

BILL ANALYSIS

C.S.S.B. 616
By: Birdwell
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Department of Public Safety (DPS) was established in 1935 to house the state's highway patrol and the Texas Rangers. DPS now serves as the state's law enforcement body combating human trafficking and transnational gangs as well as assisting in counterterrorism investigations and border security. Aside from these law enforcement functions, DPS is also tasked with managing several statewide programs, such as issuing driver's licenses and handgun licenses and regulating vehicle inspections and private security. DPS is subject to review and abolishment under the Texas Sunset Act, and the Sunset Advisory Commission found that DPS does not efficiently carry out several of its non-law enforcement related functions. C.S.S.B. 616 seeks to continue DPS with several statutory modifications aimed at addressing that issue and others raised during the Sunset review process, including transferring the administration of certain programs from DPS to the Texas Department of Licensing and Regulation and providing for a study on transferring the driver's license program to the Texas Department of Motor Vehicles.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the following:

- the Public Safety Commission in SECTIONS 3.002, 3.005, 3.006, 3.008, 3.009, 3.011, 5.112, and 5.118 of this bill;
- the public safety director of the Department of Public Safety in SECTION 4.012 of this bill;
- the State Office of Administrative Hearings in SECTION 5.112 and 5.118 of this bill;
- the Texas Department of Motor Vehicles in SECTION 6.002 of this bill; and
- the Texas Commission of Licensing and Regulation in SECTIONS 8.004, 8.007, 8.009, and 8.021 of this bill.

ANALYSIS

Continuation of Department of Public Safety and Miscellaneous Administrative Provisions

C.S.S.B. 616 amends the Government Code to postpone from September 1, 2019, to September 1, 2031, the date on which the Department of Public Safety (DPS) is abolished and related provisions expire unless continued in existence as provided by the Texas Sunset Act.

C.S.S.B. 616 revises provisions relating to the training required for members of the Public Safety Commission and provides for the creation of a related training manual that each member must

acknowledge having received and reviewed. The bill requires the Public Safety Commission to adopt physical fitness programs in accordance with applicable state law and a resolution certifying that those programs are consistent with generally accepted scientific standards and meet all applicable requirements of 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 DPS and, not later than September 1, 2020, to submit to the legislature a report regarding the development and implementation of those best practices.

C.S.S.B. 616 repeals a provision of the Code of Criminal Procedure relating to a report on seized and forfeited aircraft, and also repeals provisions in the Occupations Code relating to two reports on the metal recycling entities program.

Border Security

C.S.S.B. 616 amends the Government Code to require DPS to submit to the legislature, not later than May 30 of each year, a report on border crime and other criminal activity. The bill sets out the required contents of the report and requires DPS, in compiling the information for the report, to use information available in certain FBI and DPS databases.

Metal Recycling, Vehicle Inspection, and Provisions Applying to More Than One Regulatory Program

Criminal History Record Information

C.S.S.B. 616 amends the Government Code to revise the persons about whom DPS is authorized to obtain and use criminal history record information maintained by the FBI or DPS and to make conforming changes. The bill authorizes DPS to require any person for whom DPS is authorized to obtain and use such criminal history record information to submit a complete and legible set of fingerprints to DPS for the purpose of obtaining that information. The bill requires the Public Safety Commission to adopt rules necessary to implement these changes in law.

Powers and Duties Related to Certain Regulatory Programs

C.S.S.B. 616 amends the Government Code to set out provisions applicable to a program, and persons regulated under the program, administered by DPS under the following laws, including rules adopted under those laws:

- Government Code provisions providing for a pass for expedited access to the Capitol;
- the Texas Compassionate-Use Act;
- the Private Security Act;
- Occupations Code provisions governing metal recycling entities;
- Transportation Code provisions establishing minimum standards for vendors of ignition interlock devices; and
- Transportation Code provisions governing the certification of vehicle inspection stations and inspectors.

