

**MINUTES  
PUBLIC SAFETY COMMISSION  
November 30, 2010  
Austin, TX**

The Public Safety Commission met in Austin, Texas on November 30, 2010. Attending the meeting were Chairman Allan Polunsky, Commissioners Carin Barth, C. Tom Clowe and Ada Brown. Commissioner John Steen joined the meeting at the conclusion of the Discharge Hearing. A quorum was present for the meeting. DPS staff members and guests were also present.

**Call to order**

The meeting was called to order by Chairman Polunsky at 9:33 a.m. Proper notice had been posted.

**Approval of Minutes** (01:02) indicates time stamp from audio)

**A motion was made by Commissioner Barth and seconded by Commissioner Brown approving the minutes as submitted for the October 21, 2010 meeting. Motion carried unanimously.**

**Public Comment** (01:25)

There was no Public Comment.

**Director's Report** (01:46)

Director McCraw requested to defer his report until later in the agenda.

**New Business** (02:13)

Commissioner Barth asked that OGC Duncan Fox look at the policy for conducting employment discharge appeal hearings focusing on timeline to hold hearing when criminal charges were pending. Director McCraw stated once evidence was determined of criminal wrongdoing, DPS always sought criminal charges and it had no bearing on when the discharge appeal hearing was conducted versus when the criminal case was heard. Mr. Fox stated he would have the information available for the December meeting.

The discharge appeal hearing on Filiberto Montes followed. **A motion was made by Commissioner Brown and seconded by Commissioner Clowe affirming the Director's discharge of Mr. Montes. Motion carried unanimously.**

(01:31:46) Commissioner Steen joined the meeting at this time.

Commissioner Barth had a question arising from the discharge and inquired of AD David Baker, Highway Patrol, how to advise her young children to deal with a traffic stop in a dark, unpopulated area. AD Baker stated the Trooper would follow the vehicle until it came to a stop. He added the Trooper may ask why it took someone so long to pull over and if the individual stated they wanted to wait until they were in a lighted area that is understandable. AD Baker said he advised his own daughter if she was not sure if the vehicle was legitimate not to stop and wait until in a populated and well lit area. Chairman stated our situation was statutory that Troopers could only be in marked black and white vehicles in a traffic stop.

Director McCraw presented his Director's Report beginning with a report on the CI and Ranger personnel en route to Utah to bring back the FLDS individual, Warren Jeffs, who was being extradited to Texas to face bigamy and sexual assault charges.

He followed with a report on TX Map the requested strategy mapping system that provided access to information throughout Texas. The interactive map displayed the capability of showing, in the 23 ports of entry in Texas, data layers of: Operation Border star, cartel related violence, drug seizures, cash

seizures, and statewide axis of fatalities, homeland security resources, schools and sex offender registrants. The impressive map showed numerous capabilities that emphasized the need to use this as a strategic and operational tool for the entire department.

AD Rebecca Davio, Drivers License, reported on the requirements of proof of domicile (residency) before the issuance of a non-commercial or commercial driver license or identification certificate. The proposal submitted for action required the department to adopt rules for determining whether a domicile has been established, including rules prescribing the types of documentation the department may require from the applicant to verify the validity of the claimed domicile. Chairman confirmed this was required by statute. A discussion followed regarding the implementation documentation requirement and capability of the department to process in a manner acceptable to the public. **A motion was made by Commissioner Steen and seconded by Commissioner Barth to approve for publication both proposed new rules 37 Tex. Admin Code, Section 15.49 (non-commercial) and 16.15 (commercial) as presented. Motion carried unanimously.**

Interim General Counsel, Duncan Fox presented an item for action from the Sunset Commission's last session regarding the division of responsibilities between the commission and the director and staff of the department as provided under Government Code 411.0042. He provided details of general duties and powers and responsibilities of each. **A motion was made by Commissioner Clowe and seconded by Commissioner Steen to adopt as policy the division of responsibilities as presented. Motion carried unanimously.** Commissioner Steen inquired if this was a policy singling out DPS by Sunset or if all agencies were required to adopt policies. Mr. Fox confirmed many agencies were required to adopt policies.

