

## **BILL ANALYSIS**

C.S.S.B. 1238  
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Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A previous Texas Legislature created the Texas Forensic Science Commission to investigate complaints alleging professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis by a laboratory, facility, or entity that has been accredited by the public safety director of the Department of Public Safety (DPS). C.S.S.B. 1238 seeks to revise current law relating to the composition and duties of and investigations conducted by the Texas Forensic Science Commission, the administrative attachment of the commission to Sam Houston State University, and the accreditation of criminal laboratories by DPS.

### **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**

C.S.S.B. 1238 amends the Code of Criminal Procedure to require the governor to appoint all nine members of the Texas Forensic Science Commission, rather than requiring the governor to appoint four members, the lieutenant governor to appoint three members, and the attorney general to appoint two members, and to specify that the commission members who are faculty or staff members of certain Texas public universities are selected by the governor, rather than selected from a list submitted to the lieutenant governor. The bill removes the requirement that the commission member who is a faculty or staff member of Texas Southern University have expertise in pharmaceutical laboratory research and establishes that the terms of the commission members who are faculty or staff members of Texas A&M University and Texas Southern University expire on September 1 of each even-numbered year, rather than each odd-numbered year. The bill establishes that the term of a commission member appointed by the attorney general before the bill's effective date expires September 1, 2014, and requires the governor to appoint a person to fill each such vacancy on that date, and, on the expiration of the terms of all other members appointed before the bill's effective date, to appoint a person to fill each vacancy in accordance with the bill's provisions.

C.S.S.B. 1238 clarifies that the commission's duties apply with respect to a crime laboratory, rather than an accredited laboratory, facility, or entity, and authorizes the commission to initiate for educational purposes an investigation of a forensic analysis without receiving a complaint, submitted through the commission's reporting system, that contains an allegation of professional negligence or professional misconduct involving the forensic analysis conducted if the commission determines by a majority vote of a quorum of the commission's members that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in Texas.

C.S.S.B. 1238 clarifies that provisions regarding the contents of a commission investigation into any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory apply to

such an investigation of a crime laboratory that is accredited by the Department of Public Safety (DPS) and pursuant to such an allegation involving an accredited field of forensic science. The bill expands the required contents of the written report to be included in such an investigation to include the identification and 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. The bill authorizes such an investigation of a crime laboratory that is not accredited by DPS or 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 the previously described observations, best practices, or recommendations. The bill requires an investigation initiated for educational purposes to include the preparation of a written report that contains the previously described observations, best practices, or recommendations.

C.S.S.B. 1238 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 by the commission or for which an investigation report may be prepared under the bill's provisions and 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.

C.S.S.B. 1238 requires the commission, not later than December 1 of each year, to prepare and publish a report 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 as part of the accreditation process for crime laboratories established by rule; 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. The bill requires the commission to submit the first annual report not later than December 1, 2014.

C.S.S.B. 1238 establishes that the commission is administratively attached to Sam Houston State University and requires the Board of Regents of the Texas State University System to provide administrative support to the commission as necessary to carry out the commission's purposes. The bill provides that only the commission may exercise the commission's statutory duties and establishes that neither the Board of Regents of the Texas State University System nor Sam Houston State University has any authority or responsibility with respect to such duties. The bill 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 such an allegation is not subject to release under state public information law until the conclusion of an investigation by the commission and establishes that a written report prepared by the commission is not admissible in a civil or criminal action.

C.S.S.B. 1238 amends the Government Code to specify that "criminal justice agency," for purposes of statutory provisions regarding DPS, includes a local government corporation created under the Texas Transportation Corporation Act for governmental purposes relating to criminal identification activities, including forensic analysis, that allocates a substantial part of its annual budget to those criminal identification activities. The bill requires the public safety director of DPS to require that a laboratory, facility, or entity that must be accredited to conduct forensic analyses of physical evidence for use in a criminal proceeding to agree as part of the accreditation process to consent to any request for cooperation by the Texas Forensic Science Commission that is made as part of the exercise of the commission's statutory duties.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 1238 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

**SENATE ENGROSSED**

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 2, Article 38.01, Code of Criminal Procedure, is amended.

SECTION 1. Same as engrossed version.

SECTION 2. Subsections (a) and (b), Section 3, Article 38.01, Code of Criminal Procedure, are amended.

SECTION 2. Same as engrossed version.

SECTION 3. Section 4, Article 38.01, Code of Criminal Procedure, is amended.

SECTION 3. Same as engrossed version.

SECTION 4. Article 38.01, Code of Criminal Procedure, is amended.

SECTION 4. Same as engrossed version.

**No equivalent provision.**

SECTION 5. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0011 to read as follows:

Sec. 411.0011. CERTAIN LOCAL GOVERNMENT CORPORATIONS ENGAGED IN CRIMINAL IDENTIFICATION ACTIVITIES. For purposes of this chapter, a reference to "criminal justice agency" includes a local government corporation created under Subchapter D, Chapter 431, Transportation Code, for governmental purposes relating to criminal identification activities, including forensic analysis, that allocates a substantial part of its annual budget to those criminal identification activities.

SECTION 5. Section 411.0205, Government Code, is amended.

SECTION 6. Same as engrossed version.

SECTION 6. The term of a person appointed under former Subdivision (3), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as that law existed immediately before the effective date of this Act, expires September 1, 2014, and the governor shall appoint a person to fill each vacancy on that date in accordance with Subdivisions (7) and (8), Subsection (a), Section 3, Article 38.01, Code of

SECTION 7. Same as engrossed version.

Criminal Procedure, as amended by this Act. On the expiration of a term under former Subdivision (1) or (2), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as that law existed immediately before the effective date of this Act, the governor shall appoint a person to fill each vacancy in accordance with Subdivision (1), (2), (3), (4), (5), or (6), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as amended by this Act, as applicable.

SECTION 7. Not later than December 1, 2014, the Texas Forensic Science Commission shall submit the first annual report required by Section 8, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.