

MINUTES
PUBLIC SAFETY COMMISSION
September 24, 2003
Austin, Texas

The Public Safety Commission met in Austin, Texas on September 24, 2003. Attending the meeting were Chairman Colleen McHugh and Commissioners Robert Holt and James B. Francis, Jr.

DPS Staff members present:

Tommy Davis, Director
David McEathron, Assistant Director
Tom Haas, Accounting & Budget Control
Randy Elliston, Bob Burroughs & Mark Rogers, Traffic Law Enforcement
C. J. Havrda, Rangers
Marshall Caskey & Kent Mawyer, Criminal Law Enforcement
Burton Christian, Administration
Judy Brown, Frank Elder, Rhonda Fleming, Greg Gloria & Angela Parker, Driver License
Farrell Walker & Jude Schexnyder, Audit & Inspection
Mary Ann Courter & Phillip Adkins, General Counsel
Mary Lauderdale, Information Management Service
Tela Mange, Public Information
David Outon, Internal Affairs
Jack Reichert, Aircraft
Andy Mokry & Tavia Wendlandt, Building Program
Michael Kelley, Legislative Liaison
Dorothy Wright, Secretary

Guests present:

Colby Bueck, Lieutenant Governor's Office
Lucius Lomax

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

- I. **Minutes.** Upon motion by Commissioner Francis and seconded by Commissioner Holt, the minutes of the August 25, 2003 meeting were approved.
- II. **Public comment.** Lucius Lomax addressed the Commission reference tape recording discharge appeal hearings held before the Commission.
- III. **Discharge appeal hearing of DPS employee Charles Domingue.** Mary Ann Courter advised the Commission appropriate notice had been given appellant Charles Domingue of the hearing. Charles Domingue nor anyone on his behalf appeared for the hearing. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the Commission unanimously affirmed the Director's decision to discharge Charles Domingue.
- IV. **Budget matters.** Tom Haas gave the budget report. There was some discussion on the budget reduction due to the retirement incentive and a possible rider exempting commissioned officers' salaries from the reduction.

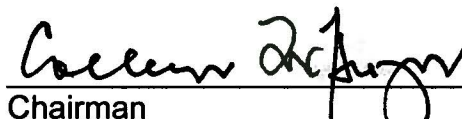
- V. Audit & Inspection Report.** Farrell Walker gave the Audit & Inspection report.
- A. Revised Internal Audit Charter.** Farrell Walker briefed the Commission on the proposed revised charter. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the attached Internal Audit Charter was unanimously approved.
- B. FY2004 Internal Audit Plan.** Farrell Walker briefed the Commission on the proposed audit plan. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached FY2004 Internal Audit Plan was unanimously approved.
- VI. Division reports.** Burt Christian gave the Administration Division report. There was some discussion on relocation of the Commission on Private Securities to DPS, the federal NCHIP grant that had previously been awarded to the Criminal Justice Policy Council and was now awarded to DPS, 32 additional federally funded positions for disaster relief and upcoming recruit schools. Randy Elliston gave the Texas Highway Patrol Division report. There was some discussion on EPIC awards recently presented to DPS and some troopers for outstanding drug seizure efforts, dive team activities, the accident reconstruction team and DPS' policy regarding a new law reference obscured license plates. The Driver License Division report was given by Judy Brown. There was some discussion on the field compliance unit pilot project, CRIS contract award, Social Security on-line verification program, automated mailing system, Texas Online DPS Intercept Survey results and the increase in on-line mail renewal and duplicate requests. Marshall Caskey gave the Criminal Law Enforcement Division report. There was some discussion on the use of DNA samples to identify missing persons, narcotics smuggling in various bus compartments, CODIS and DNA forensic case backlogs. The Ranger report was given by C. J. Havrda. Mary Lauderdale gave the Information Management Service report. Bob Burroughs gave an update on joint efforts between DPS and the Texas Commission on Environmental Quality (TCEQ) for implementation of the State's vehicle emissions inspection/maintenance program. Mark Rogers updated the Commission on the border safety inspection stations.
- VII. For publication for public comment.**
- A. Proposed amendments to Rule 15.58, 37 TAC Sec. 15.58, relating to Medical Advisory Board referrals as to driver license applicants.** Angie Parker briefed the Commission on the proposed amendments. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached amendments were unanimously approved for publication for public comment.
- VIII. For adoption.**
- A. Proposed amendment to Rule 1.101, 37 TAC Sec. 1.101, relating to Bomb Threats, as published in 28 TexReg 5496, July 11, 2003.** Mary Ann Courter briefed the Commission on the proposed amendment. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the attached amendment with a typographical error corrected was unanimously approved for final adoption.
- B. Proposed repeal of Rules 32.2-32.8, 37 TAC Secs. 32.2-32.8, relating to Bicycle Safety, as published in 28 TexReg 5499, July 11, 2003**
- C. Proposed amendments to Rule 32.1, 37 TAC Sec. 32.1; Proposed new Rules 32.2 & 32.3, 37 TAC Secs. 32.2 & 32.3, relating to Bicycles – Use and Safety, as published in 28 TexReg 5497, July 11, 2003.**

Mary Ann Courter briefed the Commission on the above proposed repeal, amendments and new rules. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached repeal, amendments and new rules were unanimously approved for final adoption.

