MINUTES
PUBLIC SAFETY COMMISSION
August 16, 2005
Austin, Texas

The Public Safety Commission met in Austin, Texas on August 16, 2005. Attending the meeting were Chairman Colleen McHugh and Commissioners Carlos Cascos and Ernest Angelo, Jr.

DPS Staff members present:
Tommy Davis, Director
David McEathron, Assistant Director
Oscar Ybarra & Tom Meredith, Accounting & Budget Control
Randy Elliston, Lamar Beckworth & Mark Rogers, Highway Patrol Division
Randall Beaty & Martin Simon, Breath Alcohol Testing
Gary Stone, Criminal Law Enforcement
Burt Christian, Administration
Greg Gloria & Bob Burroughs, Driver License
Earl Pearson, Ray Coffman, Jim Miller & Randy Prince, Texas Rangers
Farrell Walker & Jude Schexnyder, Office of Audit & Inspection
Mary Ann Courter, General Counsel
Ed Kelly, Information Management Service
Rick Kautz, Information Resource Section
David Outon, Internal Affairs
Tela Mange, Public Information Office
Steve Powell, Aircraft
Michael Kelley, Legislative Liaison
Dorothy Wright, Secretary

Guests present:
Gary Anderson, Texas Public Employees Association
Dave Michaels, Dallas Morning News
Tony Plohetski, Austin American Statesman

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

I. **Minutes.** Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the minutes of the June 29, 2005 & June 30, 2005 meetings were approved.

II. **Public comment.** Gary Anderson, Texas Public Employees Association, expressed appreciation for the support of the Commission and DPS administration during the legislative session on working toward mutual goals of enhanced benefits for state employees. He also recognized DPS employees Kathleen Murphy and Heidi Fischer who were recipients of TPEA's Unsung Hero awards.

III. **Discharge appeal hearing of DPS employee Rosie Deven.** Mary Ann Courter advised that Rosie Deven's attorney had sent a later stating Ms. Deven was withdrawing her appeal, therefore, no further action by the Commission is necessary on this matter.

IV. **Budget matters.** Oscar Ybarra gave the budget report. There was some discussion on vacancies, gasoline prices, the current working relationship with the Texas Buiilding & Procurement Commission, actual monthly expenses versus projections and the ongoing process of analyzing the budget for projected shortfalls.

A. **Approval of FY2006 operating budget.** Oscar Ybarra briefed the Commission on the proposed FY2006 operating budget. There was some discussion on the proposed budget. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the proposed FY2006 operating budget was approved.

B. **Construction of Buildings and Facilities through the Texas Public Finance Authority.** Burt Christian and Mary Ann Courter briefed the Commission on the need to request funding through the Texas Public Finance Authority, pursuant to Approp. Act, Art. V, DPS Rider #2, Capital Budget, for construction of buildings and facilities including the Bryan District Office, Waxahachie Area Office, Garland Crime Lab and Waco Ranger headquarters. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached Resolution Authorizing a Request for Financing and the Execution and Delivery of Documents Required to Effect Such Financing was unanimously approved.

C. **Donation of 2.237 acres of land from Scurry County, Texas.** Burt Christian briefed the Commission on the proposed donation. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the donation from Scurry County of 2.237 acres of land located on the corner of FM 1605 and Apple St. in Snyder, Texas, to provide property for the construction of a DPS Office for the Snyder area was unanimously accepted.

V. **Audit & Inspection report.** Farrell Walker gave the audit & inspection report. There was some discussion on inspection recommendations and what happens if there is disagreement between the inspectors and management on those recommendations.

A. **Approval of FY2006 Internal Audit Plan.** Farrell Walker briefed the Commission on the proposed FY2006 Internal Audit Plan. There was some discussion on the proposed plan. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached FY2006 Internal Audit Plan was unanimously approved.

