

By: Harper-Brown

H.B. No. 3392

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Commission on
3 Jail Standards.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 511.003, Government Code, is amended to
6 read as follows:

7 Sec. 511.003. SUNSET PROVISION. The Commission on Jail
8 Standards is subject to Chapter 325 (Texas Sunset Act). Unless
9 continued in existence as provided by that chapter, the commission
10 is abolished and this chapter expires September 1, 2021 [~~2009~~].

11 SECTION 2. Sections 511.004(g), (h), (i), and (j),
12 Government Code, are amended to read as follows:

13 (g) A person is not eligible for appointment as a public
14 member of the commission if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a a [~~an~~
16 ~~occupational~~] regulatory agency in the field of law enforcement;

17 (2) is employed by or participates in the management
18 of a business entity, county jail, or other organization regulated
19 by the commission or receiving funds from the commission;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by the commission or receiving funds from
23 the commission; or

24 (4) uses or receives a substantial amount of tangible

1 goods, services, or funds from the commission, other than
2 compensation or reimbursement authorized by law for commission
3 membership, attendance, or expenses.

4 (h) A person who is appointed to and qualifies for ~~[To be~~
5 ~~eligible to take]~~ office as a member of the commission may not vote,
6 deliberate, or be counted as a member in attendance at a meeting of
7 the commission until the ~~[, a]~~ person completes ~~[appointed to the~~
8 ~~commission must complete at least one course of]~~ a training program
9 that complies with Subsection (i).

10 (i) The training program required by Subsection (h) must
11 provide information to the person regarding:

12 (1) this chapter ~~[the enabling legislation that~~
13 ~~created the commission];~~

14 (2) the programs, functions, rules, and budget of
15 ~~[operated by]~~ the commission;

16 (3) the results of the most recent formal audit ~~[role~~
17 ~~and functions]~~ of the commission;

18 (4) the requirements of laws relating to open
19 meetings, public information, administrative procedure, and
20 conflicts of interest ~~[rules of the commission with an emphasis on~~
21 ~~the rules that relate to disciplinary and investigatory authority];~~
22 and

23 (5) ~~[the current budget for the commission,~~

24 ~~[(6) the results of the most recent formal audit of the~~
25 ~~commission,~~

26 ~~[(7) the requirements of the:~~

27 ~~[(A) open meetings law, Chapter 551,~~

1 ~~[(B) open records law, Chapter 552; and~~
2 ~~[(C) administrative procedure law, Chapter 2001;~~
3 ~~[(8) the requirements of the conflict of interests~~
4 ~~laws and other laws relating to public officials; and~~
5 ~~[(9)]~~ any applicable ethics policies adopted by the
6 commission or the Texas Ethics Commission.

7 (j) A person appointed to the commission is entitled to
8 reimbursement, ~~[for travel expenses incurred in attending the~~
9 ~~training program required by Subsection (h)]~~ as provided by the
10 General Appropriations Act, for the travel expenses incurred in
11 attending the training program required by Subsection (h)
12 regardless of whether attendance at the program occurs before or
13 after [and as if] the person qualifies for office [were a member of
14 ~~the commission].~~

15 SECTION 3. Section 511.0041(a), Government Code, is amended
16 to read as follows:

17 (a) It is a ground for removal from the commission if a
18 member:

19 (1) does not have at the time of taking office
20 ~~[appointment]~~ the qualifications required by Section 511.004;

21 (2) does not maintain during service on the commission
22 the qualifications required by Section 511.004;

23 (3) is ineligible for membership under ~~[violates a~~
24 ~~prohibition established by]~~ Section 511.004(g) or 511.0042;

25 (4) cannot discharge the member's duties for a
26 substantial part of the term for which the member is appointed
27 because of illness or disability; or

1 (5) is absent from more than half of the regularly
2 scheduled commission meetings that the member is eligible to attend
3 during a calendar year without an excuse approved [~~unless the~~
4 ~~absence is excused~~] by a majority vote of the commission.

