

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION
Revision 1

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2730 by Kolkhorst (Relating to the continuation and functions of the Department of Public Safety of the State of Texas and the Texas Private Security Board; providing penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2730, As Passed 2nd House: a positive impact of \$4,350,074 through the biennium ending August 31, 2011.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$2,173,016
2011	\$2,177,058
2012	(\$3,323,977)
2013	(\$3,323,977)
2014	(\$798,977)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Trauma Facility And Ems</i> 5111	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1
2010	\$0	\$0	\$4,165,391	(\$1,992,375)
2011	\$0	\$0	\$4,169,433	(\$1,992,375)
2012	(\$5,504,500)	(\$5,395,500)	\$4,172,898	(\$1,992,375)
2013	(\$5,504,500)	(\$5,395,500)	\$4,172,898	(\$1,992,375)
2014	(\$2,979,500)	(\$2,920,500)	\$4,172,898	(\$1,992,375)

Fiscal Analysis

The Department of Public Safety (DPS) and the Private Security Board (the Board) are subject to the Sunset Act and will be abolished on September 1, 2009 unless continued by the Legislature. The bill contains the following Sunset Commission recommendations regarding DPS and the Board, among others.

- Requires DPS to manage the Vehicle Inspection Program (VIP) as a civilian business and licensing operation with established goals and expected performance outcomes. The Sunset Advisory Commission (Sunset) states Section 1.02 of the bill would not have a significant fiscal impact because DPS already operates VIP with a director.
- Changes Governor's Division of Emergency Management to Texas Division of Emergency

Management (TDEM) and clarifies that it is a division of DPS and specifies that DPS' director appoints the chief of TDEM with the approval of the Governor.

- Authorizes the Private Security Board to receive reimbursement for travel expenses and to license by endorsement to streamline the licensing process and reduce regulation. Sunset states the travel provisions in the bill would not have a significant fiscal impact since the Board currently receives travel reimbursement. Sunset states the endorsement provisions in Section 4.01 could result in significant reduction in license issuance responsibilities and efficiencies that would reduce staffing needs. However, until the agency is funded for and implements information technology improvements, these staffing reductions may not be realized.

DPS reported to Sunset that their database is outdated (the agency originally planned upgrades to the database in fiscal year 2009) and the database needs to be upgraded before it can implement the proposed endorsement provisions. DPS states the estimated cost of upgrading the database at \$2,000,000 for the biennium. However, Sunset states DPS put the upgrade on hold after an outside audit reorganized the agency's IT priorities. Sunset states the endorsement provisions would be part of the DPS planned upgrade and separating the cost of the provision from the rest of the upgrade would be difficult to determine.

Sunset also states current statute requires the administration of the Private Security Act be a self-leveling function through fees charged to the regulated community. Sunset assumes that any potential savings or costs associated with changes to the Private Security Act would be offset by increases or decreases in fees and therefore the fee generating provisions of the bill would be revenue neutral.

