

DEPARTMENT OF PUBLIC SAFETY INTEROFFICE MEMORANDUM

TO: Steven McCraw, Director

FROM:  Skylor Hearn, Deputy Director

DATE: December 18, 2017

SUBJECT: Need-Based Dismissal Report

During the Legislative Appropriations Request development for the 85th Texas Legislature, state agencies were instructed by the Legislative Budget Board (LBB) to conduct a 4% reduction exercise to identify where budget cuts could be made. The Department determined and reported to the LBB that to achieve the targeted 4% budget cut the Department would be required to eliminate 320.4 FTEs, which included 177 commissioned positions. The 85th Legislature instituted a 4% reduction for the 2018-19 biennium which amounts to over \$50 million in budget reduction for the agency. As such, the Department must take steps to implement the plan that includes the identified reductions in staff and other budgetary cuts.¹

Reductions in FTEs for non-commissioned positions were accomplished through the elimination of vacant positions. Due to the low number of vacant commissioned positions and a recent trend of reduced rates of attrition by commissioned personnel, it will be necessary to require the dismissal of a number of commissioned employees due to a financial exigency to effectuate the required budgetary cuts. The following report has been prepared in accordance with the policy directives and is being submitted for your review and approval.

Recommendation

Multiple methodologies were analyzed to determine where the 177 commissioned officer positions could be eliminated. Attrition will account for some of these eliminated positions, but not all. A reasonable course of action to effectuate the necessary cuts to commissioned FTEs is to eliminate the positions of those reemployed under the Department's now defunct Retire/Rehire program. The elimination of these positions will provide significant budgetary savings, provide a reorganization of the current commissioned hiring cycle and have the least impact on the long term operations of the affected divisions.

Background of Retire/Rehire Program

In 2002, the Department experienced a significant retention problem in the commissioned ranks as many experienced officers were retiring as soon as eligible and going to other agencies to work for higher salaries. This combined with recruiting difficulties resulted in a record number

¹ See Attached for information from the DPS Four Percent General Revenue Reduction FY2018-19 plan.

of vacant commissioned positions statewide. To address these issues the Department initiated a program that allowed retired DPS officers to be rehired as commissioned officers. This program, commonly referred to as the Retire/Rehire program, served the dual purpose of ensuring sufficient staffing of Highway Patrol and enabled the Department to continue to leverage the experience and expertise of our retired officers in training and mentoring less experienced officers. The Retire/Rehire program was essential for the period of time during which the Department was unable to recruit, train and graduate an adequate number of troopers.

In recent years, the Texas Legislature increased commissioned officer salaries, significantly improving the Department's ability to recruit high quality candidates, compete with local law enforcement agencies, and enhance the retention efforts for commissioned officers. Since 2015, the Department has held 11 recruit schools, commissioned more than 1,050 new officers, and resolved the underlying issue which necessitated the Retire/Rehire program. The Department eliminated the routine practice of rehiring retired officers in 2013. At the cessation of the program, the Department had sufficient FTEs and budget to allow the retired employees to continue employment. Those circumstances have changed.

Identification of Impacted Employees and Divisions

DPS currently employs 118 officers who returned to duty under the Retire/Rehire program. The elimination of these 118 positions would account for 67% of the identified 177 positions that need to be eliminated. The remaining eliminations can be achieved through attrition.

The following divisions and positions will be affected: 37 Highway Patrol (HP) Troopers, 31 Commercial Vehicle Enforcement (CVE) Troopers, 15 Criminal Investigations (CID) Special Agents, nine CVE Corporals, five Tactical Training Center Troopers, five CVE Sergeants, four Training Sergeants, three HP Corporals, one HP Sergeant, one HP Lieutenant, one Intelligence and Counter Terrorism (ICT) Special Agent, one ICT Lieutenant, one Motor Carrier Bureau Lieutenant, one CID Lieutenant, one Executive Protection Bureau (EPB) Trooper, one EPB Corporal, and one EPB Special Agent. The attached spreadsheet identifies the employees and duty stations affected by this needs-based dismissal.

Cost Savings

Commissioned employees are paid in accordance with Salary Schedule C which is set by the Legislature. Employee pay under Schedule C is determined by rank and number of years of service and there is no flexibility in setting salary. The majority of these rehired retirees have more than 20 years of service and must therefore be paid at the highest salary level of the Schedule C pay scale for their respective rank. Moreover, DPS must pay a 10% surcharge for each retiree who was rehired after September 1, 2009. At this time the Department is paying the surcharge for 30 rehired commissioned officers in addition to their statutorily set salary. The elimination of the FTEs currently filled by rehired retirees will have greater fiscal impact than the elimination of positions held by equal or lower rank employees performing the same duties. Additionally, these retired employees do not pay into the state retirement system like other employees which can have an overall impact on the long term stability of the retirement system.

