

## LEGISLATIVE BUDGET BOARD

Austin, Texas

### FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 13, 2019

**TO:** Honorable Poncho Nevárez, Chair, House Committee on Homeland Security & Public Safety

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: SB616** by Birdwell (relating to the continuation and functions of the Department of Public Safety of the State of Texas, the conditional transfer of the driver licensing program to the Texas Department of Motor Vehicles, the abolition of the Texas Private Security Board, the transfer of the motorcycle and off-highway vehicle operator training programs to the Texas Department of Licensing and Regulation, and the regulation of other programs administered by the Department of Public Safety; imposing an administrative penalty; authorizing and repealing the authorization for fees.), **Committee Report 2nd House, Substituted**

**The General Revenue fiscal impact of the bill cannot be determined at this time due to the unavailability of certain fiscal estimates associated with the transfer of the driver license program. There would be fiscal impacts to the Texas Mobility Fund and the Motorcycle Education Account which are described in the text below.**

#### Fiscal Analysis

##### Regulatory Functions and Activities

The bill authorizes DPS to obtain and use criminal history record information maintained by the FBI or DPS for certain regulatory functions for applicants for licensure. The bill authorizes DPS to require applicants to submit fingerprints for the purpose of obtaining criminal history record information.

The bill removes statutory criminal history disqualifiers and requires the adoption of disqualifying offenses for vehicle inspections. The bill also repeals the definition of certain convictions, and authorizes the establishment of licensing fees for inspector and station certifications and repeals certain statutory fees.

The bill establishes a two year expiration date for certificates issued to an inspector or inspection station, repeals the requirement to register with DPS as a peyote distributor, and repeals: fees for issuance of certificate of registration and renewal in metals; certain administrative penalties in metals; authority to investigate metal recyclers; certain provisions related to denial and revocation or suspension of certain certificates; authority to require certificate holders on probation to report to DPS; certain provisions related to hearings on denial, revocation, suspension of certain certificates; provisions regarding complaints related to inspectors; and fees for certain certifications.

The bill requires the Public Safety Commission to adopt physical fitness programs, and to adopt a resolution certifying that DPS' programs are consistent with scientific standards and meet state and federal labor and employment law.

The bill requires DPS to develop and implement best practices for the collection, protection, and sharing of personal information held by the department. The bill requires DPS to submit a report no later than September 1, 2020 regarding the development and implementation of the best practices.

### **Controlled Substances**

The bill repeals the requirement of a permit, and the offense for failing to obtain a permit, for chemical and laboratory apparatus equipment. The bill establishes reporting requirements in case of loss or theft, to maintain records and inventories in accordance with department rules, and to allow a member of the department or a peace officer to conduct audits and inspect records.

### **Private Security Functions and Activities**

The bill abolishes the Private Security Board and replaces it with an advisory committee, and authorizes members of the committee to receive reimbursement for certain meeting expenses. The bill defines company and individual licenses and eliminates the terms 'registrations' and 'endorsements'. The bill eliminates the licensing/registration requirements for the following: guard dog companies and guard dog trainers; qualified managers, supervisors, and branch office managers of security companies; security and alarm salespersons; security consulting companies and consultants; employees of a license holder; and private business or government letters of authority. The bill stipulates the company and individual licenses will have a two year expiration period.

The bill specifies that the State Office of Administrative Hearings makes the final determination on contested private security enforcement cases.

Further, the bill directs DPS to create a registry of certain commissioned security officers; requires an individual license for each service; repeals statute regarding the procedures for appeal of administrative actions; and sets the expiration date for certain certifications to September 1, 2019.

### **Driver License Functions and Activities**

The bill requires DPS to contract with an independent third party, designated by the Comptroller of Public Accounts (CPA), to conduct a study that examines and makes recommendations on the management and operating structure of the driver's license program and the opportunities and challenges of transferring the driver license program. The report would be required to be submitted on or before September 1, 2020 to the Governor, the Sunset Advisory Commission, the Department of Public Safety, and the Texas Department of Motor Vehicles. The bill also prohibits DPS, DMV, or the third-party contractor from disclosing any personal information obtained in conducting the study, and clarifies that the study is a "feasibility" study.

The bill transfers all DPS' driver license FTEs, funds, property, contracts, etc. to the DMV on September 1, 2021. However, this provision takes effect only in the case where the transfer study report is not submitted by September 1, 2020.

### **Expiration Dates and Fee for Driver Licenses**

The bill extends the expiration date of an original driver license from six to eight years for most applicants. The bill also changes the fee for an original and renewal driver license from \$24 to \$32, increasing the renewal fee for a class M license or certain licenses with an authorization to operate a motorcycle or moped from \$32 to \$43.

The bill extends the expiration date of a commercial driver license (CDL) from five to eight years, and increases the fee from \$60 to \$96. The hazardous materials endorsement is stipulated to be five years after the applicant's next birthday.

