

BILL ANALYSIS

S.B. 1658
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Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Certain parties have questioned the scope of the jurisdiction of the Texas Forensic Science Commission, especially with regard to complaints involving crime laboratories and areas of forensic science that were not accredited by the Department of Public Safety at the time a forensic analysis was conducted.

S.B. 1658 seeks to address these concerns by clarifying the commission's authority, changing the composition of the commission, and placing limitations on disclosure under state public information laws for certain information that could harm commission investigations.

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. 1658 amends the Code of Criminal Procedure to establish that the Texas Forensic Science Commission is composed of seven members, rather than nine members, and that all commission members, rather than four members, are appointed by the governor. The bill removes provisions providing for the appointment of three commission members by the lieutenant governor and two commission members by the attorney general and specifying the qualifications for those members. The bill increases from two to five the number of members required to have expertise in the field of forensic science. The bill revises the staggered terms for members of the commission. The bill requires the governor, not later than January 1, 2012, to appoint five members of the commission, as required by the bill's provisions, and specifies that the terms of the members of the commission serving on the bill's effective date expire on the date the last such appointment by the governor is made.

S.B. 1658 replaces references to accredited laboratories, facilities, or entities, with references to a crime laboratory in provisions requiring the commission to exercise certain oversight over such laboratories. The bill, in the statutory provision requiring the commission to investigate, in a timely manner, any allegation of misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory, specifies that the provision applies to professional misconduct. The bill authorizes the commission to initiate for educational purposes an investigation of a forensic analysis without a report containing an allegation of professional negligence or professional misconduct involving the forensic analysis conducted if the commission determines by a majority vote of the members of the commission that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in Texas.

S.B. 1658, in the requirement that an investigation relating to an allegation of professional negligence or professional misconduct include the preparation of a written report that identifies and also describes the methods and procedures used to identify certain information, specifies that

such an investigation is that of a crime laboratory that is accredited by the Department of Public Safety (DPS) pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science. The bill expands the information that must be contained in the written report to include a description of the methods and procedures used to identify observations of the commission regarding the integrity and reliability of the forensic analysis conducted; best practices identified by the commission during the course of the investigation; and other recommendations that are relevant, as determined by the commission.

S.B. 1658 authorizes an investigation by the commission of a crime laboratory that is not accredited by DPS, or an investigation that is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science, to include the preparation of a written report that contains observations of the commission regarding the integrity and reliability of the forensic analysis conducted; best practices identified by the commission during the course of the investigation; and other recommendations that are relevant, as determined by the commission. The bill requires an investigation of a forensic analysis that is conducted for educational purposes to include the preparation of a written report that contains those same elements.

S.B. 1658 prohibits the commission from making a determination of whether professional negligence or professional misconduct occurred or issuing a finding on that question in an investigation initiated under the bill's provisions relating to an investigation conducted for educational purposes or for which an investigation report may be prepared under the bill's provisions relating to an investigation of a crime laboratory that is not accredited or an investigation pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science. The bill prohibits the commission from issuing a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission under state law.

S.B. 1658 requires the commission, not later than December 1 of each year, to prepare and publish a report, with the first such report to be submitted not later than December 1, 2012, that includes the following:

- a description of each complaint filed with the commission during the preceding 12-month period, the disposition of each complaint, and the status of any complaint still pending on December 31;
- a description of any specific forensic method or methodology the commission recommends to the public safety director of DPS for validation or approval under provisions of law relating to the crime laboratory accreditation process of DPS;
- recommendations for best practices concerning the definition of forensic analysis provided by statute or by rule of DPS;
- developments in forensic science made or used in other state or federal investigations and the activities of the commission, if any, with respect to those developments; and
- other information that is relevant to investigations involving forensic science, as determined by the presiding officer of the commission.

S.B. 1658 establishes that the commission is administratively attached to Sam Houston State University. The bill requires the Board of Regents, Texas State University System, to provide administrative support to the commission as necessary to carry out the purposes of statutory provisions governing the commission. The bill authorizes the commission alone to exercise the duties of the commission under those provisions and specifies that, except as provided by the requirement relating to the administrative support provided by the board of regents, neither the board of regents nor Sam Houston State University has any authority or responsibility with respect to the duties of the commission under those statutory provisions.

S.B. 1658 establishes that information that is filed as part of an allegation of professional

misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under state public information laws until the conclusion of an investigation by the commission under provisions of law relating to the duties of the commission. The bill establishes that a written report prepared by the commission under provisions of law governing the commission is not admissible in a civil or criminal action.

S.B. 1658 defines "accredited field of forensic science," and "commission," and provides for the meaning of "crime laboratory" by reference. The bill defines "forensic analysis" and removes language providing for the term's meaning by reference. The bill makes conforming changes.

S.B. 1658 amends the Government Code to require the public safety director of DPS to require that a laboratory, facility, or entity that must be accredited as a crime laboratory, as part of the accreditation process, to agree to consent to any request for cooperation by the commission that is made as part of the exercise of the commission's duties under provisions of law governing the commission.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.