C.S.S.B. 616 requires the Public Safety Commission to make the final determination in an administrative action against a person for a violation of a law or rule governing a program or person subject to these provisions, except with respect to the Private Security Act, and prohibits the commission from delegating that authority. The bill requires DPS to maintain a system to promptly and efficiently act on complaints filed with DPS regarding such a violation and sets out provisions related to those complaints. The bill requires the commission to adopt rules to implement the complaint-related provisions and rules to establish a procedure for the investigation and resolution of complaints, including a procedure for documenting complaints to DPS from the time of the submission of the initial complaint to the final disposition of the complaint. The bill sets out provisions related to the following:

- DPS complaint investigations;
- informal complaint resolution and informal proceedings established by commission rule;
- the authority of the commission to deny an application for, revoke, suspend, or refuse to renew a license and to impose certain administrative sanctions;
- the right of an applicable person to notice and a hearing regarding such an action by the commission and related administrative procedures;
- the authority of DPS to issue a cease and desist order;
- an action for injunctive relief; and
- the authority of the commission to impose an administrative penalty for a violation of an applicable state law, rule, or order and the procedures for the imposition of such a penalty, including requiring the commission to prescribe by rule procedures for the determination and appeal of a decision to impose an administrative penalty.

C.S.S.B. 616 authorizes the commission to adopt by rule a system under which applicable licenses expire on various dates during the year and sets out provisions relating to the staggering of those license renewals and providing for the proration of license fees. The bill establishes that a license may not expire later than the second anniversary of the date of issuance. The bill requires DPS to make available annually on its website a report of regulatory statistics for the preceding state fiscal year for each program subject to these provisions and aggregate information on all the programs and sets out the information the report must include.

C.S.S.B. 616 amends the Occupations Code to make a conforming change relating to the regulation of metal recycling entities. The bill requires the commission to adopt rules necessary to implement the changes to law made by the bill's provisions setting out powers and duties of the commission and DPS related to certain regulatory programs, including the regulation of metal recycling entities.

Other Provisions Relating to Vehicle Inspection

C.S.S.B. 616 amends the Transportation Code to require the Public Safety Commission to adopt rules necessary to comply with Occupations Code provisions establishing the consequences of a criminal conviction for state licensing with respect to the certification of persons under provisions governing the certification of a vehicle inspection station or inspector and sets out certain requirements for those rules.

C.S.S.B. 616 authorizes the commission to adopt rules to implement provisions governing hearings on the denial, revocation, or suspension of a certificate issued to an inspector or inspection station. The bill sets such a certificate to expire as determined by DPS under the bill's provisions, but not later than the second anniversary of the date of issuance. The bill revises provisions providing for set fees for an inspector certification and for certification as an inspection station to require the commission instead to establish by rule reasonable and necessary fees for such certifications, subject to certain established minimum amounts.

C.S.S.B. 616 requires the commission to adopt rules necessary to implement the changes to law made by the bill's provisions relating to vehicle inspectors and inspection stations.

Certain Programs Regulating Controlled Substances, Precursor Chemicals, and Laboratory Apparatuses

C.S.S.B. 616 amends the Health and Safety Code to repeal and remove provisions of the Texas Controlled Substances Act regulating the permitted sale and transfer of precursor chemicals and chemical laboratory apparatus. The bill establishes that, on the bill's effective date, an issued chemical precursor transfer permit or chemical laboratory apparatus transfer permit expires. The bill exempts a person who supplies peyote to a Native American Church from the requirement to

register and maintain appropriate records of receipts and disbursements in accordance with applicable rules.

C.S.S.B. 616 revises provisions relating to criminal history background checks of persons licensed to operate as a dispensing organization under the Texas Compassionate-Use Act and requires the public safety director of DPS to adopt rules to implement the revised provisions.

Private Security

C.S.S.B. 616 abolishes the governor-appointed Texas Private Security Board on September 1, 2019, and establishes that terms of members serving on the board expire on that date. The bill amends the Occupations Code to change the nature of the board by reconstituting the board as an advisory committee to DPS and the Public Safety Commission known as the Texas Private Security Advisory Committee and specifies that members are appointed by the commission. The bill transfers regulatory authority under the Private Security Act to DPS and the commission, as applicable. The bill revises and updates provisions to reflect that change and the regulatory transfer. The bill requires the commission to appoint members to the advisory committee as soon as practicable, makes a board member whose term expires at the time of abolishment eligible for reappointment to the advisory committee, and requires such board members to continue to provide advice to DPS until a majority of the members of the advisory committee are appointed and qualified. The bill sets out provisions relating to the implementation of the abolishment of the board and the transfer of related matters to DPS or the commission, as applicable.

C.S.S.B. 616 does the following with respect to the Texas Private Security Advisory Committee:

- makes Government Code provisions relating to state agency advisory committees inapplicable to the size, composition, or duration of the advisory committee or to the appointment of its presiding officer;
- requires the committee to meet at least quarterly;
- set out the committee's duties; and
- provides for the designation of a commission liaison.

