

By: Madden

H.B. No. 3617

A BILL TO BE ENTITLED

AN ACT

1
2 relating to abolishing the Texas Commission on Fire Protection, the
3 Commission on Jail Standards, and the Commission on Law Enforcement
4 Officer Standards and Education and transferring certain of the
5 powers and duties of those agencies to the newly created Public
6 Safety Licensing Commission.

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

8 ARTICLE 1. PUBLIC SAFETY LICENSING COMMISSION;
9 TEXAS COMMISSION ON FIRE PROTECTION, COMMISSION ON JAIL
10 STANDARDS, AND COMMISSION ON LAW ENFORCEMENT OFFICER
11 STANDARDS AND EDUCATION

12 SECTION 1.01. Subtitle B, Title 4, Government Code, is
13 amended by adding Chapter 422 to read as follows:

14 CHAPTER 422. PUBLIC SAFETY LICENSING COMMISSION

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 422.001. DEFINITION. In this chapter, "commission"
17 means the Public Safety Licensing Commission.

18 Sec. 422.002. COMMISSION; REFERENCE. (a) The Public
19 Safety Licensing Commission is an agency of the state.

20 (b) A reference in law to the Texas Commission on Fire
21 Protection, the Commission on Jail Standards, or the Commission on
22 Law Enforcement Officer Standards and Education means the Public
23 Safety Licensing Commission.

24 Sec. 422.003. APPLICATION OF SUNSET ACT. The Public Safety

1 Licensing Commission is subject to Chapter 325 (Texas Sunset Act).
2 Unless continued in existence as provided by that chapter, the
3 commission is abolished and this chapter expires September 1, 2023.

4 Sec. 422.004. GIFTS AND GRANTS. The commission may accept
5 grants or gifts from private individuals, foundations, or the
6 federal government.

7 Sec. 422.005. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
8 RESOLUTION. (a) The commission shall develop and implement a
9 policy to encourage the use of:

10 (1) negotiated rulemaking procedures under Chapter
11 2008 for the adoption of commission rules; and

12 (2) appropriate alternative dispute resolution
13 procedures under Chapter 2009 to assist in the resolution of
14 internal and external disputes under the commission's
15 jurisdiction.

16 (b) The commission's procedures relating to alternative
17 dispute resolution must conform, to the extent possible, to any
18 model guidelines issued by the State Office of Administrative
19 Hearings for the use of alternative dispute resolution by state
20 agencies.

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

22 (1) coordinate the implementation of the policy
23 adopted under Subsection (a);

24 (2) serve as a resource for any training needed to
25 implement the procedures for negotiated rulemaking or alternative
26 dispute resolution; and

27 (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the commission.

2 Sec. 422.006. ELECTRONIC SUBMISSION OF FORMS, DATA, AND
3 DOCUMENTS. The commission by rule shall:

4 (1) develop and establish a system for the electronic
5 submission of forms, data, and documents required to be submitted
6 to the commission under this chapter; and

7 (2) once that system is established, require agencies
8 to submit to the commission electronically any form, data, or
9 document required to be submitted to the commission under this
10 chapter.

11 Sec. 422.007. USE OF TECHNOLOGY. The commission shall
12 implement a policy requiring the commission to use appropriate
13 technological solutions to improve the commission's ability to
14 perform its functions. The policy must ensure that the public is
15 able to interact with the commission on the Internet.

16 [Sections 422.008-422.050 reserved for expansion]

17 SUBCHAPTER B. COMMISSION

18 Sec. 422.051. COMPOSITION OF COMMISSION. (a) The
19 commission is composed of nine members of the public appointed by
20 the governor with the advice and consent of the senate. At least
21 one of the members must be a practitioner of medicine licensed by
22 the Texas Medical Board.

23 (b) The members of the commission are appointed for
24 staggered terms of six years with three members' terms expiring
25 February 1 of each odd-numbered year.

26 (c) Appointments to the commission shall be made without
27 regard to the race, color, handicap, sex, religion, age, or

1 national origin of the appointees.

2 (d) A person may not be a member of the commission if the
3 person or the person's spouse:

4 (1) is employed by or participates in the management
5 of a business entity or other organization regulated by or
6 receiving money from the commission;

7 (2) owns or controls, directly or indirectly, more
8 than a 10 percent interest in a business entity or other
9 organization regulated by or receiving money from the commission;
10 or

11 (3) uses or receives a substantial amount of tangible
12 goods, services, or money from the commission, other than
13 compensation or reimbursement authorized by law for commission
14 membership, attendance, or expenses.

