

BILL ANALYSIS

S.B. 545
By: Seliger
Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Observers note that if a Commission on Law Enforcement Officer Standards and Education (TCLEOSE) licensee's employment is terminated with a law enforcement agency, the head of the agency is required to submit an employee termination report, which notes certain information. It is further noted that the agency head is required to submit the report to TCLEOSE and to the licensee within a certain period, that the licensee may request within a certain period that the report be corrected, and that the form is confidential and not subject to disclosure under the state's open records law, except under certain circumstances. However, interested parties further note that the form may be released if a subpoena is issued in a judicial proceeding and that a loophole is created in the confidentiality provision because information submitted to TCLEOSE or used during an administrative hearing is subject to the state open records law.

S.B. 545 seeks to address these issues by amending current law relating to employment records for law enforcement officers, including procedures to correct employment termination reports, and by providing an administrative penalty.

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

S.B. 545 amends the Occupations Code to change the deadline by which the head of a law enforcement agency or the head's designee is required to submit to the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) an employment termination report, and provide a copy of the report to the person who is the subject of the report, from not later than the seventh business day after the date the license holder either resigns, retires, or separates from the agency or exhausts all administrative appeals available to the license holder, if terminated based on an allegation of misconduct, to not later than the seventh business day after the date the license holder resigns, retires, is terminated, or separates from the agency and exhausts all administrative appeals available, if applicable.

S.B. 545, in a provision of law setting out the method by which a person who is the subject of an employment termination report maintained by TCLEOSE is authorized to contest information in the report, changes the method from the submission of a written request for a correction of the report and any evidence contesting the information to the submission of a written petition on a form prescribed by TCLEOSE for a correction of the report. The bill requires TCLEOSE, on receipt of the petition, to refer the petition to the State Office of Administrative Hearings (SOAH). The bill removes the requirement that TCLEOSE allow the head of the law enforcement agency to submit to the commission any evidence rebutting the evidence submitted by the person who is the subject of the termination report. The bill authorizes TCLEOSE to assess an administrative penalty against an agency head who fails to make a correction to an employment termination report following an order by the SOAH after all appeals available to the

agency head have been exhausted.

S.B. 545 repeals a provision of law relating to the duty of TCLEOSE to order the head of a law enforcement agency to correct a person's termination report and the duty of the agency head to correct the report, request a hearing, or be subject to an administrative penalty and repeals a provision entitling a person to a hearing conducted by the SOAH if the commission refuses to order the correction. The bill makes conforming changes to reflect the repeal in provisions of law relating to proceedings conducted to contest the commission's order or to correct an employment termination report and makes those provisions of law applicable to a proceeding to contest information in an employment termination report.

S.B. 545 expands the confidentiality of law enforcement officer employment record information to include all information submitted to TCLEOSE, rather than only a report or statement, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses and makes a conforming change. The bill expands the employment records that are subject to subpoena in a judicial proceeding to include all information submitted to TCLEOSE, rather than only a report or statement. The bill makes conforming and nonsubstantive changes.

S.B. 545 repeals Sections 1701.4525(b) and (c), Occupations Code.

EFFECTIVE DATE

September 1, 2011.