AD Valerie Fulmer, Administration, informed the Commission on the pending contract renewals: Enforcement Video, L.P., AAMVA and Pitney Bowes Presort Services.

#### **Executive Session (2:25:34)**

The Commission went into Executive Session to discuss security issues, to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; and ongoing criminal investigations. Executive Session began at 11:58 a.m. and ended at 2:36 p.m.

(2:26:11) The Public Safety Commission reconvened at 2:36 p.m. Commissioner Clowe acted as Chairman in the absence of Chairman Polunsky, who had to leave the meeting. A quorum was present.

#### **Ongoing Business (2:26:28)**

Commissioner Brown stated she had received numerous resumes for the new General Counsel position. She stated those qualified would be called in very shortly for an interview. She will report back with status in December.

Commissioner Brown reported on the 28-day work cycle and overtime and compensatory time policy with Donald Dickson. Mr. Dickson provided a basic outline on the Fair Labor Standards Act (FLSA) as it pertained to the current compensatory time and overtime policy. Mr. Dickson provided copies of Chapter 15 with details on FLSA. Acting Chairman Clowe and Commissioner Barth agreed this exercise was bringing up a lot of questions to this complex subject that needed answers. Commissioner Brown stated that at the December meeting they will show a comparison to other states, but at this meeting, she wanted to show where Texas was. Commissioner Steen asked why we were dealing with this and a Commissioner forming the committee. Commissioner Brown stated she had previously expressed an interest in this to the Chairman and wanted to pursue it.

Deputy Director MacBride reported details, by division, on the Fiscal Year 2011 Operating Budget, including encumbrances stating everything was where it should be at this point in time. She reviewed the variances. Commissioner Barth asked for clarification of using seized funds for overtime. Commissioner Steen quoted the U. S. Department of Justice guide stated "except in limited circumstances" overtime of officers and investigators was a permissible use of seized funds. DD MacBride continued with a report on purchases using seized funds requesting action to spend \$1,612,768 for a 5<sup>th</sup> recruit school graduating in FY2011. DAD Woodall stated this school would run April 10-August 11 and graduate before the end of FY2011, justifying the current need for approval in order for this to occur in FY2011. **No motion was made; instead Commissioner Steen asked that the Commission pass this item to the December agenda.** DD MacBride addressed the issue of previously purchased tasers needing additional cartridges and requested \$150,000 to make the purchase. **A motion was made by Commissioner Barth and seconded by Commissioner Brown to purchase the additional cartridges. Motion passed unanimously.**

AD Stephen Goodson, Audit & Inspection and AD Rebecca Davio, DL reported on the carry over project limited review of the driver license issuance process controls. AD Goodson reported that management agreed with all the issues in the report, with one exception. Commissioner Steen inquired what the exception was. AD Goodson stated the DLS database does not interface with the sex offender registry.

Commissioner Barth commented on the fact brought up earlier in the agenda that had to do with Sunset deadlines. She asked to have a list of rules that need to be put in place and timeline that will result from the upcoming Legislative session.

General Platt, Office of Inspector General, commented on one item of the regional commanders providing assistance in investigations and field investigators assigned by them. The regional commanders have assigned those investigators, and they will become effective January 1, 2011.

(03:10:52) With regards to the Consent Items, Commissioner Steen inquired how often Special Rangers were renewed since the list to be approved was so lengthy. Colonel Beckworth stated every odd year and provided the requirements and process for these renewals. He stated that if one of the renewal individuals had something negative happen in those two years the system provided a notice. Commissioner Steen further inquired about the Indigency, Incentive and Amnesty Programs. AD Davio, DL clarified previously the rules had been adopted and this consent item was to implement the reductions and waiving of surcharges in order that it would be effective January 1. **A motion was made by Commissioner Steen and seconded by Commissioner Barth to approve Consent Items A, B 1 & 2 and C 1-4 as presented. Motion passed unanimously.**

Commissioner Brown stated she would like to remove the item regarding 28-day work cycle and Overtime and Compensatory Time policy until a later time, when her committee could provide more information. Acting Chairman Clowe requested a report on driver license metrics; and an update on the sexual harassment policy be added to the December agenda.