5 SECTION 4. Section 511.0042, Government Code, is amended to
6 read as follows:

7 Sec. 511.0042. CONFLICT OF INTEREST. (a) A person may not
8 be a member of the commission and may not be a commission employee
9 employed in a "bona fide executive, administrative, or professional
10 capacity," as that phrase is used for purposes of establishing an
11 exemption to the overtime provisions of the federal Fair Labor
12 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

13 (1) the person is an [~~An~~] officer, employee, or paid
14 consultant of a Texas trade association in the field of county
15 corrections; or

16 (2) the person's [~~may not be a member of the commission~~
17 ~~or an employee of the commission who is exempt from the state's~~
18 ~~position classification plan or is compensated at or above the~~
19 ~~amount prescribed by the General Appropriations Act for step 1,~~
20 ~~salary group 17, of the position classification salary schedule.~~

21 [~~(b) A person who is the~~] spouse is [~~of~~] an officer,
22 manager, or paid consultant of a Texas trade association in the
23 field of county corrections [~~may not be a commission member and may~~
24 ~~not be a commission employee who is exempt from the state's position~~
25 ~~classification plan or is compensated at or above the amount~~
26 ~~prescribed by the General Appropriations Act for step 1, salary~~
27 ~~group 17, of the position classification salary schedule].~~

1 **(b)** In [~~(c) For the purposes of~~] this section, "Texas
2 trade association" means [~~a Texas trade association is~~] a
3 [~~nonprofit,~~] cooperative [~~7~~] and voluntarily joined statewide
4 association of business or professional competitors in this state
5 designed to assist its members and its industry or profession in
6 dealing with mutual business or professional problems and in
7 promoting their common interest.

8 **(c)** [~~(d)~~] A person may not be [~~serve as~~] a member of the
9 commission or act as the general counsel to the commission if the
10 person is required to register as a lobbyist under Chapter 305
11 because of the person's activities for compensation on behalf of a
12 profession related to the operation of the commission.

13 SECTION 5. Chapter 511, Government Code, is amended by
14 adding Section 511.0061 to read as follows:

15 Sec. 511.0061. USE OF TECHNOLOGY. The commission shall
16 implement a policy requiring the commission to use appropriate
17 technological solutions to improve the commission's ability to
18 perform its functions. The policy must ensure that the public is
19 able to interact with the commission on the Internet.

20 SECTION 6. Section 511.0071, Government Code, is amended by
21 amending Subsections (a), (d), (e), and (f) and adding Subsection
22 (a-1) to read as follows:

23 (a) The commission shall prepare information of public
24 interest describing the functions of the commission and the
25 commission's procedures by which complaints regarding the
26 commission and complaints regarding jails under the commission's
27 jurisdiction are filed with and resolved by the commission. The

1 commission shall make the information available:

2 (1) to the public, inmates, county officials, and
3 appropriate state agencies; and

4 (2) on any publicly accessible Internet website
5 maintained by the commission.

6 (a-1) The commission shall adopt rules and procedures
7 regarding the receipt, investigation, resolution, and disclosure
8 to the public of complaints regarding the commission and complaints
9 regarding jails under the commission's jurisdiction that are filed
10 with the commission. The commission shall:

11 (1) prescribe a form or forms on which written
12 complaints regarding the commission and complaints regarding jails
13 under the commission's jurisdiction may be filed with the
14 commission;

15 (2) keep an information file in accordance with
16 Subsection (f) regarding each complaint filed with the commission
17 regarding the commission or a jail under the commission's
18 jurisdiction;

19 (3) develop procedures for prioritizing complaints
20 filed with the commission and a reasonable time frame for
21 responding to those complaints;

22 (4) maintain a system for promptly and efficiently
23 acting on complaints filed with the commission;

24 (5) develop a procedure for tracking and analyzing all
25 complaints filed with the commission, according to criteria that
26 must include:

27 (A) the reason for or origin of complaints;

1 (B) the average number of days that elapse
2 between the date on which complaints are filed, the date on which
3 the commission first investigates or otherwise responds to
4 complaints, and the date on which complaints are resolved;

5 (C) the outcome of investigations or the
6 resolution of complaints, including dismissals and commission
7 actions resulting from complaints;

8 (D) the number of pending complaints at the close
9 of each fiscal year; and

10 (E) a list of complaint topics that the
11 commission does not have jurisdiction to investigate or resolve;
12 and

13 (6) regularly prepare and distribute to members of the
14 commission a report containing a summary of the information
15 compiled under Subdivision (5).

