

MINUTES
PUBLIC SAFETY COMMISSION
January 16, 2008
Austin, Texas

The Public Safety Commission met in Austin, Texas on January 16, 2008. Attending the meeting were Chairman Ernest Angelo, Jr., and Commissioners Allan Polunsky and Elizabeth Anderson.

DPS staff members present:

Tommy Davis, Director
David McEathron, Assistant Director
Oscar Ybarra & Tom Haas, Accounting & Budget Control
Randy Elliston, Lamar Beckworth & Luis Gonzalez, Texas Highway Patrol
Kent Mawyer & Gary Stone, Criminal Law Enforcement
Burt Christian, David Gavin, Lester Mills & Valerie Fulmer, Administration
Judy Brown & Greg Gloria, Driver License
Ray Coffman & Suzanne Birdwell, Texas Rangers
Farrell Walker & L. C. Wilson, Office of Audit & Inspection
Russ Lecklider, Emergency Management Division
Mary Ann Courter, General Counsel
Bryan Lane & Tully Brown, Information Management Service
Jack Reichert, Aircraft
Michael Kelley, Legislative Liaison
Kent Radney & Frank Paige, Internal Affairs
Tela Mange, Public Information Office
Dorothy Wright, Secretary

Guests present:

Lori Gabbert, Legislative Budget Board
Amy Trost & Ken Martin, Sunset Advisory Commission

The meeting was called to order by Chairman Angelo. Proper notice had been posted.

- I. **Approval of minutes.** Upon motion by Commissioner Polunsky and seconded by Commissioner Anderson, the minutes of the November 29, 2007 meeting were approved.
- II. **Public comment.** There was no public comment.
- III. **Discharge appeal hearing of DPS employee Tyrance Jacobs.** There was no hearing as the employee had resigned.
- IV. **Budget matters.** Oscar Ybarra gave the budget report, updating the Commissioners on a pending request for financing to the Public Finance Authority and a request to the LBB to exceed the FTE cap that had been disapproved. There was some discussion on gasoline prices, vacancies and hiring.
- V. **Audit & Inspection report.** Farrell Walker gave the Audit & Inspection report.

VI. Division reports. Burt Christian gave the Administration Division report, including updates on electronic arrest and disposition submissions, the fingerprinting requirement for teachers and school employees, CHL and private security license issuance, recruit schools, fleet vehicle production and physical readiness testing. David Gavin updated the Commission on sex offender registrations and TDEX. There was some discussion on TDEX funding. Lester Mills briefed the Commission on building projects. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on a recent Mexican tour bus fatality accident, THP criminal and drug interdiction efforts, and in-car computer system deployment. Judy Brown gave the Driver License Division report, including an update on the most recent Real ID Act proposal. The Driver Responsibility Program update was given by Judy Brown. Russ Lecklider gave the Emergency Management Division report. There was some discussion on the wildfire situation and response preparation. The Criminal Law Enforcement Division report was given by Kent Mawyer. Ray Coffman gave the Ranger Division report. Bryan Lane gave the Information Management Service report, including an update on the department's assessment of its IT functions, staffing and proposed projects.

VII. For publication for public comment

A. Proposed amendments to Rule 1.114, 37 TAC Sec. 1.114, regarding Major Infraction Applicable to Any Member, in order to incorporate an ethics policy consistent with the recently adopted Attorney General model ethics policy. Mary Ann Courter briefed the Commission on the proposed amendment. Upon motion by Commissioner Anderson and seconded by Commissioner Polunsky, the attached proposed amendments were unanimously approved for publication for public comment.

VIII. For final adoption – Private Security Rules

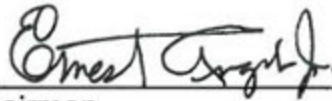
- A. Proposed repeal of Rule 35.52, relating to Summary Suspension, as published in 32 TexReg, November 16, 2007**
- B. Proposed amendment to Rule 35.70, relating to General Administration and Examinations (fees), as published in 32 TexReg 8298, November 16, 2007**
- C. Proposed amendments to Rule 35.92, relating to Administrative Hearings (Service of Notice), as published in 32 TexReg 8299, November 16, 2007**
- D. Proposed amendment to Rule 35.94, relating to Administrative Hearings (Default Judgments), as published in 32 TexReg 8300, November 16, 2007**
- E. Proposed amendments to Rule 35.171, relating to Requirements for Issuance of a Private Business Letter of Authority, as published in 32 TexReg 8300, November 16, 2007**
- F. Proposed amendment to Rule 35.181, relating to General Registration Requirements (Employment Requirements), as published in 32 TexReg 8301, November 16, 2007**
- G. Proposed amendment to Rule 35.182, relating to General Registration Requirements (Fingerprints), as published in 32 TexReg 8302, November 16, 2007**
- H. Proposed amendments to Rule 35.301, relating to Delegation of Authority, as published in 32 TexReg 8303, November 16, 2007**

Valerie Fulmer briefed the Commission on the proposed amendments and repeal. Upon motion by Commissioner Anderson and seconded by Commissioner Polunsky, the attached amendments and repeal were approved for final adoption.