- Requires the Board to adopt rules necessary to comply with Chapter 53 regarding offenses that would prohibit a person from obtaining or retaining a license under the Private Security Act. Sunset states the Section 4.02 provisions could require staff time to develop the rules, but this is a typical staff responsibility. Sunset states DPS predicts these provisions could result in 30 percent more applicants being eligible and would require three additional staff to process an increase in applications. However, Sunset states that while the number of approvals for licensure may increase, the number of applicants, and the resulting background checks and investigations, would not likely change. In addition, Sunset states the license approval rate would depend on the rules adopted by the Board. Sunset states no significant fiscal impact for these provisions.
- Applies standard Sunset across-the-board language requiring the Board to develop a policy that encourages the use of negotiated rule making and alternative dispute resolution (ADR), as well as designate a trained person to coordinate the Board's ADR efforts. The person designated by the Board to coordinate ADR efforts must be an existing employee of the agency, who would expand on existing efforts to achieve agreed settlements. Sunset assumes the potential minimal training costs could be more than offset by reduced costs from avoiding protracted rule making or lengthy contested case hearings.
- Authorizes the Private Security Board to require jurisprudence exams to ensure all licensees understand the laws and rules that guide their professions. Sunset states the Board could experience costs from developing exam questions (should it decide to require exams). However, Sunset states the overall Section 4.73 costs could be recovered through exam fees and therefore the jurisprudence provisions of the bill would be revenue neutral.
- Eliminates fee caps in the Private Security Act. Regarding Section 4.19, Sunset states the Private Security Act specifies that fees collected must produce sufficient revenue to administer the chapter without producing unnecessary fund balances. Therefore, Sunset assumes the fee generating provisions of the bill would be revenue neutral.
- Increases the amount of the Private Security Act's maximum administrative penalty from \$500 to \$5,000. Regarding Section 4.98, Sunset states the Board's ability to assess higher administrative penalties could potentially increase revenue deposited to the General Revenue Fund, but the Board does not anticipate assessing the maximum penalty often, if ever. Sunset states the administrative penalty provisions of this bill would have no significant revenue impact.
- Requires the Public Safety Commission to hire the Director of the Office of Inspector General (OIG) and to directly oversee the activities of the Office. Sunset states DPS already operates the OIG with seven FTEs. Sunset states staff outside of the Office currently perform additional internal affairs investigations and these resources could be transferred to the OIG. DPS states these provisions would require an additional 36 FTEs to comply with the bill requirements. Sunset states the provisions of the bill would not increase the overall number of internal affairs

investigations, but merely consolidate efforts within a single office. Therefore, Sunset assumes these provisions in the bill would have no significant fiscal impact.

- Authorizes DPS to put the classroom portion of the concealed handgun licensing renewal class and written test online. Sunset states that DPS staff indicates the agency would not develop the class and test, but that qualified concealed handgun license instructors would, which is current practice. Because these instructors do not work for the State, Sunset assumes the instructors would absorb the cost of developing an online class and exam and that there would be no significant fiscal impact to the state for these provisions.
- Requires the Sunset Commission to conduct a limited scope review of DPS in 2011 that studies the agency's implementation of the 2008 information technology audit and a civilian business management model for the driver license program. DPS states this provision would require the agency to move the current commission based driver license division to a civilian based business model. DPS states they would require an additional 264 civilian FTEs to accommodate the suggested change. As part of DPS exceptional items for fiscal years 2010-11, DPS' driver license restructure plan is to move commissioned officers into the Highway Patrol Division, but leave the salaries for the troopers in the Driver License Division to help pay for the additional civilian FTEs. DPS has not requested additional funds for the 264 civilians, but they did request an additional \$32,737,176 in fiscal years 2010 and 2011 for trooper salary costs to pay for the FTEs that moved to Highway Patrol.

It is assumed that Sunset views the civilian model concept costs as not significant because the movement of troopers from the Driver License Division to Highway Patrol would address current trooper vacancies. The concept is that DPS could use current vacancy salary funds to pay for the movement of troopers between divisions. However, DPS states they need additional funds for this purpose. Sunset states the bill does not contain agency requirements related to the civilian business model. Sunset states they would accomplish this study within existing resources and that the bill does not require any action by DPS.

Regarding the 2008 information technology audit reporting requirement, DPS states the following fiscal analysis based on the Gartner Assessment implementation plan developed for the agency. To upgrade software, hardware, and various program upgrades to increase agency security, the assessment determined \$11,471,790 in fiscal year 2010 and \$2,950,000 in fiscal year 2011 for equipment would be required with an additional \$4,160,000 in fiscal year 2011 for staff augmentation. Sunset states the bill does not contain agency requirements related to the information technology audit. Sunset states they would accomplish this study within existing resources and that the bill does not require any action by DPS.