VI. **Division reports.** Burt Christian gave the Administration Division report. There was some discussion on countermeasures training, reorganization of the Crime Records Service and private security operations. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on the recent Strategic National Stockpile Exercise, THP drug and currency interdiction efforts and the recent injury to Trooper Steven Oliver. Greg Gloria gave the Driver License Division report, including an update on the DL mailing system upgrade; Patriot Act legislation affecting Commercial Driver Licenses, and fraud unit activities. There was some discussion on the driver responsibility program, the recent State Auditor's Report and what DPS is doing to resolve the issues brought forward in that report. Bob Burroughs gave an overview of the Driver Responsibility Program including legislative mandates, the timeline for implementation of the program within the Department, the DPS task force to review the program, and ongoing efforts to educate the public on the program and resolve any issues. The Criminal Law Enforcement Division report was given by Gary Stone. There

was some discussion on ongoing activities of the various services, the increasing number of CODIS samples, and recent motor vehicle theft trends identified by that service. Earl Pearson gave the Ranger Division report. The Commission expressed their appreciation to Chief Pearson for his service to the State of Texas and wished him well in his retirement. The Information Management Service report was given by Ed Kelly. Randy Elliston & Mark Rogers updated the Commission on border safety inspections and THP enforcement activities on the border.

VII. For publication for public comment.

A. Proposed repeal of Rule 1.42, 37 TAC Sec. 1.42, relating to Volunteer Program. Burt Christian briefed the Commission on the proposed repeal. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached proposed repeal was unanimously approved for publication for public comment.

B. Proposed amendment to Rule 15.89(b), 37 TAC Sec. 15.89(b), relating to moving violations assessed points to qualify for the Driver Responsibility Program.

C. Proposed amendment to Rule 15.162, 37 TAC Sec. 15.162, relating to Driver Responsibility Program installment agreements.

Bob Burroughs briefed the Commission on the above proposed amendments. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendments were unanimously approved for publication for public comment.

D. Repeal of existing Rules 19.1-19.7, 37 TAC Secs. 19.1-19.7; proposed New Rules 19.1-19.7, 37 TAC Secs. 19.1-19.7, relating to Breath Alcohol Testing Regulations. Randall Beaty briefed the Commission on the proposed repeal and new rules. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached repeal and new rules were unanimously approved for publication for public comment.

E. Proposed amendments to Rules 19.21-19.29, 37 TAC Secs. 19.21-19.29, relating to Texas Ignition Interlock Device Regulations. Martin Simon briefed the Commission on the proposed amendments. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendments were unanimously approved for publication for public comment.

F. Proposed amendment to Rule 29.2, 37 TAC Sec. 29.2, relating to enforcement of contested cases brought under the Ignition Interlock Program. Mary Ann Courter briefed the Commission on the proposed amendment. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached amendment was unanimously approved for publication for public comment.

VIII. For adoption.

A. Proposed repeal of Rules 6.41-6.46, 37 TAC Secs. 6.41-6.46, relating to Time, Place and Manner Restrictions on Concealed Handgun License holders, as published in 30 TexReg 3399, June 10, 2005. Mary Ann Courter briefed the Commission on the proposed repeal. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached repeal was unanimously approved for final adoption.

B. **Proposed Rule 35.77, 37 TAC Sec. 35.77, relating to termination of incomplete applications for a Private Security License and the process to request a hearing from the Private Security Board, as published in 30 TexReg 3722, June 24, 2005.** Burt Christian briefed the Commission on the proposed rule. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached rule was unanimously approved for final adoption.

IX. **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 action of discharging probationary employees Alamay Stolowski, Mark Jamail, William Pierce and Rogelo Mancha; 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. Special Ranger commissions had been considered for DPS retirees Manuel Alaniz, John Callaway, Jack Downs, Johnny Lubbock, Jesse Sharp and Kenneth Thompson and Special Texas Ranger commissions had been considered for DPS retirees Fermin Islas, Jesse Mack, Earl Pearson and LeeRoy Young and James B. Mast of the Texas & Southwestern Cattle Raisers Association . Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, Special Ranger and Special Texas Ranger commissions respectively were approved for the above named individuals. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, consent to discharge probationary employees Alamay Stolowski, Mark Jamail, William Pierce and Rogelo Mancha was given (see attached Order).

A motion was made by Commissioner Cascos and seconded by Commissioner Angelo adjourning the meeting.