The agency appreciates the knowledge and perspective these rehired commissioned officers provide to less experienced troopers, but that benefit comes at significant cost. The estimated cost for each non-retired trooper, including overtime costs, averages more than \$111,733 per year, not including vehicle and equipment costs. The comparable figure for the rehired commissioned officer averages \$125,700 not including the return to work surcharge. Over the course of a single fiscal year, the elimination of these 118 positions represents a savings of \$15.1 million for the agency.² This cost savings would help ease the current financial hardship to the agency, particularly to the Texas Highway Patrol Division, which is currently experiencing a General Revenue budget shortfall of \$11.2 million.

Operational Impact

The natural lifecycle for the Department's commissioned ranks is designed to routinely bring new troopers in at lower salaries to fill vacancies and to have more experienced troopers mentor and train them. As troopers gain experience, move up the salary scale and are able to train others they assume the more senior roles of those who promote or retire and their spots are filled back in by entry level troopers. Without officers consistently retiring and permanently separating from DPS, the opportunities for the more junior officers do not open up and leads to stagnation in the annual hiring cycle. Disruption of the cycle can lead to tenured FTE gaps several years in the future, result in negative impact on internal promotional pools and create adversely large retirement groups. The healthiest systems require regular steady infusions of new employees and perspectives to maintain long term balance in the existing structure. This one time reorganization of the cycle will serve the purpose of meeting budgetary needs as well as adjusting the cycle in a manner that will better ensure long term viability of the commissioned structure and prevent a repeat of the situation that necessitated the implementation Retire /Rehire program in 2002.

The proposed needs-based dismissal of the 118 employees who took advantage of the Retire/Rehire program will not leave an insurmountable experience deficit. DPS officers perform the same functions and have the same responsibilities regardless of whether or not they have previously retired. The agency currently has 144 commissioned employees with 20 or more years of service who have not previously retired. There are an additional 411 commissioned employees with over 16 years of service who have not previously retired. These employees will continue to fill the senior role in the standard career cycle.

Other Considerations

The Department considered methodologies other than the elimination of commissioned positions, but other avenues did not lead to the level of fiscal savings necessary to achieve the required budget cut. The Texas Legislature mandated the agency cut 4% of the budget and the reduction in commissioned FTEs; however, they also funded and required that we hire 250 new troopers under Goal B, Secure Texas. Unfortunately, funding source restrictions prevent the Agency from simply hiring the net commissioned FTE increase. Rider 61 of the agency's appropriations specifically prohibits transferring funds from Goal B to fund these 177 commissioned positions. Rider 61 also prohibits the transferring of funds from Goal F, Driver License Services and Driver Safety, and Strategy E.1.1, Crime Laboratory Services, to fund the

² This figure includes the return-to-work surcharge the Department is currently paying for 30 rehired retirees.

177 commissioned positions. Due to eliminating these potential funding sources to retain these positions, alternative options such as job sharing, pay freezes/cuts, and demotions are unavailable. Texas Government Code §657.007 requires a veteran's preference be considered as part of a reduction in workforce, but subsection (b) specifically states that the section only applies to employees of a similar type or classification. Because DPS seeks to eliminate all positions within the Retire/Retire category, no preference is applicable.

Implementation

- The positions will be eliminated effective May 31, 2018. Advanced notification will be provided in writing to all affected personnel regarding the elimination of these 118 positions.
- Representatives from the Human Resources department will meet with the members of the affected group to answer questions regarding the process and provide assistance in seeking other employment.
- An analysis will be conducted to determine whether any of the positions held by these retired/rehired employees can be converted to non-commissioned positions utilizing current non-commissioned vacancies. While the managers and executives of the impacted divisions will review the functional job responsibilities and make a determination regarding whether that position requires a commissioned officer to perform the job duties, the positions of Trooper and similar front line positions will not meet this criteria because the positions require they be filled by commissioned officers.

Based upon the information contained in this report, I recommend the 118 FTEs held by commissioned employees who returned to duty under the Retire/Rehire program be dismissed from employment pursuant to the Need-Based Dismissal Policy.