- Requires DPS to collect data regarding collisions of automobiles driven by students taught by different driver education programs, and to report annually on the data. Sunset reports DPS states this provision is revenue neutral. DPS did not include a cost estimate for these provisions in their fiscal note response. This analysis assumes that DPS would be able to implement these provisions of the bill with existing resources.
- Increases the fee for a provisional license or instruction permit from \$5 to \$15 and makes the provisional license expire on the youth's 18th birthday, instead of the first birthday after the date of application. Sunset states DPS reports this provision is revenue neutral. DPS did not include a cost estimate for these provisions in their fiscal note response. This analysis assumes that DPS would be able to implement these provisions of the bill with existing resources.
- Requires DPS to establish a system for verifying that a person actually lives at the address they've provided on their driver license or identification certificate application. Sunset reports DPS states this provision is revenue neutral. DPS did not include a cost estimate for these provisions in their fiscal note response. This analysis assumes that DPS would be able to implement these provisions of the bill with existing resources.
- Requires DPS to adopt rules for determining whether a person's domicile has been established, and allows DPS to contract with a third party to verify claims of domicile. Sunset reports DPS anticipates no significant fiscal impact to the state. DPS did not include a cost estimate for these provisions in their fiscal note response. This analysis assumes that DPS would be able to implement these provisions of the bill with existing resources.
- Requires DPS to participate in an inmate identification verification pilot program to issue driver licenses' and identification cards to inmates at the Department of Criminal Justice. Sunset states DPS reports no fiscal impact to the agency and the fiscal note for Senate Bill 1783 assumes any

additional fiscal impact created by the provisions in the bill could be absorbed within current appropriations.

- Increases the administrative fine for parking violations in the Capitol Complex from \$10 to \$25, and increases the late fee from \$2 to \$5. Sunset states that DPS estimates an annual gain to General Revenue of \$205,473 per year.
- Protects judge's addresses from being revealed through concealed handgun license (CHL) records, eases testing requirements for judges to obtain CHLs, allows handgun instructors to renew online and clarifies several provisions of CHL statutes. Sunset states DPS indicates they have the ability to provide online renewal for handgun instructors without additional resources.
- Requires subcontractors of school contractors to obtain criminal history record information on their employees that will work on school ground. Sunset states the subcontractor or its employees would be required to pay the cost of obtaining the criminal history background check resulting in no fiscal impact. This analysis assumes that DPS would be able to implement these provisions of the bill with existing resources.
- Authorizes the DPS director to appoint a deputy director. Sunset states the agency already has and is funded for such a position.
- Allows DPS public security officers to earn comp time on holidays that fall on Saturday or Sunday. The fiscal note for House Bill 3712 reports no significant fiscal impact to the State.
- Makes changes to the Driver Responsibility Program, including payment plans and reducing or eliminating payments for indigent persons; however these provisions do not take effect until September 1, 2011, resulting in no fiscal impact for the FY 10-11 biennium. Based on information from the Comptroller's Office, General Revenue loss in 2012 would be \$5.5 million and the same again in 2013, with \$5.4 million lost each year in GR account 5111-Trauma. For fiscal year 2014, General Revenue loss would be \$3.0 million and \$2.9 million in GR account 5111-Trauma.
- Clarifies that people that repair or maintain computers or work for several governmental entities do not fall under the Private Security Act licensing requirements. Sunset states these people do not currently obtain private security licenses or endorsements so no change in revenue or expenses will occur.
- Requires camera system installers to obtain an endorsement under the private security act. Sunset states any costs incurred by these provisions of the bill would be recovered through fees.
- Requires certain counties to establish a local data advisory board to plan for the adequate collection and transmission of records under rules to be established by the DPS director. Sunset states that local governments could incur minor costs; however, there is no state fiscal impact.
- Requires criminal history background checks for potential and some current employees of higher education institutions. The fiscal note for SB 2046 which is similar to this amendment will result in a gain to General Revenue Funds of about \$2 million per year.
- Allows donation of compensatory or annual leave time from and to certain DPS employees for DPS Officers Association and Texas State Troopers Association legislative matters. Sunset states while DPS will spend a small amount of time managing the accounts, the change will not have a fiscal impact.
- Requires DPS to conduct a study of private vendors performing criminal history background checks and identity verification. Sunset assumes this study can be done with existing resources.
- Authorizes DPS to establish a driver record monitoring pilot program. The fiscal note for Senate Bill 512 reports no significant fiscal impact to the State.
- Authorizes a county to pilot a school bus video monitoring system. These provisions of the bill also clarify that school districts need only comply with school bus seat belt requirements if the Texas Education Agency (TEA) grants appropriated funds for that purpose. Sunset states these provisions are similar to language in current law. Sunset states no fiscal impact is expected since the state nor TEA are required to appropriate funds for this purpose, although the state could choose to do so.
- Limits the release of criminal history and other records regarding school employees. These provisions would prohibit release of criminal history record information regarding employees obtained by school districts, charter schools, or other entities approved to collect such information on public education employees except as authorized by the provisions of bill. The bill would specify that other related information is not subject to disclosure, and provides that