- IX. Appointment of members of advisory committee relating to the operation of the vehicle inspection program.** Luis Gonzalez briefed the Commission on the advisory committee and an issue raised by Representative Jerry Madden on the proposed members. A motion was made by Commissioner Anderson and seconded by Commissioner Polunsky tabling this item until the Texas Highway Patrol staff can visit with Representative Madden's staff to resolve the issue.
- X. Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status of purchase of real property.** The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.072, 551.074 & 411.0041 to discuss personnel matters, pending and contemplated litigation, status of purchase of real property; and ongoing criminal investigations. Upon reconvening Regular Session, a motion was made by Commissioner Polunsky and seconded by Commissioner Anderson approving Special Ranger commissions for DPS retirees David Doyle, Michael Fincher, William Franklin, Marical Gonzalez, James Haney, Robert Manford and Randy Ratzlaff and a Special Texas Ranger commission for DPS retiree John A. Martin.

There being no further business, the meeting was adjourned.

Read and approved this 12th day of February, 2008.



Chairman



Member



Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter D
Section Number 35.52

The Texas Department of Public Safety adopts the repeal of Section 35.52, concerning Summary Suspension, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8298).

Adoption of the repeal is necessary due to the section having been rendered redundant by Tex. H.B. 2833, Acts 2007, 80th Leg., R.S. (amending Chapter 1702 of the Occupations Code).


No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter E
Section Number 35.70

The Texas Department of Public Safety adopts an amendment to Section 35.70, concerning General Administration And Examinations, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8298).

Adoption of the amendment to Section 35.70 is necessary in order to add language to subsection (c) to address the problem of fee payment checks that are returned for "insufficient funds."

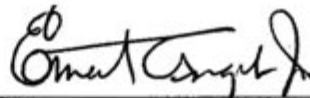
No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.



Ernest Angelo, Jr., Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter F
Section Number 35.92

The Texas Department of Public Safety adopts amendments to Section 35.92, concerning Administrative Hearings, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8299).

Adoption of the amendments to Section 35.92 are necessary in order to redact language rendered redundant by Tex. H.B. 2833, Acts 2007, 80th Leg., R.S. (amending Chapter 1702 of the Occupations Code).

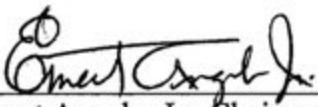
No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter F
Section Number 35.94

The Texas Department of Public Safety adopts an amendment to Section 35.94, concerning Administrative Hearings, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8300).

Adoption of the amendment to Section 35.94 is necessary in order to provide the authority for default judgments required under the State Office of Administrative Hearings' administrative rule Section 155.55(d)(2).

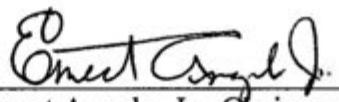
No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission

SAP

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter K
Section Number 35.171

The Texas Department of Public Safety adopts amendments to Section 35.171, concerning Letters Of Authority, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8300).

Adoption of the amendments to Section 35.171 are necessary in order to clarify the scope of its regulations governing security departments of private businesses.

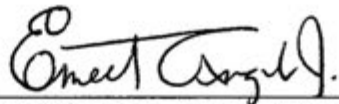
No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter L
Section Number 35.181

The Texas Department of Public Safety adopts an amendment to Section 35.181, concerning General Registration Requirements, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8301).

Adoption of the amendment to Section 35.181 is necessary in order to clarify the limitations of registration with the Bureau and to redact language rendered redundant by Tex. H.B.2833, Acts 2007, 80th Tex Leg., R.S. (amending Chapter 1702 of the Occupations Code).

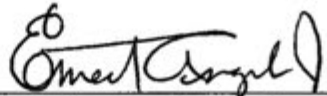
No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission

WAP

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter L
Section Number 35.182

The Texas Department of Public Safety adopts an amendment to Section 35.182, concerning General Registration Requirements, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8302).

Adoption of the amendment to Section 35.182 is necessary in order to render consistent the deadline related to the submission of new fingerprints with the twelve (12) month grace period currently permitted for renewals.

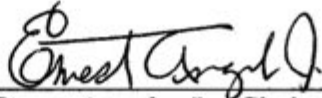
No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter T
Section Number 35.301

The Texas Department of Public Safety adopts amendments to Section 35.301, concerning Delegation Of Authority, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8303).

Adoption of the amendments to Section 35.301 are necessary in order to add new paragraph (6) to subsection (a) to clarify that the Bureau manager is authorized to issue the investigative subpoenas described in Section 1702.367 of the Occupations Code. In addition, the title of the section has been changed in order to clarify the purpose of the section.

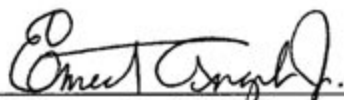
No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Ernest Angelo, Jr., Chairman
Public Safety Commission

7/10/08