**Motorcycle and Off-Road Vehicle Operator Training Functions and Activities**

The bill transfers the motorcycle safety and off-highway vehicle programs, and any associated material and financial assets, to the Texas Department of License and Regulation (TDLR) on September 1, 2020. The bill requires TDLR to establish curriculum standards, approve courses that meet these standards, and set fee amounts reasonable and necessary to cover the costs of administering the program.

The bill also: requires TDLR to establish an Advisory Board; establishes eligibility criteria for an instructor license, including a mandatory training program administered by the Texas Engineering Extension Service; creates a new motorcycle grant program out of the Motorcycle Education Fund; and requires the Texas Transportation Institute to promulgate research, advocacy, and education on motorcycle safety.

**Methodology**

**Regulatory Functions and Activities**

According to DPS, there will be an estimated increase in Appropriated Receipts revenue of \$766,649 in fiscal year 2020, and \$758,880 in each fiscal year thereafter, to reflect the increase in fingerprinting background checks authorized in Article III of the bill.

**Controlled Substances**

It is assumed the provisions in this article can be performed using existing resources.

**Private Security Functions and Activities**

The elimination of certain licenses and registrations, and the extension of renewal licenses to two years, results in a loss in revenue to the General Revenue Fund. The elimination of some private security registrations are estimated to reduce revenue by \$555,655 in each fiscal year, and the change from a one-year license period to a two-year license period for some private security licenses is estimated to reduce revenue by \$3,273,710 in each even-numbered fiscal year.

According to DPS, there would be a small cost savings to General Revenue because of the elimination of certain licenses and registrations. According to the State Office of Administrative Hearings, the costs associated with the provisions of the bill can be absorbed within existing resources.

**Driver License Functions and Activities**

If the third party study is not submitted by September 1, 2020, the transfer of the driver license program will result in a significant All Funds decrease for DPS, with a corresponding increase for DMV.

Should the report not be submitted by this date, DPS estimates the transfer of the driver license program in fiscal year 2022 will result in a decrease to DPS of 2,236.8 FTEs and \$140,170,655 in All Funds, of which \$135,560,337 in General Revenue and \$4,610,318 is Appropriated Receipts, with a corresponding increase to the Department of Motor Vehicles.

According to DPS, the study to transfer the driver license program to DMV would cost \$250,000 in fiscal year 2020.

The operational cost to administer the driver license program is expected to be cost neutral or be absorbed using existing resources; the appropriation for the driver license program would be appropriated to DMV in fiscal year 2021, as discussed above. The transition of the program from DPS to DMV, however, is expected to have a significant fiscal impact.

DPS has not given a complete analysis of anticipated transition costs. The agency assumes the third-party study would provide an accurate estimate of costs to transfer the program. Potential obstacles with significant cost to the state may include: consideration of building or leasing contracts that must be modified to include a different agency; DPS owned buildings that contain law enforcement capabilities that also provide driver license services; consideration of commercial driver license (CDL) enforcement; any memorandums of understanding (MOU) with other governmental entities or municipalities that would need to be transferred; DMV building capacity for driver license employees that are located at DPS headquarters; or administrative or human resources staff that serve multiple DPS administrative functions outside the driver license program.

Further, DPS is not required to house their data center services through the Department of Information Resources (DIR), while DMV is required to do so. DIR indicates the additional costs to expanding DCS to include the driver license function at DMV cannot be estimated at this time.

According to DPS, an estimate of the full impact of changes to the infrastructure and applications that support the Driver License System (DLS), and associated vendor applications, cannot be determined, and will be determined by the third-party study.

DMV assumed an additional 346.0 FTEs would be required to provide the support services indicated above. DMV's analysis also assumed DPS staff and funding that support the administrative license revocation hearings function would not be transferred from DPS to DMV. DMV estimated it would need an additional 56.0 FTEs, including attorneys and legal support staff, to accommodate this function.

Based on DMV's analysis, total costs for an additional 402.0 FTEs, including salaries and wages, associated operating costs, and employee benefits are estimated to be \$41.7 million from the General Revenue Fund in each fiscal year beginning in fiscal year 2021. However, if ultimately the administrative functions and FTEs associated with the driver license program were transferred to DMV, the DMV cost estimate would likely be significantly offset. As a result, the General Revenue fiscal impact of the program transfer cannot be determined.

### **Expiration Dates and Fees for Drivers Licenses**

The bill extends the term of an original driver license from six to eight years and increases the fee for an original or renewal driver license from \$24 to \$32.

The bill would increase the cost of renewal for a Class M license or certain other licenses that have a motorcycle authorization from \$32 to \$43. The bill would increase the fee for a commercial driver's license (CDL) from \$60 to \$96 while extending the term of the license from five to eight years.

As provided by DPS, there are approximately 3,182,000 driver licenses, 98,000 CDLs, and 985,000 motorcycle licenses and authorization renewals to which the provisions of the bill would apply in fiscal year 2020.