16 ~~(d) [The commission shall keep an information file about~~
17 ~~each complaint filed with the commission that the commission has~~
18 ~~authority to resolve. The commission is not required to keep an~~
19 ~~information file about a complaint to the commission from or~~
20 ~~related to a prisoner of a county or municipal jail.]~~ The
21 commission shall adopt rules and procedures regarding the referral
22 of [refer] a complaint filed with the commission from or related to
23 a prisoner to the appropriate local agency for investigation and
24 resolution. The commission ~~and~~ may perform a special inspection
25 of a facility named in the complaint to determine compliance with
26 commission requirements.

27 (e) If a written complaint is filed with the commission that

1 the commission has authority to resolve, the commission at least
2 quarterly and until final disposition of the complaint shall notify
3 the parties to the complaint of the status of the complaint, unless
4 the notice would jeopardize an undercover investigation. This
5 subsection does not apply to a complaint referred to a local agency
6 under Subsection (d).

7 (f) The commission shall collect and maintain information
8 about each complaint received by the commission regarding the
9 commission or a jail under the commission's jurisdiction,
10 including:

- 11 (1) the date the complaint is received;
- 12 (2) the name of the complainant;
- 13 (3) the subject matter of the complaint;
- 14 (4) a record of all persons contacted in relation to
15 the complaint;
- 16 (5) a summary of the results of the review or
17 investigation of the complaint; and
- 18 (6) for a complaint for which the agency took no
19 action, an explanation of the reason the complaint was closed
20 without action.

21 SECTION 7. Section 511.008(e), Government Code, is amended
22 to read as follows:

23 (e) The commission shall develop and implement policies
24 that clearly separate the policymaking responsibilities of the
25 commission and the management responsibilities of the executive
26 director [~~define the respective responsibilities of the~~
27 ~~commission~~] and the staff of the commission.

1 SECTION 8. Chapter 511, Government Code, is amended by
2 adding Section 511.0085 to read as follows:

3 Sec. 511.0085. RISK FACTORS; RISK ASSESSMENT PLAN. (a) The
4 commission shall develop a comprehensive set of risk factors to use
5 in assessing the overall risk level of each jail under the
6 commission's jurisdiction. The set of risk factors must include:

7 (1) a history of the jail's compliance with state law
8 and commission rules, standards, and procedures;

9 (2) the population of the jail;

10 (3) the number and nature of complaints regarding the
11 jail, including complaints regarding a violation of any required
12 ratio of correctional officers to inmates;

13 (4) problems with the jail's internal grievance
14 procedures;

15 (5) available mental and medical health reports
16 relating to inmates in the jail, including reports relating to
17 infectious disease or pregnant inmates;

18 (6) recent turnover among sheriffs and jail staff;

19 (7) inmate escapes from the jail; and

20 (8) the number and nature of inmate deaths at the jail,
21 including the results of the investigations of those deaths.

22 (b) The commission shall use the set of risk factors
23 developed under Subsection (a) to guide the inspections process for
24 all jails under the commission's jurisdiction by:

25 (1) establishing a risk assessment plan to use in
26 assessing the overall risk level of each jail; and

27 (2) regularly monitoring the overall risk level of

1 each jail.

2 SECTION 9. Section 511.009(a), Government Code, is amended
3 to read as follows:

4 (a) The commission shall:

5 (1) adopt reasonable rules and procedures
6 establishing minimum standards for the construction, equipment,
7 maintenance, and operation of county jails;

8 (2) adopt reasonable rules and procedures
9 establishing minimum standards for the custody, care, and treatment
10 of prisoners;

11 (3) adopt reasonable rules establishing minimum
12 standards for the number of jail supervisory personnel and for
13 programs and services to meet the needs of prisoners;

14 (4) adopt reasonable rules and procedures
15 establishing minimum requirements for programs of rehabilitation,
16 education, and recreation in county jails;

17 (5) revise, amend, or change rules and procedures if
18 necessary;

19 (6) provide to local government officials
20 consultation on and technical assistance for county jails;

21 (7) review and comment on plans for the construction
22 and major modification or renovation of county jails;

23 (8) require that the sheriff and commissioners of each
24 county submit to the commission, on a form prescribed by the
25 commission, an annual report on the conditions in each county jail
26 within their jurisdiction, including all information necessary to
27 determine compliance with state law, commission orders, and the

1 rules adopted under this chapter;

2 (9) review the reports submitted under Subdivision (8)
3 and require commission employees to inspect county jails regularly
4 to ensure compliance with state law, commission orders, and rules
5 and procedures adopted under this chapter;