Read and approved this 20 day of September, 2005.

Chairman

Member

Member

A RESOLUTION
AUTHORIZING A REQUEST FOR FINANCING
AND THE EXECUTION AND DELIVERY OF DOCUMENTS
REQUIRED TO EFFECT SUCH FINANCING

Whereas, the Texas Public Finance Authority (the "Authority") is authorized to issue general obligation bonds to finance the cost of certain projects for the use and benefit of the **Texas Department of Public Safety,** ("Agency") pursuant to Article III, Section 50-f, Texas Constitution, Chapter 1232, Texas Government Code, as amended, and SB **1, Article V, pages V-45 through V-46, sections 2 and 2(a),** Acts, 79th Legislature, R.S. (2005), (collectively, the "Authorizing Law").

Whereas, the Agency desires and intends to request the Authority to finance the cost of the projects as permitted by the Authorizing Law; and

Whereas, the Agency recognizes that in order to finance the cost of the projects, the Authority may issue short term obligations, general obligation bonds, either or both ("Obligations") in an aggregate principal amount sufficient to finance project costs in the estimated amount of **$25,745,577**, plus the costs of issuance and related administrative costs, if any, which will be determined at the time of issuance; and

Whereas, the attached form of a Request for Financing (the "Request for Financing"), from the Agency to the Authority, which includes a detailed description of the projects to be financed for the Agency ("Projects " herein) and a proposed expenditure schedule, is presently before the **Public Safety Commission**.

NOW THEREFORE BE IT RESOLVED by the **Public Safety Commission** that:

Section 1. The purpose of the financing is to provide funds sufficient to complete the Projects, and the financing thereof is appropriate at this time. Accordingly, the execution and delivery of the Request for Financing to the Authority pursuant to the Authorizing Law is hereby ratified, approved and confirmed.

Section 2. The **Director** of the Agency is hereby authorized, empowered and directed to:

a. sign and deliver any and all documents necessary or desirable to effect the financing and provide the Projects, which documents may include but not be limited to a Memorandum of Understanding and a Financing Agreement between the Agency and the Authority;

b. cooperate with the Authority and its consultants to prepare an Official Statement in connection with the sale of the Obligations; and

c. and to take any other action necessary to assist in such sale.

Section 3. All actions not inconsistent with provisions of this Resolution heretofore taken by the Agency, its officers, employees, agents or consultants, directed toward the financing of the Projects and the issuance of the Obligations, is hereby ratified, approved and confirmed.

Section 4. The officers and employees of the Agency shall take all action in conformity with the Authorizing Law to effect the issuance of the Obligations and complete the Projects as provided in the Agreement and to take all action necessary or desirable or in conformity with the Authorizing Law for carrying out, giving effect to, and consummating the transactions contemplated by the Memorandum of Understanding, the Agreement, the Obligations, and the Request for Financing, including without limitation, the execution and delivery of any closing documents in connection with the closing of the Obligations.

Section 8. This Resolution was adopted at a meeting open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Ch. 551, Texas Government Code.

Adopted by the affirmative vote of a majority of the **Public Safety Commission** present and voting on this 16th day of August, 2005, in Travis County, Texas.

(Chairman)

Attested: (Commissioner)

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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 on August 16, 2005, in Travis County, Texas.

Signature

General Counsel
Title

SWORN AND SUBSCRIBED TO before me this 16th day of August, 2005.

JOANNE G. SCARBROUGH
Notary Public, State of Texas
My Commission Expires
APRIL 9, 2007
Notary Without Bond

Notary Public

:H:\ALINE\SPECIAL PROJECTS\2005\RIDER #2, ART. V, GENERAL OBLIGATION BONDS\INITIAL RESOLUTION WITH REQUEST FOR FINANCING\FINAL 8-10-05.AGENCY RESOLUTION FOR NEW GO ISSUES.DPS. WPD.DOC

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On August 16, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

License to Carry Handguns
Title 37 T.A.C. Part I, Chapter 6
Subchapter D
Section Numbers 6.41 – 6.46

The Texas Department of Public Safety adopts the repeal of Subchapter D, Sections 6.41-6.46, concerning Time, Place, And Manner Restrictions On License Holders, without changes to the proposed text as published in the June 10, 2005, issue of the Texas Register (30 TexReg 3399).