According to Comptroller of Public Accounts' analysis, these changes are estimated to increase

revenues to the Texas Mobility Fund by \$9,416,000 in fiscal year 2020 and \$38,231,000 in fiscal year 2021. As the current CDL is valid for five years and a Class C driver license is valid for six years, and the bill's effective date is June 1, 2020, the first seven years after the implementation of the bill would see an increase in revenue to the Texas Mobility Fund. Year eight would see a decrease of \$86,457,000.

### **Motorcycle and Off-Road Vehicle Operator Training Functions and Activities**

The transfer of the motorcycle safety and off-highway vehicle programs to TDLR results in a savings to General Revenue and the Motorcycle Safety Education Account for, with corresponding increases for TDLR. This analysis that any increased cost to TDLR, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

The bill transfers the motorcycle operator safety training program, and any associated material and financial assets, from DPS to TDLR. According to DPS, there will be minimal impact to DPS' Education, Training, and Research (ETR) Division. ETR's Motorcycle Safety Unit provides its own training to meet statutory requirements, and the transfer of this Unit will not have an impact on any other training by other units in ETR. There would be a small savings to DPS from the Motorcycle Education Account No. 501 resulting from the decrease of 9.0 FTEs.

TDLR reports it would need to hire 9.0 FTEs to fulfill the motorcycle program requirements. TDLR also reports it would need to contract for the printing of the MSB-8 and estimates this would result in a cost for the approximately 34,000 cards issued annually. In addition, DPS currently contracts for the use of a licensing system and database called REMS for the regulation of the motorcycle program. Taking over the contract and making the changes necessary to reflect TDLR as the agency regulating the program would result in an annual cost of \$20,000 beginning in fiscal year 2021. Finally, TDLR estimates a cost of \$100,000 in each fiscal year for a staff augmentation contract to have the motorcycle safety training information transferred into TDLR's existing licensing systems. These costs would no longer appear after fiscal year 2022 as the motorcycle licenses would be within the existing TDLR database.

The bill authorizes TDLR to set fees to cover costs of administering the program. TDLR expects to set a renewal license fee of \$100 for a motorcycle school and \$50 for an instructor license. According to TDLR analysis, approximately 80 schools and 400 instructors renew each year and about 25 instructors and 2 schools submit new applications each year. Based on TDLR's response, this analysis assumes new application fees for schools will be \$200 and new application fees for instructors will be \$100. This would result in a General Revenue gain of approximately \$30,700 per fiscal year. As an agency that has its appropriations limited to revenue collections, TDLR is statutorily required to generate sufficient revenue to cover its costs of operation. However, this analysis assumes the disparity between annual expenses and licensing fees for this program would come from the Motorcycle Education Fund Account (General Revenue Dedicated Fund 0501) because current statute (Section 662) authorizes funds from this account to be used to defray the cost of administering the motorcycle operator training and safety program.

The ATV safety program currently operates through a no-cost cooperative agreement with the All-Terrain Vehicle Safety Institute, which will be continued at TDLR, resulting in no fiscal impact.

**Note:** The bill would reduce, rescind, or repeal the dedication of a specific source or portion of revenue dedicated to the Texas Mobility Fund. Article 3, Section 49-k, of the Texas Constitution, specifies that while money in the Texas Mobility Fund is pledged for the payment of any outstanding debt obligations, the Legislature may not reduce, rescind, or repeal the dedication of a specific source or portion of revenue dedicated to the Texas Mobility Fund unless the Legislature

by law dedicates a substitute or different source of revenue that is projected by the Comptroller to be of a value equal to or greater than the source or amount being reduced, rescinded, or repealed.

**Technology**

The bill requires programming to the Driver License System (DLS) to extend expiration dates from six to eight years for original driver licenses only, update fees and financial files, and testing with the Comptroller of Public Accounts. Additionally, the Department of Information Resources (DR) will be required to program the Over the Counter (OTC) application for the fee changes. Information Technology (IT) resources include a DLS developer, finance developer, and quality assurance resources to test the changes in DLS and OTC.

The bill also requires modifications to the Private Security program's online licensing application (TOPS). Several registration types will need to be removed, most notably the company manager registration, which would require a major change from application through licensing as this is integrated into the company rules. There is also a change for Letter of Authority registry which would include application and fee changes.

DPS' Information Technology Division will need contractors to provide programming support for development, security, networking and project management.

Should the driver license functions be transferred to DMV in fiscal year 2022, there would be significant, if undetermined, one time IT costs associated with the program transfer. DPS assumes these costs will be addressed in the study required by this bill. Currently, the Driver License Division includes \$5,152,555 in General Revenue Funds specifically for ongoing IT operations related to the maintenance and improvement of the driver license program.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 608 Department of Motor Vehicles, 716 Texas A&M Engineering Extension Service, 727 Texas A&M Transportation Institute, 313 Department of Information Resources

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