- IX. Approval of Resolution on DPS use of Master Lease Purchase Program funds administered by the Texas Public Finance Authority.** Mary Lauderdale briefed the Commission on the proposed resolution for use of funds for the final stage of reengineering projects for IMS. She advised this resolution is a substitute for the one previously approved by the Commission as it meets the technical requirements of the Bond Review Board. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached Resolution was unanimously approved.
- 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, 551.074, 551.072 & 411.0041 to discuss personnel matters including the Director's intent to discharge probationary employees Annie Woods and Gregory Downey, Special Ranger and Special Texas Ranger commissions, pending and contemplated litigation, status of purchase of real property, and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner McHugh announced that the Commission had discussed personnel matters, pending and contemplated litigation and ongoing criminal investigations. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the Commission unanimously consented to the Director's intent to discharge probationary employees Annie Woods and Gregory Downey. Special Ranger commissions had been considered for DPS retirees Gary D. Briley, Grady M. Dunn, Robert W. Duvall, Frank Escalon, Jr., Bobby J. Harpole, Kendall G. Johnson, Frank R. Langley, Jr., William D. Lord, Reginald T. Rhea and Michael T. Wiggins and Special Texas Ranger commissions had been considered for DPS retirees Gary S. Henderson and Fermin T. Islas, Jr. Upon motion by Commissioner Holt and seconded by Commissioner Francis, Special Ranger and Special Texas Ranger commissions were respectively approved for the above named individuals.

A motion was made by Commissioner Francis and seconded by Commissioner Holt adjourning the meeting.

Read and approved this 28 day of October, 2003.


Chairman


Member


Member

IN THE MATTER OF

THE APPEAL OF DISCHARGE OF

CHARLES DOMINGUE

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BEFORE THE

PUBLIC SAFETY COMMISSION

IN AUSTIN, TRAVIS COUNTY, TX


ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Charles Domingue on the 24th day of September, 2003. Mr. Domingue received adequate notice of this hearing but did not appear for the hearing. Pursuant to the Policies and Procedures for the Appeal of an Employment Discharge to the Public Safety Commission, Charles Domingue is deemed to have withdrawn his appeal of the discharge and request for a hearing, and the Director's decision in this matter will be affirmed.

Therefore, the Commission finds that there is just cause to discharge Charles Domingue and affirms the Director's decision in this matter.

On motion of Comm. Francis, seconded by Comm. Holt, the discharge was affirmed.

Entered and signed this 24 day of September, 2003.


Colleen McHugh, Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On September 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Subchapter G
Section Number 1.101

The Texas Department of Public Safety adopts an amendment to Section 1.101, concerning Bomb Threats, with a slight grammatical change to the proposed text as published in the July 11, 2003, issue of the Texas Register (28 TexReg 5496). The change to subsection (b) is necessary to correct the spelling of "ordinance" to "ordnance."

Amendment to Section 1.101 is necessary in order to add explosive ordnance disposal units from local law enforcement agencies to the list of agencies the department will contact in those instances where a discovered bomb must be removed.

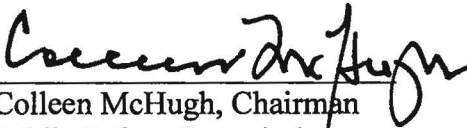
No comments were received regarding adoption of the amendment.

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.

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.


Colleen McHugh, Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On September 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Bicycle Safety and Education Program
Title 37 T.A.C. Part I, Chapter 32
Section Numbers 32.2 – 32.8

The Texas Department of Public Safety adopts the repeal of Sections 32.2-32.8, concerning Bicycle Safety, without changes to the proposed text as published in the July 11, 2003, issue of the Texas Register (28 TexReg 5499).

Repeal of the sections is necessary due to the reorganization of Chapter 32 to incorporate new rules on the use of electric bicycles and an update on the existing bicycle safety education program curriculum and course provider requirements. Information which was previously included in Sections 32.2-32.8 is now included in new Section 32.3 which is being adopted simultaneously.

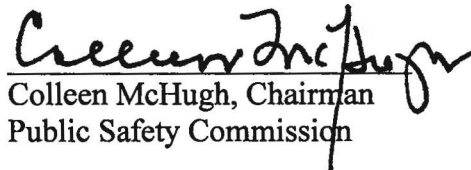
No comments were received regarding adoption of the repeals.

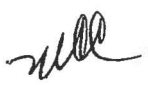
The repeals are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Health and Safety Code, Section 758.002(a), which authorizes the department to adopt rules to implement the statewide bicycle safety education program.

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.