15 (e) A person who is appointed to and qualifies for office as
16 a member of the commission may not vote, deliberate, or be counted
17 as a member in attendance at a meeting of the commission until the
18 person completes a training program that complies with Subsection
19 (f).

20 (f) The training program required by Subsection (e) must
21 provide information to the person regarding:

22 (1) this chapter;

23 (2) the programs, functions, rules, and budget of the
24 commission;

25 (3) the results of the most recent formal audit of the
26 commission;

27 (4) the requirements of laws relating to open

1 meetings, public information, administrative procedure, and
2 conflicts of interest; and

3 (5) any applicable ethics policies adopted by the
4 commission or the Texas Ethics Commission.

5 Sec. 422.0511. INITIAL APPOINTMENTS TO COMMISSION. (a)
6 The governor shall appoint to the initial commission:

7 (1) two public members of the Texas Commission on Fire
8 Protection, as that commission existed on August 31, 2011;

9 (2) two public members of the Commission on Jail
10 Standards, as that commission existed on August 31, 2011;

11 (3) two public members of the Commission on Law
12 Enforcement Officer Standards and Education, as that commission
13 existed on August 31, 2011; and

14 (4) three members representative of the general
15 public, one of whom must be a practitioner of medicine licensed by
16 the Texas Medical Board.

17 (b) In making the initial appointments to the commission,
18 the governor shall appoint three members to terms expiring February
19 1, 2013, three members to terms expiring February 1, 2015, and three
20 members to terms expiring February 1, 2017.

21 (c) This section expires September 1, 2012.

22 Sec. 422.052. CONFLICT OF INTEREST. (a) In this section,
23 "Texas trade association" means a cooperative and voluntarily
24 joined statewide association of business or professional
25 competitors in this state designed to assist its members and its
26 industry or profession in dealing with mutual business or
27 professional problems and in promoting their common interest.

1 (b) A person may not be a member of the commission and may
2 not be a commission employee employed in a "bona fide executive,
3 administrative, or professional capacity," as that phrase is used
4 for purposes of establishing an exemption to the overtime
5 provisions of the federal Fair Labor Standards Act of 1938 (29
6 U.S.C. Section 201 et seq.), if:

7 (1) the person is an officer, employee, or paid
8 consultant of a Texas trade association in the field of fire
9 protection, county corrections, or law enforcement; or

10 (2) the person's spouse is an officer, manager, or paid
11 consultant of a Texas trade association in the field of fire
12 protection, county corrections, or law enforcement.

13 (c) A person may not be a member of the commission or act as
14 the general counsel to the commission if the person is required to
15 register as a lobbyist under Chapter 305 because of the person's
16 activities for compensation on behalf of a profession related to
17 the operation of the commission.

18 Sec. 422.053. REMOVAL OF COMMISSION MEMBERS. (a) It is a
19 ground for removal from the commission that a member:

20 (1) does not have at the time of taking office the
21 qualifications required by Section 422.051;

22 (2) does not maintain during service on the commission
23 the qualifications required by Section 422.051;

24 (3) is ineligible for membership under Section
25 422.052;

26 (4) cannot, because of illness or disability,
27 discharge the member's duties for a substantial part of the member's

1 term; or

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

6 (b) The validity of an action of the commission is not
7 affected by the fact that it is taken when a ground for removal of a
8 commission member exists.

9 (c) If the executive director has knowledge that a potential
10 ground for removal exists, the executive director shall notify the
11 presiding officer of the commission of the potential ground. The
12 presiding officer shall then notify the governor and the attorney
13 general that a potential ground for removal exists. If the
14 potential ground for removal involves the presiding officer, the
15 executive director shall notify the next highest ranking officer of
16 the commission, who shall then notify the governor and the attorney
17 general that a potential ground for removal exists.

18 Sec. 422.054. OFFICERS; MEETINGS; COMPENSATION. (a) The
19 governor shall designate a commission member to serve as the
20 commission's presiding officer. The presiding officer serves in
21 that capacity at the will of the governor.

22 (b) The commission shall meet at least quarterly.

23 (c) A member of the commission may not receive compensation
24 for service on the commission. A member is entitled to receive
25 reimbursement, subject to any applicable limit on reimbursement
26 provided by the General Appropriations Act, for actual and
27 necessary expenses incurred in performing services as a member of

1 the commission.