C.S.S.B. 616 revises provisions relating to the general powers and duties of the regulatory authority under the Private Security Act to remove the Texas Private Security Board as the authority and to require the Public Safety Commission instead to adopt rules and general policies to guide DPS in the administration of the act. The bill updates provisions of the act to reflect this delineation of powers and duties. The bill revises provisions relating to the chief administrator of DPS to change the entity under whose direction the chief administrator is responsible for the administration of the act from the board to the public safety director.

C.S.S.B. 616 revises provisions relating to denial and disciplinary actions under the Private Security Act to expand the range of sanctions available to the commission for applicable violations. The bill sets out provisions establishing the hearing and appeals procedure for proceedings initiated by request of a person regulated under that act against whom the commission has taken an applicable action, including the following:

- a requirement for the commission and the State Office of Administrative Hearings (SOAH) to adopt rules to administer those provisions; and
- a provision making the Administrative Procedure Act applicable to such a proceeding to the extent the provisions are consistent.

The bill clarifies that those provisions apply to summary actions.

C.S.S.B. 616 revises provisions relating to authorized activity under the Private Security Act to require an individual to obtain the proper individual license and be employed by a company

license holder to perform any activity under the act. The bill defines "company license" as a license issued by DPS that entitles a person to operate as a security services contractor or investigations company. The bill defines "individual license" as a license issued by DPS that entitles an individual to perform a service regulated under the act for a company license holder, including a personal protection officer license. The bill provides for a flexible license renewal system and revises provisions to conform to this licensing scheme and to eliminate references to endorsement, letter of authority, branch office license, manager, registrant, and registration, as applicable.

C.S.S.B. 616 removes the following as classifications of licenses for investigation companies:

- Class P: private business letter of authority license;
- Class X: government letter of authority license; and
- Class T: telematics license.

The bill revises the provision prohibiting a security department of a private business or a political subdivision from employing a commissioned security officer without holding a letter of authority to prohibit such employment unless the security department provides to DPS notice of intent to employ a commissioned security officer and other specified information. The bill requires DPS to maintain a registry of security departments that provide such notice and other specified information. The bill removes the provision requiring a qualifying telematics company to pay an annual fee to be exempt from the act and repeals provisions regulating the following under that act:

- private security consultants and consulting companies;
- guard dog companies;
- guard dog trainers; and
- security salespersons.

The bill clarifies that the regulation of owners only applies to an owner who owns at least a 51 percent interest in a company license holder. The bill provides for the expiration on September 1, 2019, of any license, registration, endorsement, or other authorization required to operate as a guard dog company, guard dog trainer, security salesperson, private security consultant, or private security consulting company.

C.S.S.B. 616 requires the Public Safety Commission to adopt rules necessary to implement the changes in law made by the bill with respect to private security.

C.S.S.B. 616 amends the Government Code to make conforming changes.

Conditional Transfer of Driver's License Programs from Department of Public Safety to Department of Motor Vehicles

C.S.S.B. 616 requires DPS to enter into a contract with an independent, third-party contractor designated by the comptroller of public accounts to conduct a feasibility study that examines and makes recommendations on the management and operating structure of the programs for licensing a person to operate in Texas a motor vehicle or a commercial motor vehicle and for issuing an election identification certificate and the opportunities and challenges of transferring those programs from DPS to the Texas Department of Motor Vehicles (TxDMV). The bill requires the contractor, not later than September 1, 2020, to submit a report on the study to the legislature, the governor, the Sunset Advisory Commission, DPS, and TxDMV. The bill prohibits DPS, TxDMV, or the contractor from disclosing any personal information obtained in conducting the study.

C.S.S.B. 616 requires DPS and TxDMV to establish a work group to plan that transfer and:

- sets out required actions for the work group;
- requires DPS to provide TxDMV with access to certain systems, information, property, records, or personnel as necessary for TxDMV to prepare for the transfer;
- requires TxDMV to study the most effective use of available state and county resources to administer the transferred licensing program; and
- requires DPS to assist in that study.

The bill's provisions other than the provisions requiring the third-party study and report take effect only if the report required to be submitted by the third-party contractor is not submitted within the prescribed period. If the report is not submitted within the prescribed period, then the bill transfers, effective September 1, 2021, all functions and activities performed by DPS immediately before that date for the applicable licensing program to TxDMV and sets out related provisions, including providing that all DPS FTE positions that primarily concern the administration or enforcement of the licensing program become TxDMV positions. The bill amends the Transportation Code to make conforming changes.