certain related information may not be released to an ineligible party. Sunset states there is no fiscal impact to the state.

- Allows buses registered but not kept in Texas to use certificates of inspection in compliance with federal law. Sunset states no significant fiscal impact to the state.
- Creates an interagency council to develop a plan to transfer controlled drugs prescription information from DPS to the Board of Pharmacy. Sunset assumes agencies would participate in the council using existing resources.
- Limits the effectiveness of this Act only if a specific appropriation for the implementation of the Act is provided in the appropriations act. Sunset states no such appropriation appears to be in the appropriations act, however the bill also does not require an appropriation.
- The bill repeals the following provisions in the Occupations Code: Section 1702.002(4), 1702.045, 1702.046, 1702.047, 1702.065, 1702.069, 1702.113(e), 1702, Subchapter K, and 1702.364(j) as well as Government Code, Sections 411.0195(d) and (e), and 421.072, and Transportation Code, Chapter 601, Subchapter N. The bill also repeals Occupations Code, Section 1702.003 which removes the Private Security Board's separate Sunset date, but it continues the Board and the Act.
- Continues DPS for 12 years.

The bill would take effect on September 1, 2009.

Methodology

Senate Floor Amendments 9 and 26 establish minimum lengths for installment agreements to pay Driver Responsibility Program (DRP) surcharges and an indigency program for driver license holders who have been assessed a surcharge in the program. These provisions do not take effect until September 1, 2011, resulting in no fiscal impact in the 2010-2011 biennium. The Comptroller of Public Accounts (CPA) states that deferring installment agreements would have a cost of \$5.0 million annually, of which 50.5 percent would be from the General Revenue Fund and 49.5 percent would be from General Revenue-Dedicated Account 5111 (Trauma Fund), in fiscal years 2012 and 2013. The CPA assumes there would be no revenue loss in fiscal year 2014 and beyond. CPA assumes the indigency program would have a revenue loss of \$5.9 million annually starting in fiscal year 2012, of which \$3.0 million would be from the General Revenue Fund and \$2.9 million would be from the Trauma Fund.

Senate Floor Amendment 15 requires institutions of higher education to subscribe to the criminal history clearing house as provided by Government Code 411.0845 or obtain criminal history record information from a private vendor that offers comparable services, and would be allowed to obtain criminal history record information that relates to a specific applicant for employment or current employee. These provisions require institutions to condition offers of employment on obtaining a criminal history record and to reject applicants who fail to consent to the background check or provide finger prints needed to obtain the information.

Applicants would be rejected if the information obtained indicates conviction of a felony of the second degree, a felony of the first degree, a capital felony or an offense for which registration as a sex offender is required. Applicants whose records indicate other convictions or arrests could be considered for employment after an analysis is conducted as outlined in the bill and could be employed if recommended by the person in charge of the department or division to which the applicant has applied and approved by the chief executive officer of the institution.

Institutions would be required to conduct background checks of employees within the institution for promotions and transfers, and otherwise as necessary to maintain the integrity of the institution's faculty and staff. Institutions would require that every employee provide the information necessary to conduct background checks and would be allowed to terminate the employment of anyone who fails to provide it. Institutions would also be required to reject applicants and would be allowed take disciplinary action against employees who knowingly fail to provide or falsify criminal history record information. Applicants would be required by the institutions to report arrests subsequent to submission of an application and employees would be required by the institution to report arrests, charges, or convictions for offenses other than misdemeanor traffic offenses punishable by a fine only

as early as possible. These provisions would also repeal section 51.215 of Education Code.

