MINUTES
PUBLIC SAFETY COMMISSION
December 7, 2005
Austin, Texas

The Public Safety Commission met in Austin, Texas on December 7, 2005. Attending the meeting were Chairman Ernest Angelo, Jr., and Commissioner Carlos Cascos.

DPS Staff members present:
Tommy Davis, Director
David McEathron, Assistant Director
Oscar Ybarra, Accounting & Budget Control
Randy Elliston, Danny Knauth, Randall Beaty, Mack Cowan & Eugene Summerford, Texas Highway Patrol Division
Gary Stone, Criminal Law Enforcement
Burt Christian, Administration
Bob Burroughs & Greg Gloria, Driver License
Ray Coffman, Texas Rangers
Farrell Walker, Jude Schnexyder, Jack Allen, Doug Farber, Office of Audit & Inspection
Jack Colley, Emergency Management Division
Mary Ann Courter, General Counsel
Ed Kelly & Bryan Lane, Information Management Service
Tela Mange, Public Information Office
David Outon, Internal Affairs
Michael Kelley, Legislative Liaison
Dorothy Wright, Secretary

Guests present:
Shaniqua Johnson, Legislative Budget Board
Marshall Kenderdine, House Appropriations Committee
Brenda Ackarman-Siosson, MCI

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

I. **Minutes.** Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the minutes of the November 3, 2005 meeting were approved.

II. **Public comment.** There was no public comment.

III. **Discharge appeal hearing of DPS employee Eric Cullop.** Eric Cullop appeared before the Commission to appeal his discharge. He was represented by Bob Gorsky and Phil Burleson. DPS was represented by Phil Adkins. Court reporter was Shannon DeLay of Esquire Deposition Services. Opening statements were made by both attorneys. All witnesses were sworn. The only witness to appear for DPS was Sergeant Robert Wilson, Highway Patrol, Commercial Vehicle Enforcement. DPS Exhibits #1 & 2 were submitted and accepted by the Commission. Witnesses appearing for appellant were Robert McDonald, Timothy Murphy and Eric Cullop. Appellant Exhibits #1, 2, 3 & 4 were submitted and accepted by the Commission. Closing statements were made by both attorneys.

IV. **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 Eric Cullop and probationary employee Deanna Pinkard; pending and contemplated litigation; status of purchase of real property; and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner Angelo announced that the Commission had discussed personnel matters, contemplated litigation and ongoing criminal investigations. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the Director's action of discharging probationary employee Deanna Pinkard was affirmed (see attached Order). Commissioner Cascos made a motion to set aside the Director's action of discharging Eric Cullop. The motion was not seconded. Commissioner Angelo made a motion to affirm the Director's action of discharging Eric Cullop. The motion was not seconded. The Director will make a recommendation to the Commission on the Eric Cullop matter at the next meeting. Special Ranger commissions had been considered for DPS retirees Arvin Kilpatrick, Ralph G. Mutchler, Kenneth Reeves and Barry Washington. A motion was made by Commissioner Cascos and seconded by Commissioner Angelo approving the above named individuals as Special Rangers.

V. **Driver License Division report.** Bob Burroughs gave the Driver License Divsion report. There was some discussion on the Crash Records project and the fraud investigation unit.

VI. **Budget matters.** Oscar Ybarra gave the budget report. There was some discussion on gasoline prices and FTE vacancies.

A. **Consideration of and possible action on Construction of Buildings and Facilities through the Texas Public Finance Authority, pursuant to Approp. Act, Art. V, DPS Rider #2, Capital Budget (projects to include Bryan District Office, Waxahachie Area Office, Garland Crime Lab, Waco Ranger headquarters).** Burt Christian briefed the Commission on the next step of the procedure needed to secure these funds. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached Resolution was approved.

VII. **Audit & Inspection report.** Farrell Walker gave the audit & inspection report. There was some discussion on the follow-up to Accounting's procurement and fixed assets reports.

