the governor, lieutenant governor, and speaker of the house of representatives concerning ways to improve quality assurance procedure at and the reliability of forensic analyses from laboratories, facilities, or entities that conduct forensic analyses.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1263 amends Chapter 38, Code of Criminal Procedure, by adding Article 38.01, as follows:

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. Creates the Texas Forensic Science Commission (commission).

Sec. 2. DEFINITION. Defines "forensic analysis."

Sec. 3. COMPOSITION.

(a) Provides that the commission is made up of 11 members, and sets forth which officials appoint which members, and the required professions or expertise of the members.

(b) Provides that each member of the commission serves a two-year term and sets forth the respective expiration dates for the members' terms.

(c) Requires the governor to designate a member of the commission, other than a member appointed by the governor, to serve as the presiding officer.

Sec. 4. DUTIES.

(a) Requires the commission to develop and implement a reporting system through which laboratories, facilities, or entities report professional negligence or misconduct. Requires the commission to require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence and misconduct to the commission. Requires the commission to investigate in a

timely manner any credible allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a laboratory, facility, or entity that conducts forensic analyses. Requires the commission to make recommendations to the governor, lieutenant governor, and speaker of the house of representatives concerning ways to improve quality assurance procedure at and the reliability of forensic analyses from laboratories, facilities, or entities that conduct forensic analyses.

(b) Sets forth the information and reports that are required and the examinations and evaluations that are authorized for an investigation of an allegation of professional negligence or misconduct.

(c) Authorizes the commission by contract to delegate certain duties to any person the commission determines to be independent from and not otherwise associated with the laboratory, facility, or entity being investigated and qualified to assume those duties. Requires the person to whom the commission delegates duties under this subsection to submit any report completed by the person to the commission.

(d) Requires the commission to make all reports completed under Subsection (b) or received under Subsection (c) available to the public. Provides that a report completed under Subsection (b) or received under Subsection (c), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. ACCESS TO DOCUMENTS.

(a) Provides that the commission shall be given access to a variety of reports, communications, proficiency tests, and any other laboratory, facility, or entity document the commission finds necessary to fulfill the commission's duty to investigate allegations of professional negligence or misconduct.

(b) Provides that Subsection (a) does not apply to a law enforcement agency or a component of a law enforcement agency that collects physical evidence but does not conduct forensic analysis.

(c) Provides that Subsection (a) applies to a laboratory, facility, or entity that conducts forensic analyses and is required to be accredited under Section 411.0205, Government Code, and a laboratory, facility, or entity that conducts forensic analyses and is subject only to voluntary accreditation under the rules adopted under Section 411.0205, Government Code.

Sec. 6. COSTS OF INVESTIGATION. Requires a laboratory, facility, or entity investigated under Section 4 to pay all reasonable costs incurred by the commission in conducting the investigation and any follow-up evaluations of the laboratory, facility, or entity.

Sec. 7. REIMBURSEMENT. Prohibits a member of the commission from receiving compensation. Entitles a member to reimbursement for certain travel expenses.

Sec. 8. ASSISTANCE. Requires the Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin to assist the commission in performing its duties.

Sec. 9. SUBMISSION. Requires the commission to submit any reports received regarding professional negligence or misconduct and any report prepared in the course of an investigation for professional negligence or misconduct to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

C.S.S.B. 1263 also requires initial appointments to the commission to be made not later than the 60th day after the effective date of this Act, sets forth the expiration dates for the terms of certain

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initial members, and provides that a member whose term expires on September 1, 2006, is eligible to be reappointed for a two-year term.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

S.B. 1263, as introduced, and C.S.S.B. 1263 both provide that the Texas Forensic Science Commission is composed of 11 members. However, the bills differ as to which officials appoint which members, and the required professions or expertise of the members.

The original bill requires the governor to designate a member of the commission to serve as the presiding officer. The substitute further provides that this member may not be a member appointed by the governor.

The substitute requires the commission to make recommendations to the governor, lieutenant governor, and speaker of the house of representatives concerning ways to improve quality assurance procedure at and the reliability of forensic analyses from laboratories, facilities, or entities that conduct forensic analyses. The original contains no such requirement.

The original bill requires the commission to develop and implement an accreditation process for all laboratories, facilities, or entities that conduct forensic analyses, and a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct. The substitute requires the commission to develop and implement only a reporting system through which all laboratories, facilities, or entities report professional negligence or misconduct, and does not require the development or implementation of an accreditation process under this Article.

The original bill requires that the commission require all laboratories, facilities, or entities that conduct forensic analyses to become accredited by the commission. The substitute does not include this requirement.

The original bill provides that the commission by contract may delegate certain duties to any person the commission determines to be qualified to assume those duties. The substitute adds that the commission must also determine that the person is independent from and not otherwise associated with the laboratory, facility, or entity being investigated. The substitute further requires a person to whom the commission delegates duties under the subsection to submit any report completed by the person to the commission.

The original bill authorizes the commission, as part of the accreditation process, to establish certain standards, procedures, and training requirements relating to entities that conduct forensic analyses and to validate or approve certain forensic methods or methodologies. The substitute does not include these provisions.

The original bill authorizes the commission to require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred in the preparation of the report required when investigating allegations of professional negligence or misconduct. The substitute requires a laboratory, facility, or entity investigated for professional negligence or misconduct to pay all reasonable costs incurred by the commission in conducting the investigation and any follow-up evaluations of the laboratory, facility, or entity.

The substitute includes provisions requiring that the commission be given access to certain reports, communications, and proficiency tests, and specifying to whom these provisions apply. The original does not include such provisions.

The original bill amends Articles 38.35(a), (d), and (e), Code of Criminal Procedure, as follows:

- (a) Redefines "forensic analysis."

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(d) Provides that physical evidence subjected to a forensic analysis, and related testimony, is not admissible in a criminal case unless at the time of analysis or the time of submission of the evidence to the court, the entity conducting the analysis was not accredited by the Texas Forensic Science Commission under Article 38.01, rather than the Department of Public Safety under Section 411.0205, Government Code.

(e) Provides that this subsection, relating to preservation of samples by an unaccredited laboratory, expires September 1, 2007, rather than 2005.

The substitute does not amend Article 38.35 of the Code of Criminal Procedure.

The original bill repeals Sections 411.0205 (Crime Laboratory Accreditation Process) and 411.0206 (Regulation of DNA Testing), Government Code. The substitute does not repeal these sections.

The original bill makes Article 38.35, Code of Criminal Procedure, as amended by the Act, prospective to the admissibility of physical evidence in a criminal proceeding that commences on or after the effective date of this Act. The substitute does not include this provision.

The substitute makes conforming and non-substantive changes not made in the original bill.