Colleen McHugh, Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On September 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Bicycle Safety and Education Program
Title 37 T.A.C. Part I, Chapter 32
Section Numbers 32.1 – 32.3

The Texas Department of Public Safety adopts amendments to Section 32.1, and new Sections 32.2 and 32.3, concerning Bicycle Safety and Education Program, without changes to the proposed text as published in the July 11, 2003, issue of the Texas Register (28 TexReg 5497).

Amendments to the section are necessary in order to change the title of the chapter from Bicycle Safety and Education Program to Bicycles – Use and Safety and to include the definition of “electric bicycles” in Section 32.1. The title change, amendment to Section 32.1, and new Section 32.2 are necessary in order to include information relating to the use of electric bicycles as required by Tex. HB 2204, 77th Leg., R.S. (2001).

New Section 32.3 is adopted simultaneously with the repeal of current Sections 32.2-32-8 and outlines qualifications for an applicant to be licensed as a course provider; specifies administrative control of instructors by licensed providers; specifies required curriculum and materials necessary to provide a course; explains license suspension; explains procedures by which provider sites may be evaluated; and notes requirements of providers to make notification of legal action.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections 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; Health and Safety Code, Section 758.002(a), which authorizes the department to adopt rules to implement the statewide bicycle safety education program; and Texas Transportation Code, Section 551.106.

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.


Colleen McHugh, Chairman
Public Safety Commission



**A RESOLUTION
AUTHORIZING THE FINANCING OF EQUIPMENT UNDER
THE MASTER LEASE PURCHASE PROGRAM**

WHEREAS, pursuant to Chapter 1232, Texas Government Code, the Texas Public Finance Authority (the "Authority") is authorized to issue revenue bonds or other obligations to finance the acquisition of equipment for state agencies and institutions of higher education;

WHEREAS, the Texas Department of Public Safety ("Agency") intends to request the Authority from time to time to issue revenue bonds or other obligations to finance or refinance equipment in an aggregate amount not exceeding the amount authorized by the Legislature in the General Appropriations Act or other act of appropriation;

WHEREAS, the Agency now desires to approve and authorize requests for financing or refinancing of equipment and to authorize the Texas Department of Public Safety's Executive Director or his designee to submit requests for financing or refinancing from time to time and to take such other actions as may be necessary with respect thereto; and

WHEREAS, the Agency desires and intends that this Resolution and the authorizations it embodies remain in effect until rescinded, withdrawn, or amended by action of the Texas Public Safety Commission.

THEREFORE, BE IT RESOLVED BY THE TEXAS PUBLIC SAFETY COMMISSION THAT:

1. The acquisition of equipment has been duly authorized by law and is required or suitable for public purposes mandated by law and the financing or refinancing of the equipment is appropriate.
2. The Texas Department of Public Safety's Executive Director or his designee is hereby authorized and directed to submit requests from time to time to the Authority to issue bonds or other obligations, in an aggregate amount not exceeding the Agency's appropriation authority for the equipment.
3. The Texas Department of Public Safety's Executive Director or his designee is further authorized to approve, execute and deliver the Master Lease Agreement Requests for Financing, and such other instruments, including but not limited to the financing documents required by the Authority's rules, and to take such other actions as are necessary and appropriate in connection with the issuance, sale or delivery of the bonds or other obligations.
4. This Resolution and the authorizations embodied herein shall continue in effect until rescinded, withdrawn, or amended by action of the Texas Public Safety Commission.
5. Due notice of this meeting and the subject matter of this Resolution was given as required by law and a quorum of the Texas Public Safety Commission was present at

the meeting at which this Resolution was considered.

Adopted by the affirmative vote of a majority of the Commission present and voting on this
24 day of September, 2003, in Travis County, Texas.

Cecilia J. Smith
Chairman, Public Safety Commission

Attested: Dorothy Wright
(Secretary or other Commission member)

Certification

I, Mary Ann Courter, hereby certify that the foregoing Resolution is a true, correct and complete copy of the Resolution adopted by the Public Safety Commission for the State of Texas on this 24th day of SEPTEMBER, 2003.

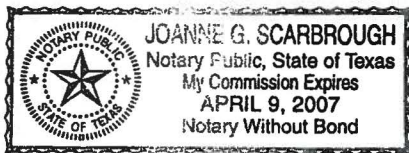

Signature

General Counsel

Title

SWORN AND SUBSCRIBED TO before me this 24th day of September, 2003.


Notary Public



It is the Director's intent to discharge the following probationary employees because they are unsuitable for work:

NAME	TITLE	SERVICE	DIVISION	DATE OF ENTRY
Annie Woods	Admin. Tech. I	Driver License	Driver License	06/09/03
Gregory Downey	Clerk IV	Crime Records	Administration	02/18/03

Pursuant to Government Code 411.007(f) the Director obtained consent from the Public Safety Commission on September 24, 2003 to discharge the above-mentioned employees.


Colleen McHugh, Chairman
Public Safety Commission