VIII. **Division reports.** Burt Christian gave the Administration Division report. There was some discussion on electronic arrest reporting, private security application processing and an update on building projects. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on dive team activities, recent Trooper injuries, ongoing STEP programs and THP drug interdiction efforts. Greg Gloria gave an update on the Driver Responsibility Program. Jack Colley gave the Emergency Management Division report. There was some discussion on the Division's ongoing response in relation to Hurricanes Rita and Katrina and wildfire operations, and the Governor's Task Force on Evacuation Transportation and Logistics. The Criminal Law

Enforcement Division report was given by Gary Stone. There was some discussion on efforts to locate Hurricane Katrina evacuees in Texas that may be wanted criminals, parolees and sex offenders. Ray Coffman gave the Ranger Division report. The Information Management Service report was given by Ed Kelly.

IX. **Consideration of and possible action on Resolution stating a continued need and support for renewal of the Texas Department of Public Safety Training Academy license and for continued compliance with Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) Rule 215.3(b).** Burt Christian briefed the Commission on the Resolution. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached Resolution was approved. There was some discussion on the status of the consultant contract for the Defensive Tactics Program.

X. **For publication for public comment.**

A. **Proposed amendment to Rule 19.8, 37 TAC Sec. 19.8, relating to Breath Alcohol Testing Regulations.** Mack Cowan briefed the Commission on the above proposed amendment. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendment was unanimously approved for publication for public comment.

XI. **For adoption.**

A. **Proposed amendments to Rules 23.1, 23.3, 23.8, 23.12-23.15, 23.21, 23.28, 23.51-23.53, 23.61, 23.73, 23.75, 23.76, 23.79 & 23.94, 37 TAC Secs. 23.1, 23.3, 23.8, 23.12-23.15, 23.21, 23.28, 23.51-23.53, 23.61, 23.73, 23.75, 23.76, 23.79 & 23.94; Proposed New Rules 23.18, 23.19, 23.25 & 23.81, 37 TAC Secs. 23.18, 23.19, 23.25 & 23.81, relating to implementation of the automation of the motor vehicle inspection program requiring inspection stations to use TexasOnline to purchase inspection certificates and send reports and other required information to the Department, as published in 30 TexReg 6582, Oct. 14, 2005**

B. **Proposed repeal of Rule 23.17, 37 TAC Sec. 23.17, relating to Vehicle Inspection Station Licensing and the lease or sale of Inspection Station during suspension, as published in 30 TexReg 6595, Oct. 14, 2005**

C. **Proposed repeal of Rule 23.25, 37 TAC Sec. 23.25, relating to Vehicle Inspection Station Licensing and safeguarding certificates, as published in 30 TexReg 6595, Oct. 14, 2005**

Mary Ann Courter briefed the Commission on the proposed amendments, repeals and new rules. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendments, repeals and new rules were unanimously approved for final adoption.

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

Read and approved this 3rd day of March, 2006.

Chairman

Member

IN THE MATTER OF	§	BEFORE THE
THE DISCHARGE OF	§	PUBLIC SAFETY COMMISSION
PROBATIONARY EMPLOYEE	§	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 employee was unsuitable for continued employment in the Department of Public Safety. The Public Safety Commission has consented to the discharge of this employee:

Employee Name	Employee Title/Division	Date of Discharge
Deanna Pinkard	Administrative Assistant I/Driver License Division	10/24/05

Approved:

Ernest Angelo, Jr., Chairman
Public Safety Commission
Date: December 7, 2005

RESOLUTION DECLARING EXPECTATION
TO REIMBURSE
EXPENDITURES WITH PROCEEDS OF FUTURE DEBT

Whereas, the Texas Department of Public Safety (the "Agency") intends to make a capital expenditure of approximately $25,745,577.00 for the four construction projects detailed in the attached memorandum from Mr. Andy Mokry to Chief Oscar Ybarra dated November 22, 2005, (the "Project"), which is to be funded in part with proceeds of bonds to be issued by the Texas Public Finance Authority (the "Authority") as authorized by Texas Government Code, Chapter 1232; and