6 (10) adopt a classification system to assist sheriffs
7 and judges in determining which defendants are low-risk and
8 consequently suitable participants in a county jail work release
9 program under Article 42.034, Code of Criminal Procedure;

10 (11) adopt rules relating to requirements for
11 segregation of classes of inmates and to capacities for county
12 jails;

13 (12) require that the chief jailer of each municipal
14 lockup submit to the commission, on a form prescribed by the
15 commission, an annual report of persons under 17 years of age
16 securely detained in the lockup, including all information
17 necessary to determine compliance with state law concerning secure
18 confinement of children in municipal lockups;

19 (13) at least annually determine whether each county
20 jail is in compliance with the rules and procedures adopted under
21 this chapter;

22 (14) require that the sheriff and commissioners court
23 of each county submit to the commission, on a form prescribed by the
24 commission, an annual report of persons under 17 years of age
25 securely detained in the county jail, including all information
26 necessary to determine compliance with state law concerning secure
27 confinement of children in county jails; ~~and~~

1 (15) schedule announced and unannounced inspections
2 of jails under the commission's [its] jurisdiction using the risk
3 assessment plan established under Section 511.0085 to guide the
4 inspections process; and

5 (16) adopt a policy for gathering and distributing to
6 jails under the commission's jurisdiction information regarding:

7 (A) common issues concerning jail
8 administration;

9 (B) examples of successful strategies for
10 maintaining compliance with state law and the rules, standards, and
11 procedures of the commission; and

12 (C) solutions to operational challenges for
13 jails ~~[based on the jail's history of compliance with commission~~
14 ~~standards and other high-risk factors identified by the~~
15 ~~commission].~~

16 SECTION 10. Chapter 511, Government Code, is amended by
17 adding Section 511.0115 to read as follows:

18 Sec. 511.0115. PUBLIC INFORMATION ABOUT COMPLIANCE STATUS
19 OF JAILS. The commission shall provide information to the public
20 concerning whether jails under the commission's jurisdiction are in
21 compliance with state law and the rules, standards, and procedures
22 of the commission:

23 (1) on any publicly accessible Internet website
24 maintained by the commission; and

25 (2) through other formats, including newsletters or
26 press releases, as determined by the commission.

27 SECTION 11. Chapter 511, Government Code, is amended by

1 adding Section 511.018 to read as follows:

2 Sec. 511.018. ALTERNATIVE DISPUTE RESOLUTION. (a) The
3 commission shall develop and implement a policy to encourage the
4 use of:

5 (1) negotiated rulemaking procedures under Chapter
6 2008 for the adoption of commission rules; and

7 (2) appropriate alternative dispute resolution
8 procedures under Chapter 2009 to assist in the resolution of
9 internal and external disputes under the commission's
10 jurisdiction.

11 (b) The commission's procedures relating to alternative
12 dispute resolution must conform, to the extent possible, to any
13 model guidelines issued by the State Office of Administrative
14 Hearings for the use of alternative dispute resolution by state
15 agencies.

16 (c) The commission shall designate a trained person to:

17 (1) coordinate the implementation of the policy
18 adopted under Subsection (a);

19 (2) serve as a resource for any training needed to
20 implement the procedures for negotiated rulemaking or alternative
21 dispute resolution; and

22 (3) collect data concerning the effectiveness of those
23 procedures, as implemented by the commission.

24 SECTION 12. Section 511.0071(c), Government Code, is
25 repealed.

26 SECTION 13. The change in law made by Section 511.004(h),
27 Government Code, as amended by this Act, regarding training for

1 members of the Commission on Jail Standards does not affect the
2 entitlement of a member serving on the commission immediately
3 before September 1, 2009, to continue to serve and function as a
4 member of the commission for the remainder of the member's term,
5 unless otherwise removed as provided by law. The change in law
6 described by Section 511.004(h), Government Code, applies only to a
7 member appointed or reappointed on or after September 1, 2009.

8 SECTION 14. The changes in law made by this Act in the
9 prohibitions or qualifications applying to a member of the
10 Commission on Jail Standards do not affect the entitlement of a
11 member serving on the commission immediately before September 1,
12 2009, to continue to serve and function as a member of the
13 commission for the remainder of the member's term, unless otherwise
14 removed as provided by law. Those changes in law apply only to a
15 member appointed on or after September 1, 2009.

16 SECTION 15. This Act takes effect September 1, 2009.