Director McCraw asked the Commission to observe a moment of silence for Trooper McDonald who was recently killed in the line of duty. Colonel Beckworth gave some information on the Houston 100 Club who supports the families of law enforcement officers and firefighters killed in the line of duty. The 100 Club provides line-of-duty death benefits to all Texas Department of Public Safety officers, Texas Parks & Wildlife Department game wardens, Texas Alcoholic Beverage Commission agents and Texas Department of Corrections personnel, throughout the State of Texas, who are killed in the line of duty. Acting Chairman Clowe asked everyone to rise and observe a moment of silence in honor of this Trooper and his family.

The next meeting of the Public Safety Commission will be held on Friday, December 17, 2010.

The meeting was adjourned at 3:20 p.m.

Read and approved this 17 day of December, 2010.



Chairman

IN THE MATTER OF

THE APPEAL OF DISCHARGE OF

FILIBERTO MONTES

§  
§  
§  
§  
§

BEFORE THE

PUBLIC SAFETY COMMISSION

IN AUSTIN, TRAVIS COUNTY, TX

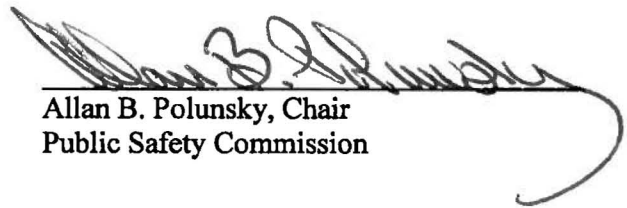
### ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Filiberto Montes, on the 30th day of November, 2010. Mr. Montes received adequate notice of the hearing on this matter and did appear in person and through counsel. Pursuant to §411.007, Government Code, the Commission proceeded to hear evidence in the above-captioned matter.

After reviewing all of the evidence presented at the hearing, the Commission finds that there is just cause to discharge Filiberto Montes and affirms the Director's decision in this matter.

On motion of Commissioner Ada Brown, seconded by Commissioner C. Tom Clouse, the discharge was affirmed.

ENTERED AND SIGNED on the 30 day of November, 2010.

  
Allan B. Polunsky, Chair  
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On November 30, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Organization and Administration  
Title 37 T.A.C. Part I, Chapter 1  
Subchapter W  
Sections 1.281 - 1.284

The Texas Department of Public Safety (the department) adopts new Sections 1.281 – 1.284, concerning Negotiated Rulemaking Policy without changes to the proposed text as published in the October 8, 2010 issue of the *Texas Register* (35 TexReg 9059).

These new rules are necessary to implement a negotiated rulemaking procedure for the adoption of department rules as required by Texas Government Code, Section 411.0044.

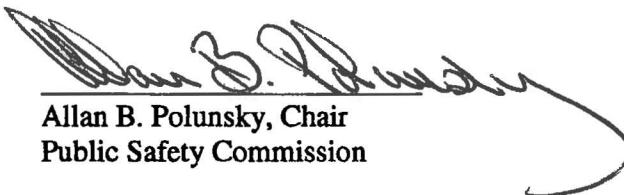
No comments were received regarding the adoption of these new sections.

The new rules 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 Government Code, Section 411.0044 which authorizes commission to implement a policy to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008 for the adoption of department rules.

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.

  
Allan B. Polunsky, Chair  
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On November 30, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

Commercial Vehicle Regulations and Enforcement Procedures  
Title 37 T.A.C. Part I, Chapter 4  
Subchapter C  
Section 4.37

The Texas Department of Public Safety (the department) adopts amendments to Section 4.37, concerning Acceptance of Out-of-State Commercial Vehicle Inspection Certificate without changes to the proposed text as published in the October 8, 2010 issue of the *Texas Register* (35 TexReg 9060).