Calculations assume that implementation of the bill would require criminal record history information (CHRI) checks that would include FBI fingerprint-based checks be performed in each fiscal year. It is not known whether institutions would use DPS or private vendors to obtain the criminal history background checks. For the purpose of this fiscal note, it is assumed that institutions of higher education would subscribe to the criminal history clearing house maintained by the Department of Public Safety (DPS). To the extent that institutions of higher education chose to use a private vendor, rather than DPS, the revenue gain would be reduced proportionally.

The fiscal note calculations for these provisions assume 115,500 criminal history checks would be submitted per fiscal year, based on an estimated 330,000 current employees, a 15% new hire rate (49,500) and a 15% promotions and transfers rate (49,500) in addition to an estimated 16,500 checks to maintain integrity of faculty and staff. Calculations also assume that 3.5% of the total records retained by DPS will be updated per year. The number of records retained by DPS would total 115,500 in fiscal year 2010, 231,000 in fiscal year 2011 and 330,000 in subsequent fiscal years. Both DPS and Federal Bureau of Investigation (FBI) CHRI checks would be required. DPS CHRI checks would generate \$15.00 each. FBI CHRI checks would generate \$17.25 each. The DPS FBI processing fee would generate \$2.00 each, while updates would generate \$1.00 each.

Fees assessed by the DPS would result in a total increase in revenue of \$3,959,918 in fiscal year 2010, \$3,963,960 in fiscal year 2011 and \$3,967,425 per year in fiscal years 2011 through 2014. However, a portion of the DPS fee revenue (\$1,992,375 in fiscal years 2010 through 2014) would be returned to the FBI for professional services. It is assumed that other costs to DPS associated with the background checks can be absorbed within available resources. It is assumed that provisions of the bill will be implemented by institutions of higher education within existing resources.

Section 16 of the bill would increase the driver license reinstatement fee from \$50 to \$100 for certain motor vehicle offenses. Based on specific bill text for the revenue collected to deposit into the General Revenue Fund (instead of the Mobility Fund where these fees are currently deposited), the assumption would be that this section of the bill could produce additional General Revenue for the state. However, a fiscal note has not been completed on this bill text and therefore cannot be determined at this time.

Section 20 of the bill would amend the Government Code, Sections 411.067 (a), (b), and (c) to increase the parking fees in the Capitol Complex from \$10 to \$25 each and increases late fees from \$2 to \$5 each. The bill also associates security and parking enforcement to the Department of Public Safety highway patrol district who is responsible for the Capitol Complex. DPS states that approximately 12,173 parking citations are paid annually at the current rate of \$10 each. DPS estimates that a \$15 increase in the each fine could result in a General Revenue gain of approximately \$182,595 per year (12,173 * 10). DPS also states that approximately 7,626 parking citations are paid annually with a current late fee of \$2 each. DPS estimates that a \$3 increase in the late fee could result in a General Revenue gain of approximately \$22,878 per year (7,626 *3). DPS states this bill could result in a total General Revenue gain of approximately \$205,473 per year (\$182,595 + \$22,878).

The bill also includes various sections that would establish a fee for licenses or personal identification certificates issued to an applicant who is not a citizen of the United States. The CPA states the fee amounts for the licenses and certificates to be issued to noncitizens by DPS would be set by agency rule. The CPA states that because the amount of the license or certificate fee is not known, and the number of noncitizens applying for these licenses or certificates is not known, the fiscal impact of this provision of the bill cannot be estimated. This analysis assumes that the fiscal impact to DPS would not be significant.

The Office of the Governor and the Office of Administrative Hearings anticipate no significant fiscal impact to their agencies. The CPA states the net fee amounts set by the Private Security Board are not known and can not be estimated. The CPA also states the administrative penalties imposed on a person licensed, commissioned, or registered under the chapter, who violated the chapter or rule, can not be determined.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 405
Department of Public Safety

LBB Staff: JOB, SD, KK, GG, LG