The repeal of Section 6.41 is necessary because Texas Penal Code, Section 46.035, Unlawful Carrying of Handgun by License Holder and the definition of "intoxicated" in Texas Penal Code, Section 49.01 prohibit carrying of a concealed handgun by a license holder while intoxicated. This rule was simply a restatement of the law under Penal Code, Section 46.035(d).

The repeal of Section 6.42 is necessary because Texas Penal Code, Section 46.035, Unlawful Carrying of Handgun by License Holder requires a license holder to carry the handgun concealed unless a justification defense exists under Texas Penal Code, Chapter 9. This rule was simply a restatement of the law under Penal Code, Section 46.035(a), (h).

The repeal of Section 6.43 is necessary because Texas Government Code, Section 411.187, Suspension of License and Section 411.205, Displaying License; Penalty, requires a license holder carrying a concealed handgun on or about their person to display the driver license and concealed handgun license on demand for identification from a peace officer or magistrate. This rule was simply a restatement of the law under Texas Government Code, Section 411.187(a)(2) and Section 411.205.

The repeal of Section 6.44 is necessary because Texas Penal Code, Section 46.03, Places Weapons Prohibited, and Texas Penal Code, Section 46.035, Unlawful Carrying of handgun by License Holder, prohibit the license holder from carrying a concealed handgun in certain locations and give the license holders notice that such violations are felony offenses. This rule was simply a restatement of the law under Texas Penal Code, Section 46.03 and Section 46.035.

The repeal of Section 6.45 is necessary because the current rule separates out the Class A misdemeanor level offense of carrying a concealed handgun in certain places. The rule does not provide additional information to license holders under Texas Government Code, Section 411.711 et. seq. Since the enactment of current 6.45, the law has not changed. The repeal of Section 6.45 will not deprive the public of information and will not affect the Texas Department of Public Safety's administration of the Concealed Handgun Licensing Statute. This rule was simply a restatement of the law under Texas Penal Code, Section 46.035.

The repeal of Section 6.46 is necessary because Texas Parks and Wildlife Code, Section 62.081 gives license holders carrying concealed handguns notice that carrying a concealed handgun on Lower Colorado River Authority lands is a Class C misdemeanor. This rule was simply a restatement of the law under Texas Parks and Wildlife Code, Section 62.081.

No comments were received regarding repeal of the sections.

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; Texas Government Code, Section 411.006(4), which requires the Director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for control of the department; and Texas Government Code, Section 411.197, 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.

M. Colleen McHugh, Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On August 16, 2005, 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 35.77

The Texas Department of Public Safety adopts new Section 35.77, concerning Termination of Incomplete Applications, without changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3722).

Adoption of the new section is necessary in order to provide a mechanism for the termination of incomplete applications within a definite time period. Additionally, the new section provides a mechanism for the applicant to request a hearing from the Private Security Board for the application to be processed in the event the applicant is unable to provide the necessary information to complete the application.

No comments were received regarding adoption of the new section.

The new section 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, Chapter 1702.

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

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IN THE MATTER OF	§	BEFORE THE
THE DISCHARGE OF	§	PUBLIC SAFETY COMMISSION
PROBATIONARY EMPLOYEES	§	IN AUSTIN, TRAVIS COUNTY, TX

Advice and Consent

In accordance with Government Code Section 411.007(f), the Director found that the following named probationary employees were unsuitable for continued employment in the Department of Public Safety. The Public Safety Commission has consented to the discharge of these employees:

Employee Name	Employee Title/Division	Date of Discharge
Alamay Stolowski	Records Technician/Criminal Law Enforcement	6/21/05
Mark Jamail	Clerk IV/Driver License	7/06/05
William Pierce, Jr.	Records Technician/Administration	7/18/05
Rogelio Mancha	Probationary Trooper/Texas Highway Patrol	8/05/05

Approved:

Colleen McHugh, Chairman
Public Safety Commission
Date: August 16, 2005

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