Amendments to Section 4.37 are necessary to incorporate language added to Texas Transportation Code, Section 548.005(3) as a result of HB 2730, 81st Legislature, 2009 relating to the exceptions of inspections only by state-certified and supervised inspection stations which became effective September 1, 2009. Section 548.005(3), and subsequently this amendment, authorizes the acceptance in this state of a certificate of inspection and approval issued in compliance with 49 C.F.R. Part 396 to a motor bus, as defined by Section 502.001, that is registered in this state but is not domiciled in this state.

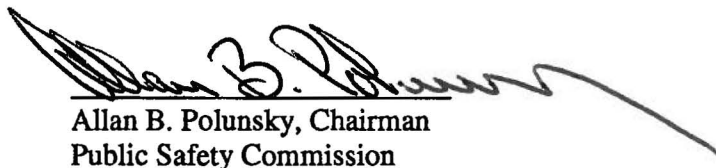
No comments were received regarding the amendments to this section.

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 Transportation Code, Section 548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

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.

  
Allan B. Polunsky, Chairman  
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On November 30, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

School Bus Safety Standards  
Title 37 T.A.C. Part I, Chapter 14  
Subchapter C  
Sections 14.32, 14.33, and 14.36

The Texas Department of Public Safety (the department) adopts amendments to Sections 14.32, 14.33, and 14.36, concerning School Bus Driver Safety Training Program without changes to the proposed text as published in the October 8, 2010 issue of the *Texas Register* (35 TexReg 9061).

The adoption of these amendments is necessary to update the rules to reflect certification curriculum updates.

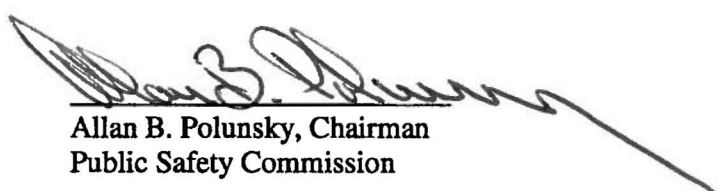
No comments were received regarding the amendments to these sections.

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 Transportation Code, Section 521.022, which authorizes the department to adopt rules to administer and enforce the school bus driver safety training 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.

  
Allan B. Polunsky, Chairman  
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On November 30, 2010, the Public Safety Commission (the commission) by majority vote approved rules concerning:

School Bus Safety Standards  
Title 37 T.A.C. Part I, Chapter 14  
Subchapter D  
Section 14.52 and Section 14.54

The Texas Department of Public Safety (the department) adopts amendments to Section 14.52 and Section 14.54, concerning School Bus Driver Safety Standards without changes to the proposed text as published in the October 8, 2010 issue of the *Texas Register* (35 TexReg 9063).

The amendments update the rules to reflect the 2011 Texas School Bus Specifications as the current publication and relieve the mandatory school bus emergency evacuation training as passed by the 81st Texas Legislature.

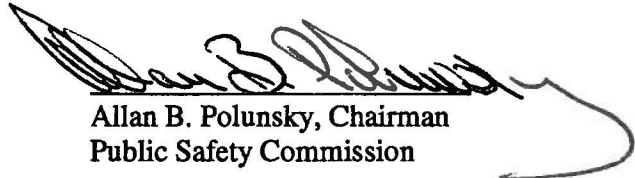
No comments were received regarding the amendments to these sections.

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; Texas Education Code, Section 34.002, which authorizes the department to establish safety standards for school buses used to transport students in accordance with Texas Education Code Section 34.003; Texas Transportation Code, Section 547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and Texas Transportation Code, Section 547.7015, which authorizes the department to adopt and enforce rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of school children.

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.

  
Allan B. Polunsky, Chairman  
Public Safety Commission