The provisions of C.S.S.B. 616 relating to the conditional transfer take effect on passage or, if the bill does not get the necessary vote, September 1, 2019.

Expiration Dates of Driver's Licenses and Commercial Driver's Licenses

C.S.S.B. 616 amends the Transportation Code to extend the term of an original noncommercial driver's license and the term of a renewal noncommercial driver's license from six years to eight years. The bill extends the term of an original commercial driver's license without a hazardous materials endorsement and the term of a renewal of such a license that has been expired for less than one year from five years to eight years. The bill extends the term of a renewal of a commercial drivers license without a hazardous materials endorsement that has been expired for at least one but not more than two years from six years to seven years. The bill sets out the term of renewal of a commercial driver's license with a hazardous materials endorsement that has expired. The bill does the following with respect to license fees:

- increases from \$32 to \$43 the fee for renewal of a Class M license or for the renewal of a license that includes authorization to operate a motorcycle;
- increases from \$24 to \$32 the fee for issuance or renewal of certain other driver's licenses;
- increases from \$8 to \$11 the amount by which the fee for a Class A, B, or C driver's license is increased if that license includes an authorization to operate a motorcycle or moped;
- increases from \$60 to \$96 the fee for a commercial driver's license without a hazardous materials endorsement; and
- adds a \$60 fee for a commercial driver's license with a hazardous materials endorsement with certain exceptions.

These provisions apply only to a license issued or renewed on or after June 1, 2020.

Motorcycle and Off-Highway Vehicle Operator Training Programs

C.S.S.B. 616 amends the Transportation Code to remove the requirement for the governor to designate an entity to establish and administer a motorcycle operator training and safety program and an off-highway vehicle operator education and certification program. The bill requires the Texas Department of Licensing and Regulation (TDLR) instead to administer those programs and enforce the laws governing those programs. The bill includes institutions of higher education among the entities that may be contracted with to assist in the administration of the education program and the certification of off-highway vehicle operators.

C.S.S.B. 616 requires the Texas Commission of Licensing and Regulation (TCLR) to establish by rule minimum curriculum standards for courses provided under the motorcycle operator training and safety program, requires TDLR to approve all courses that meet the established curriculum standards, and sets out provisions relating to the establishment of the minimum curriculum standards for entry-level courses. The bill authorizes TCLR to set fees in amounts reasonable and necessary to cover the costs of administering the motorcycle operator training and safety program, including fees for the issuance and renewal of a motorcycle school license and instructor license and courses provided under the program. The bill requires TCLR to establish a nine-member advisory board to advise TDLR on matters related to the program. The bill sets out the board's composition and provides for its administration and operation. The bill repeals provisions relating to a program director and a motorcycle safety coordinator.

C.S.S.B. 616 revises and sets out provisions related to the following:

- TDLR contracts with motorcycle schools, including required consultation with the motorcycle safety advisory board;
- the prohibition against unauthorized training in motorcycle operation;
- eligibility to obtain, and the application process for, a motorcycle operation and safety instructor license;
- the denial, suspension, or revocation of an instructor or motorcycle school license; and
- reporting requirements for motorcycle schools.

The bill requires the Texas A&M Engineering Extension Service, in consultation with TDLR, to administer the training program to obtain an instructor license and provides for the issuance of a certificate of completion of the training program.

C.S.S.B. 616 authorizes TDLR to establish and administer a grant program to improve motorcycle safety in Texas using money from the motorcycle education fund account and sets out provisions related to awarding and administering the grant program. The bill authorizes TDLR to apply for and accept gifts, grants, and donations from any organization to be deposited in the motorcycle education fund account for such purposes. The bill requires the Texas A&M Transportation Institute, in consultation with TDLR, to research motorcycle safety in Texas and provide advocacy and education to the public on that topic.

C.S.S.B. 616 provides for the transition of the administration and enforcement of the motorcycle operator training and safety program and the off-highway vehicle operator education and certification program from the DPS to TDLR on September 1, 2020, including providing that all DPS FTE positions that primarily concern the administration or enforcement of the licensing program become TDLR positions.

C.S.S.B. 616 requires DPS, not later than August 31, 2020, to dispose of motorcycles and other equipment related to the motorcycle operator training and safety program that DPS possesses or has leased to entities offering training under the program and sets out related provisions, including a requirement for DPS and TDLR to enter into a memorandum of understanding not later than August 31, 2020, regarding any property acquired by DPS by lease or purchase using money from the motorcycle education fund account to ensure that DPS appropriately compensates the fund for those assets.