Whereas, the Agency intends to expend an amount not to exceed $25,745,577.00 (the "Expenditure") for Project costs consisting of construction, engineering, telecommunications, fixtures, furniture, equipment, construction contingency, land acquisition, design professional fees, surveying, geotechnical, construction material testing, HVAC test and balance testing, procurement, contract administration, etc.; and currently desires and intends the Expenditure to be reimbursed from proceeds of bonds to be issued by the Authority for the Project; and

Whereas, the Agency and the Authority desire to preserve the ability to reimburse the Expenditure with proceeds of tax-exempt obligations;

NOW THEREFORE, THE AGENCY HEREBY RESOLVES that it reasonably expects and intends to reimburse the Expenditure with the proceeds of tax-exempt obligations to be issued hereafter by the Authority, and this Resolution shall constitute a declaration of official intent under applicable federal tax regulations.

Be It Further Resolved that a copy of this resolution will be included in the minutes of the Texas Public Safety Commission meeting.

This Resolution will be made available for public inspection at the Authority's office at 300 W. 15th Street, Suite 411, Austin, Texas and at the Agency's Executive Director's office at 5805 North Lamar Boulevard, Austin, Texas.

Adopted by the affirmative vote of a majority of the **Public Safety Commission** present and voting on this 7th day of December, 2005, in Travis County, Texas.

Ernest Angel Jr.
(Chairman)

Attested: Carl H. Cascon
(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 this 7th day of December, 2005, in Travis County, Texas.

Signature

General Counsel
Title

SWORN AND SUBSCRIBED TO before me this 7th day of December, 2005.

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

Notary Public

PUBLIC SAFETY COMMISSION RESOLUTION

STATING A CONTINUED NEED AND SUPPORT FOR RENEWAL OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY TRAINING ACADEMY LICENSE AND FOR CONTINUED COMPLIANCE WITH TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION (TCLEOSE) RULE 215.3(b).

WHEREAS, a resolution to make a statement of continued support and need for the Texas Department of Public Safety Training Academy has been submitted to the Public Safety Commission for approval on December 7, 2005; and

WHEREAS, the Texas Department of Public Safety Training Academy has been licensed since 1968; and

WHEREAS, the Texas Department of Public Safety Training Academy has been in good standing with the Texas Commission on Law Enforcement Officer Standards and Education since 1968; and

WHEREAS, the Texas Department of Public Safety Training Academy currently provides instruction and training to recruit schools, consisting of over 1,245 hours of instruction spanning 27 weeks; and

WHEREAS, all Texas peace officers are required to complete at least 40 hours of in-service training every two years, the Training Academy currently provides this training to the Texas Department of Public Safety officers that includes Texas Commission on Law Enforcement Officer Standards and Education mandated training, new legislative requirements, and law enforcement tactics and techniques; and

WHEREAS, the Texas Department of Public Safety Training Academy maintains a Firearms Training Unit in Florence, Texas that instructs in firearm techniques, evaluates weapons, soft body armor, and ammunition for the Department, and is responsible for training all concealed handgun instructors; and

WHEREAS, the Texas Department of Public Safety Training Academy provides specialized law enforcement training and Texas Commission on Law Enforcement Officer Standards and Education mandated training to officers and support personnel of city, county, and other state law enforcement agencies; and

WHEREAS, the Texas Department of Public Safety Commission concurs with the continued need and value of the Texas Department of Public Safety Training Academy to meet the training requirements of its own officers as well as other law enforcement officers;

NOW, THEREFORE BE IT RESOLVED by the Public Safety Commission that this resolution serve as our statement of the continued need and support to satisfy the Texas Commission on Law Enforcement Officer Standards and Education Rule 215.3 (b).

BE IT FURTHER RESOLVED that this resolution be recorded in the minutes of this Commission meeting with copies sent to the Texas Commission on Law Enforcement Standards and Education and the Texas Department of Public Safety Training Academy.