2 (d) The commission shall develop and implement policies
3 that provide the public with a reasonable opportunity to appear
4 before the commission and to speak on any issue under the
5 jurisdiction of the commission.

6 [Sections 422.055-422.100 reserved for expansion]

7 SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER PERSONNEL

8 Sec. 422.101. EXECUTIVE DIRECTOR; STAFF. (a) The
9 commission shall employ an executive director who may employ other
10 personnel necessary for the performance of commission functions.

11 (b) The commission shall provide to its members and
12 employees, as often as necessary, information regarding their
13 qualifications for office or employment under this chapter and
14 their responsibilities under applicable laws relating to standards
15 of conduct for state officers or employees.

16 (c) The commission shall develop and implement policies
17 that clearly separate the policymaking responsibilities of the
18 commission and the management responsibilities of the executive
19 director and the staff of the commission.

20 (d) The executive director or the executive director's
21 designee shall develop an intra-agency career ladder program that
22 addresses opportunities for mobility and advancement for employees
23 within the commission. The program shall require intra-agency
24 postings of all positions concurrently with any public posting.

25 (e) The executive director or the executive director's
26 designee shall develop a system of annual performance evaluations
27 that are based on documented employee performance. All merit pay

1 for commission employees must be based on the system established
2 under this subsection.

3 (f) The executive director or the executive director's
4 designee shall prepare and maintain a written policy statement to
5 assure implementation of a program of equal employment opportunity
6 under which all personnel transactions are made without regard to
7 race, color, disability, sex, religion, age, or national origin.
8 The policy statement must include:

9 (1) personnel policies, including policies relating
10 to recruitment, evaluation, selection, appointment, training, and
11 promotion of personnel that are in compliance with the requirements
12 of Chapter 21, Labor Code;

13 (2) a comprehensive analysis of the commission
14 workforce that meets federal and state laws, rules, or regulations
15 and instructions directly adopted under those laws, rules, or
16 regulations;

17 (3) procedures by which a determination can be made
18 about the extent of underuse in the commission workforce of all
19 persons for whom federal or state laws, rules, or regulations and
20 instructions directly adopted under those laws, rules, or
21 regulations encourage a more equitable balance; and

22 (4) reasonable methods to appropriately address those
23 areas of underuse.

24 (g) A policy statement prepared under Subsection (f) must
25 cover an annual period, be updated annually and reviewed by the
26 Texas Workforce Commission civil rights division for compliance
27 with Subsection (f)(1), and be filed with the governor's office.

- 1 (1) complaint intake;
- 2 (2) investigation;
- 3 (3) adjudication and relevant hearings;
- 4 (4) appeals;
- 5 (5) the imposition of sanctions; and
- 6 (6) public disclosure.

7 (b) On request, a license holder may obtain information
8 regarding a complaint made against the license holder under this
9 chapter, including a complete copy of the complaint file. On
10 receipt of a request under this subsection, the commission shall
11 provide the requested information in a timely manner to allow the
12 license holder time to respond to the complaint.

13 (c) The commission shall ensure that detailed information
14 regarding the commission's complaint enforcement process described
15 by this section is available on any publicly accessible Internet
16 website and in any appropriate printed materials maintained by the
17 commission.

18 Sec. 422.203. RECORDS OF COMPLAINTS. (a) The commission
19 shall maintain a system to promptly and efficiently act on
20 jurisdictional complaints filed with the commission. The
21 commission shall maintain information about parties to the
22 complaint, the subject matter of the complaint, a summary of the
23 results of the review or investigation of the complaint, and its
24 disposition.

25 (b) The commission shall make information available
26 describing its procedures for complaint investigation and
27 resolution.

1 (c) The commission shall periodically notify the parties to
2 the complaint of the status of the complaint until final
3 disposition.

4 Sec. 422.2035. TRACKING AND ANALYSIS OF COMPLAINT AND
5 VIOLATION DATA. (a) The commission shall develop and implement a
6 method for:

7 (1) tracking complaints filed with the commission
8 through their final disposition, including:

9 (A) the reason for each complaint;

10 (B) how each complaint was resolved; and

11 (C) the subject matter of each complaint that was
12 not within the jurisdiction of the commission and how the
13 commission responded to the complaint; and

14 (2) tracking and categorizing the sources and types of
15 complaints filed with the commission and of violations of this
16 chapter or a rule adopted under this chapter.

