

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

Revision 1

May 24, 2009

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

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.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2730, Committee Report 2nd House, Substituted: a negative impact of (\$42,089,054) 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	(\$16,794,527)
2011	(\$25,294,527)
2012	(\$33,794,527)
2013	(\$42,294,527)
2014	(\$42,294,527)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from General Revenue Fund 1	Probable Revenue Gain/ (Loss) from Trauma Facility And Ems 5111	Probable Revenue Gain from General Revenue Fund 1
2010	(\$17,000,000)	(\$16,800,000)	\$205,473
2011	(\$25,500,000)	(\$25,200,000)	\$205,473
2012	(\$34,000,000)	(\$33,600,000)	\$205,473
2013	(\$42,500,000)	(\$42,000,000)	\$205,473
2014	(\$42,500,000)	(\$42,000,000)	\$205,473

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.

- Establishes that courts that have jurisdiction over a person's offense also have jurisdiction over all matters relating to a Driver Responsibility Program surcharges, and allows the court to reduce or waive surcharges. The bill also prohibits DPS from assessing a surcharge against a person who is indigent. Sunset states DPS and the Comptroller estimate a biennial revenue loss of \$42.5 million from loss in surcharge revenue from indigent persons.
- 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.
- 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

Section 15 of the bill would amend Chapter 708 of the Transportation Code to require DPS to send a second and third notice to offenders about outstanding surcharges due under the Driver Responsibility Program (DRP). Current statute requires the department to notify offenders once. Under current law, if the offender has failed to pay the surcharge or enter into an installment agreement by the 30th day after notification, the offender's license is automatically suspended. The bill would extend the automatic suspension until the 30th day after the third notification. The bill would modify DRP installment agreements. Current law states that DPS may not permit offenders to enter into installment agreements of a period more than 36 consecutive months. The bill would state that DPS cannot require an offender to enter into an installment agreement of less than 36 consecutive months.

The bill would extend a court's jurisdiction for a conviction resulting in a surcharge to the person who is assessed a surcharge and DPS and all agents of the department regarding all matters related to the surcharge. The bill would allow a court to reduce or waive a surcharge and would establish that all persons required to pay a surcharge could invoke the jurisdiction of the court. The bill would require DPS to waive a surcharge for a person considered indigent. The bill would define an indigent person as a person who submits documentation to the court that proves that his or her income does not exceed 200 percent of the applicable income level established by the federal poverty guidelines or a person who is a full-time student enrolled in an institution of higher education. The court is required to notify DPS that a person is indigent. The bill would also require the DPS to establish a procedure by rule to annually deduct one point accumulated under Chapter 708 of the Transportation Code for each year that the person does not accumulate another point.

Approximately \$166 million was collected from DRP surcharges in fiscal 2008. The bill would allow a court to reduce or waive surcharges for an offender. Surcharges could not be assessed on an indigent person. Revenue from the DRP is dedicated 50.5 percent to General Revenue Fund (which includes 1 percent for DPS administration) and 49.5 percent to GR Account-Dedicated Trauma and EMS 5111.

For the purposes of this estimate, the Comptroller of Public Accounts assumed that, through court-ordered reductions or waiving of surcharges and no collection of surcharges from indigent persons, revenue would decline by 20 percent in fiscal 2010, 30 percent in 2011, 40 percent in 2012, and 50 percent each year thereafter. DPS estimates the costs for mailing two more notices at \$590,764 annually. It is assumed that these costs would be passed on to offenders.

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 Comptroller of Public Accounts (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 Comptroller of Public Accounts (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, 405 Department of Public Safety

LBB Staff: JOB, KK, GG, LG