This resolution was considered and approved by a majority of the members of the Public Safety Commission of the State of Texas at its Open Meeting held on the 7th day of December, 2005, in Travis County, Texas.

Ernest Angelo, Jr., Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On December 7, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection
Title 37 T.A.C. Part I, Chapter 23
Subchapter A
Section Number 23.17

The Texas Department of Public Safety adopts the repeal of Section 23.17, concerning Vehicle Inspection Station Licensing, without changes to the proposed text as published in the October 14, 2005, issue of the Texas Register (30 TexReg 6595).

Adoption of the repeal is necessary due to implementation on the use of TexasOnline in vehicle inspection operation as provided under Section 22 of House Bill 2048 and Section 11 of House Bill 2593, 79th Legislature (RS) and codified as Texas Transportation Code, Section 548.258. Section 23.17 concerning the Lease or Sale of Inspection Station During Suspension is no longer necessary as it is duplicative of portions of Section 23.15 of this title (relating to Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings).

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 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.

Ernest Angelo, Jr., Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On December 7, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection
Title 37 T.A.C. Part I, Chapter 23
Subchapter B
Section Number 23.25

The Texas Department of Public Safety adopts the repeal of Section 23.25, concerning General Inspection Requirements, without changes to the proposed text as published in the October 14, 2005, issue of the Texas Register (30 TexReg 6595).

Adoption of the repeal is necessary due to implementation on the use of TexasOnline in vehicle inspection operation as provided under Section 22 of House Bill 2048 and Section 11 of House Bill 2593, 79th Legislature (RS) and codified as Texas Transportation Code, Section 548.258. Because of a title change and other substantial changes needing to be made, Section 23.25 was repealed and a new Section 23.25 was filed simultaneously.

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 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.

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Ernest Angelo, Jr., Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On December 7, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection
Title 37 T.A.C. Part I, Chapter 23
Subchapter A
Section Numbers 23.1, 23.3, 23.8, 23.12-23.15, 23.21, 23.28, 23.51-23.53, 23.61, 23.73, 23.75, 23.76, 23.79, 23.94, and 23.18, 23.19, 23.25, 23.81

The Texas Department of Public Safety adopts amendments to Sections 23.1, 23.3, 23.8, 23.12-23.15, 23.21, 23.28, 23.51-23.53, 23.61, 23.73, 23.75, 23.76, 23.79, and 23.94, as well as new Sections 23.18, 23.19, 23.25, and 23.81, concerning Vehicle Inspection, without changes to the proposed text as published in the October 14, 2005, issue of the Texas Register (30 TexReg 6582).

Adoption of the amendments and new sections is necessary in order to implement the automation of the motor vehicle inspection program requiring inspection stations to use TexasOnline to purchase inspection certificates and send records, reports, and other required information to the department as authorized by Section 548.258 of the Texas Transportation Code, as amended by Section 22 of House Bill 2048 and Section 11 of House Bill 2593, 79th Legislature, (RS). Revising the rules for the department and inspection stations to use TexasOnline, the Texas Automated Vehicle Inspection System (TAVIS), necessitated an extensive review of all applicable rules resulting in additional amendments correcting typographic errors, procedural updates, and minor program changes.