17 (b) The commission shall analyze the complaint and
18 violation data maintained under Subsection (a) to identify trends
19 and areas that may require additional regulation or enforcement.

20 Sec. 422.204. PUBLIC PARTICIPATION. (a) The commission
21 shall develop and implement policies that provide the public with a
22 reasonable opportunity to appear before the commission and to speak
23 on any issue under the commission's jurisdiction.

24 (b) The commission shall prepare and maintain a written plan
25 that describes how a person who does not speak English may be
26 provided reasonable access to the commission's programs and
27 services.

1 SECTION 1.02. Section 419.001(1), Government Code, is
2 amended to read as follows:

3 (1) "Commission" means the Public Safety Licensing
4 Commission [~~Texas Commission on Fire Protection~~].

5 SECTION 1.03. Section 511.001(1), Government Code, is
6 amended to read as follows:

7 (1) "Commission" means the Public Safety Licensing
8 Commission [~~Commission on Jail Standards~~].

9 SECTION 1.04. Section 511.009(a), Government Code, as
10 amended by Chapters 977 (H.B. 3654) and 1215 (S.B. 1009), Acts of
11 the 81st Legislature, Regular Session, 2009, is reenacted and
12 amended to read as follows:

13 (a) The commission shall:

14 (1) adopt reasonable rules and procedures
15 establishing minimum standards for the construction, equipment,
16 maintenance, and operation of county jails;

17 (2) adopt reasonable rules and procedures
18 establishing minimum standards for the custody, care, and treatment
19 of prisoners;

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

23 (4) adopt reasonable rules and procedures
24 establishing minimum requirements for programs of rehabilitation,
25 education, and recreation in county jails;

26 (5) revise, amend, or change rules and procedures if
27 necessary;

1 (6) [~~provide to local government officials~~
2 ~~consultation on and technical assistance for county jails,~~

3 [~~(7) review and comment on plans for the construction~~
4 ~~and major modification or renovation of county jails,~~

5 [~~(8)~~] require that the sheriff and commissioners of
6 each county submit to the commission, on a form prescribed by the
7 commission, an annual report on the conditions in each county jail
8 within their jurisdiction, including all information necessary to
9 determine compliance with state law, commission orders, and the
10 rules adopted under this chapter;

11 (7) [~~(9)~~] review the reports submitted under
12 Subdivision (6) [~~(8)~~] and require commission employees to inspect
13 county jails regularly to ensure compliance with state law,
14 commission orders, and rules and procedures adopted under this
15 chapter;

16 (8) [~~(10)~~] adopt a classification system to assist
17 sheriffs and judges in determining which defendants are low-risk
18 and consequently suitable participants in a county jail work
19 release program under Article 42.034, Code of Criminal Procedure;

20 (9) [~~(11)~~] adopt rules relating to requirements for
21 segregation of classes of inmates and to capacities for county
22 jails;

23 (10) [~~(12)~~] require that the chief jailer of each
24 municipal lockup submit to the commission, on a form prescribed by
25 the commission, an annual report of persons under 17 years of age
26 securely detained in the lockup, including all information
27 necessary to determine compliance with state law concerning secure

1 confinement of children in municipal lockups;

2 (11) [~~(13)~~] at least annually determine whether each
3 county jail is in compliance with the rules and procedures adopted
4 under this chapter;

5 (12) [~~(14)~~] require that the sheriff and
6 commissioners court of each county submit to the commission, on a
7 form prescribed by the commission, an annual report of persons
8 under 17 years of age securely detained in the county jail,
9 including all information necessary to determine compliance with
10 state law concerning secure confinement of children in county
11 jails;

12 (13) [~~(15)~~] schedule announced and unannounced
13 inspections of jails under the commission's jurisdiction using the
14 risk assessment plan established under Section 511.0085 to guide
15 the inspections process;

16 (14) [~~(16)~~] adopt a policy for gathering and
17 distributing to jails under the commission's jurisdiction
18 information regarding:

19 (A) common issues concerning jail
20 administration;

21 (B) examples of successful strategies for
22 maintaining compliance with state law and the rules, standards, and
23 procedures of the commission; and

24 (C) solutions to operational challenges for
25 jails;

26 (15) [~~(17)~~] report to the Texas Correctional Office on
27 Offenders with Medical or Mental Impairments on a jail's compliance

1 with Article 16.22, Code of Criminal Procedure;

2 (16) [~~(18)~~] adopt reasonable rules and procedures
3 establishing minimum requirements for jails to:

4 (A) determine if a prisoner is pregnant; and

5 (B) ensure that the jail's health services plan
6 addresses medical and mental health care, including nutritional
7 requirements, and any special housing or work assignment needs for
8 persons who are confined in the jail and are known or determined to
9 be pregnant; and

10 (17) [~~(19)~~] provide guidelines to sheriffs regarding
11 contracts between a sheriff and another entity for the provision of
12 food services to or the operation of a commissary in a jail under
13 the commission's jurisdiction, including specific provisions
14 regarding conflicts of interest and avoiding the appearance of
15 impropriety.