The provisions of C.S.S.B. 616 relating to the motorcycle operator training and safety program and the off-highway vehicle operator education and certification program take effect September 1, 2020, except that the provisions relating to the disposition of motorcycles and other equipment related to the motorcycle operator training and safety program take effect on passage or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

Repealers

C.S.S.B. 616 repeals the following provisions:

- Article 59.11, Code of Criminal Procedure
- Sections 1956.014(b) and (c), Occupations Code
- Sections 1956.041(b-2), (c), (d), (e), and (f), Occupations Code
- Section 1956.152, Occupations Code
- Sections 548.405(b), (h), and (i), Transportation Code
- Section 548.406, Transportation Code
- Sections 548.407(f), (g), (h), (i), (j), (k), and (l), Transportation Code
- Section 548.409, Transportation Code
- Sections 481.077(e), (f), (g), and (h), Health and Safety Code
- Section 481.078, Health and Safety Code
- Sections 481.080(f), (g), (h), and (i), Health and Safety Code
- Section 481.081, Health and Safety Code
- Section 411.119, Government Code
- Section 1702.002(1-b), Occupations Code
- Section 1702.002(3), Occupations Code
- Section 1702.002(6-b), Occupations Code
- Section 1702.002(11), Occupations Code
- Section 1702.002(12), Occupations Code
- Section 1702.002(13), Occupations Code
- Section 1702.002(14), Occupations Code
- Section 1702.002(19), Occupations Code
- Section 1702.002(20), Occupations Code
- Section 1702.027(c), Occupations Code
- Section 1702.028, Occupations Code
- Section 1702.030, Occupations Code
- Section 1702.043, Occupations Code
- Section 1702.047, Occupations Code
- Section 1702.0611, Occupations Code
- Section 1702.0612, Occupations Code
- Section 1702.066, Occupations Code
- Section 1702.081, Occupations Code
- Section 1702.082, Occupations Code
- Section 1702.083, Occupations Code
- Section 1702.1045, Occupations Code
- Section 1702.109, Occupations Code

- Section 1702.111, Occupations Code
- Section 1702.113(d), Occupations Code
- Section 1702.116, Occupations Code
- Section 1702.119, Occupations Code
- Section 1702.120, Occupations Code
- Section 1702.121, Occupations Code
- Section 1702.183, Occupations Code
- Section 1702.225, Occupations Code
- Section 1702.227, Occupations Code
- Section 1702.228, Occupations Code
- Sections 1702.301(a), (d), (e), (f), and (g), Occupations Code
- Section 1702.304, Occupations Code
- Section 1702.307, Occupations Code
- Section 1702.3615, Occupations Code
- Section 1702.362, Occupations Code
- Sections 1702.364(g), (h), and (i), Occupations Code
- Section 1702.371, Occupations Code
- Section 1702.385, Occupations Code
- Subchapter Q, Chapter 1702, Occupations Code
- Section 662.002(b), Transportation Code
- Section 662.003, Transportation Code
- Section 662.004, Transportation Code
- Section 662.007, Transportation Code

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 616 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes provisions establishing the hearing and appeals procedure for certain proceedings under the Private Security Act, which includes a requirement for the Public Safety Commission and SOAH to adopt necessary rules.

The substitute does not repeal Section 548.507, Transportation Code, which sets fees for certification as an inspection station, but instead includes a provision revising that section. The substitute includes provisions setting minimum amounts for the fees established by the Public Safety Commission for certification as an inspector or inspection station.

The substitute extends the term of a renewal noncommercial driver's license from six years to eight years. The substitute includes provisions revising the terms of certain original or renewal

commercial driver's licenses and increasing the fees for the following:

- the renewal of a Class M license or a license that includes authorization to operate a motorcycle;
- the issuance of a Class A, B, or C driver's license that includes an authorization to operate a motorcycle or moped; and
- the issuance of a commercial driver's license without a hazardous materials endorsement.

The substitute revises provisions establishing the manner in which DPS is required to dispose of the motorcycles and other equipment related to the motorcycle operator training and safety program by replacing the requirement for DPS to sell certain motorcycles and related equipment remaining after any transfer to other applicable state agencies by August 31, 2020, with a requirement for DPS to inform the Texas Facilities Commission by that date that any such remaining motorcycles and equipment are surplus or salvage property to be disposed of.