

BILL ANALYSIS

C.S.S.B. 1005
By: Hinojosa
Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Polygraph Examiners Board (the Board) 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 Department of Public Safety since 1981, the Board employs two staff and operates with a budget of about \$103,000. In fiscal year 2008, the Board licensed 247 examiners and reported receiving 10 jurisdictional complaints, all of which the Board dismissed.

The Board is subject to the 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, the Board's ability to protect the public is compromised by the real and potential conflicts of interest inherent in the Board's processes and administrative placement, ineffective enforcement, and the small size of the agency and number of licensees. The Sunset Commission therefore recommended abolishing the Board and transferring its functions to the Texas Department of Licensing and Regulation, and made several other statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 9 of this bill. Rulemaking authority previously delegated to the Polygraph Examiners Board is transferred to the Texas Commission of Licensing and Regulation in SECTIONS 9 and 14 of this bill. SECTION 30 provides that all rules of the Polygraph Examiners Board are continued in effect as rules of the Texas Commission of Licensing and Regulation.

ANALYSIS

Abolish and Transfer

C.S.S.B. 1005 abolishes the Polygraph Examiners Board and transfers its functions to the Texas Department of Licensing and Regulation (TDLR). The substitute creates an advisory committee to advise the Texas Commission of Licensing and Regulation on the specific offenses for which a conviction would prohibit a person from having a polygraph license, administering and enforcing the Polygraph Act, and other matters. The substitute requires the presiding officer of the Texas Commission of Licensing and Regulation to appoint members of the advisory committee as soon as possible after the effective date of the bill. C.S.S.B. 1005 provides transition language for the abolishment of the Polygraph Examiners Board by continuing the agency until January 1, 2010 for the purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to TDLR. The substitute requires the Board and TDLR to enter into a memorandum of understanding regarding the transfer of functions which must include a timetable with specific steps and deadlines. The bill repeals provisions pertaining to the Board's sunset date; Board powers and duties; Board member eligibility, removal, and compensation; and other provisions that duplicate or conflict with TDLR statute.

Conform Licensing and Enforcement Functions to Commonly Applied Licensing Practices

C.S.S.B. 1005 eliminates notarization requirements for individuals applying for a polygraph license.

The substitute specifies that a person may qualify for a polygraph license if the person has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner. The substitute also authorizes TDLR to take disciplinary action against a licensee, or deny a license to an applicant, who is convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner. The substitute requires the Texas Commission of Licensing and Regulation to establish by rule those specific offenses.

The substitute requires written contracts for a polygraph examiner's services and waivers of liability signed by the subject of a polygraph exam to contain information about how to file a complaint with TDLR, along with TDLR's name, mailing address, and phone number.

C.S.S.B. 1005 specifies that appeals of disciplinary action to district court be reviewed under the substantial evidence standard.

The substitute removes fee caps from statute.

The substitute repeals the following statutory provisions.

- Occupations Code Section 1703.005
- Occupations Code Section 1703.052
- Occupations Code Section 1703.053
- Occupations Code Section 1703.056
- Occupations Code Section 1703.057
- Occupations Code Subchapter C
- Occupations Code Subchapter D
- Occupations Code Section 1703.204
- Occupations Code Section 1703.253
- Occupations Code Section 1703.352

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes numerous conforming changes to align the Polygraph Examiners Act with TDLR administration, including specifying that TDLR's administrative procedures apply to the Act. The substitute also makes the bill effective immediately, rather than on September 1, 2009, to give TDLR time to transfer polygraph regulation before the current fiscal year ends, and specifies that a memorandum of understanding between TDLR and DPS relating to transferring functions must be established by July 15, 2009 instead of October 1, 2009.