16 SECTION 1.05. Section 1701.001(1), Occupations Code, is
17 amended to read as follows:

18 (1) "Commission" means the Public Safety Licensing
19 Commission [~~Commission on Law Enforcement Officer Standards and~~
20 ~~Education~~].

21 ARTICLE 2. REPEALER

22 SECTION 2.01. The following provisions of the Government
23 Code are repealed:

24 (1) Sections 419.002, 419.003, 419.004, 419.005,
25 419.006, 419.007, 419.0071, 419.0083, 419.009, 419.0091, 419.011,
26 and 419.012; and

27 (2) Sections 511.002, 511.003, 511.004, 511.0041,

1 511.0042, 511.005, 511.006, 511.0061, 511.007, 511.0071, 511.008,
2 and 511.018.

3 SECTION 2.02. The following provisions of the Occupations
4 Code are repealed:

5 (1) Sections 1701.002, 1701.051, 1701.052, 1701.053,
6 1701.054, 1701.055, 1701.056, 1701.057, 1701.058, 1701.059,
7 1701.1521, 1701.1522, 1701.1523, and 1701.155; and

8 (2) Subchapters C and E, Chapter 1701.

9 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

10 SECTION 3.01. (a) Effective January 1, 2012, the Texas
11 Commission on Fire Protection, the Commission on Jail Standards,
12 and the Commission on Law Enforcement Officer Standards and
13 Education are abolished and all powers, duties, obligations,
14 rights, contracts, bonds, appropriations, records, and property of
15 those agencies are transferred to the Public Safety Licensing
16 Commission.

17 (b) Effective January 1, 2012, a rule, policy, procedure, or
18 decision of the Texas Commission on Fire Protection, the Commission
19 on Jail Standards, or the Commission on Law Enforcement Officer
20 Standards and Education continues in effect as a rule, policy,
21 procedure, or decision of the Public Safety Licensing Commission
22 until superseded by an act of the Public Safety Licensing
23 Commission.

24 (c) Effective January 1, 2012, a reference in another law to
25 the Texas Commission on Fire Protection, the Commission on Jail
26 Standards, or the Commission on Law Enforcement Officer Standards
27 and Education means the Public Safety Licensing Commission.

1 SECTION 3.02. (a) Not later than October 1, 2011, the
2 governor shall appoint the initial members of the Public Safety
3 Licensing Commission.

4 (b) Not later than October 1, 2011, the Texas Commission on
5 Fire Protection, the Commission on Jail Standards, and the
6 Commission on Law Enforcement Officer Standards and Education
7 shall:

8 (1) adopt a comprehensive plan to ensure the efficient
9 transition of all programs operated by the Texas Commission on Fire
10 Protection, the Commission on Jail Standards, and the Commission on
11 Law Enforcement Officer Standards and Education to the Public
12 Safety Licensing Commission; and

13 (2) enter into a memorandum of understanding that
14 identifies the essential personnel of the Texas Commission on Fire
15 Protection, the Commission on Jail Standards, and the Commission on
16 Law Enforcement Officer Standards and Education.

17 (c) Not later than November 1, 2011, the members of the
18 Texas Commission on Fire Protection, the Commission on Jail
19 Standards, and the Commission on Law Enforcement Officer Standards
20 and Education shall meet with the members of the Public Safety
21 Licensing Commission to provide for the transfer of necessary
22 employees to the Public Safety Licensing Commission.

23 (d) This section takes effect September 1, 2011.

24 SECTION 3.03. To the extent of any conflict, this Act
25 prevails over another Act of the 82nd Legislature, Regular Session,
26 2011, relating to nonsubstantive additions to and corrections in
27 enacted codes.

H.B. No. 3617

1 SECTION 3.04. Except as otherwise provided by this Act,
2 this Act takes effect January 1, 2012.