Adoption of the rules in Subchapter A is necessary due to style revisions and substantive changes having been made in order to facilitate use of TexasOnline in vehicle inspection station licensing matters. Section 23.1 amends the application procedure, allows phase-in of TexasOnline procedures, and a corresponding automation fee authorized by Government Code, Section 2054.2591 as amended by Section 8 of H.B. 2048 and Section 6 of H.B. 2593, 79th Legislature (RS). Section 23.3 requires inspection stations to record all inspections using the TAVIS system. Section 23.8 removes a nonspecific repair tool requirement, updates inspection tool requirements, and adds requirement for the TAVIS device with associated telephone line requirement. Section 23.12 updates procedure for reinstatement of a license that expired during a period of suspension and aligns it with initial application procedures. Section 23.13 updates the procedure for reinstating an unexpired license after suspension and aligns it with initial application procedures. Section 23.14 revises license renewal procedures allowing phase-in, as available, of TexasOnline procedures and a corresponding automation fee. Section 23.15 corrects typographical errors, clarifies violations, and updates violations to include TAVIS, as follows: Category A (minor) violations – clarifies out-of-date certificate issuance, adds minor TAVIS security violation, and adds recording false vehicle information in TAVIS; Category B (intermediate) violations – adds using another inspector's TAVIS identification code and inspector not safeguarding own TAVIS identification code; Category C (serious) violations – revises permitting 'uncertified person' participating in inspections to 'currently denied, suspended, or revoked inspector' and adds violation for the disqualified inspector under same circumstance; Category D (eligibility) violations – clarifies understanding of this category and

deferred adjudication as a conviction; Category E (emissions, other than C) – minor style change and minor textual change in subsection (j). New Section 23.18 provides TAVIS access and security requirements. New Section 23.19 provides explanation on issuance of TAVIS interface equipment to stations.

Adoption of the rules in Subchapter B is necessary in order to make substantive changes to facilitate use of TexasOnline and operational clarifications to meet general vehicle inspection requirements. Section 23.21 amends requirements for recording information on certificate and requiring reporting inspection results using TAVIS system, as available. New Section 23.25 provides inspection station security and financial responsibilities concerning certificates and TAVIS equipment. Section 23.28 removes reference to inspection of miniature vehicles to prevent confusion concerning legality of recently popular mini-motorcycles (Pocket Bikes) that are not eligible for registration and/or operation on the public roadways.

Adoption of the rules in Subchapter D is necessary in order to make substantive changes to facilitate use of TexasOnline and minor textual clean up for vehicle inspection records and forms. Section 23.51 amends record requirements to include TAVIS. Section 23.52 removes outdated reference to the out-of-state vehicle identification number (VIN) verification form used for initial registration duplicated in another rule, Section 23.80 of this title (relating to Out-of-State Vehicle Identification Number Verification), and includes use of TAVIS. Section 23.53 includes TAVIS use for maintaining records of station activity.

Adoption of the rule in Subchapter E is necessary in order to make style revisions and substantive changes to facilitate use of TexasOnline for the certification of inspectors. Section 23.61 amends the inspector application procedure to allow phase-in of TexasOnline procedures and collection of a corresponding automation fee.

Adoption of the rules in Subchapter F is necessary in order to make style revisions and substantive changes to facilitate use of TexasOnline and program updates in regulation of vehicle inspection station operation. Section 23.73 amends inspection fees for El Paso County based on rulemaking by the Texas Commission on Environmental Quality (TCEQ), removes authorization of inspection stations to offer and/or advertise inspection in combination with other services, and authorization for inspection stations to pass certificate automation fee to vehicle owners. Section 23.75 aligns procedure for change of licensing information with initial application procedures to include TAVIS. Section 23.76 revises going out of business procedures to include responsibility of returning TAVIS equipment. Section 23.79 amends minor textual change and department procedures for handling insufficient electronic funds transfers in TAVIS. New Section 23.81 provides the TAVIS procedures the department may require stations to use to requisition inspection certificates.

Adoption of the rule in Subchapter G is necessary in order to amend the vehicle emissions inspection and maintenance program with a minor textual change to Section 23.94 by removing reference to On-Board Diagnostic (OBD) testing as an alternative vehicle emissions testing methodology, since OBD is the primary emissions test method for model years 1996 and newer vehicles.

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; and Texas Transportation Code, Section 548.002 and Section 548.258 which authorize the department to adopt rules to administer and enforce the compulsory inspection of vehicles and requiring inspection stations to use TexasOnline to purchase inspection certificates, send records, reports, and other information to the department.

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