

TEXAS PRIVATE SECURITY BOARD

**SPECIALLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
OCTOBER 8, 2013**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
108 B DENSON DRIVE, BUILDING T
REGULATORY SERVICES BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Albert Black
Honorable Charles Crenshaw
Honorable Wade Hayden

BOARD MEMBERS NOT PRESENT:

Honorable Mark Smith, Secretary
Honorable Brian England

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Other members of the staff;
Members of the industry;
Members of the general public.

MINUTES

These minutes are a summary record of the Board's public meeting. The meeting was audio-recorded and video-taped. For a detailed record of discussions and statements made by persons speaking at this meeting, please consult the video DVD on file at the Board's office.

The board meeting was called to order at 9:03 a.m.

Chairman Chism welcomed everyone to the meeting and asked that all cell phones and pagers be turned off or set to vibrate for the duration of the meeting.

Agenda Item I: Discussion and possible action regarding proposed Rule §35.185 concerning Registration Deadline and amendments to Rule §35.187, "Renewal Applications"

Chairman Chism introduced this agenda item stating that changes to these rules were proposed to the Board at the last meeting. He stated that after review by DPS counsel a letter was sent to the

Board from Phil Adkins informing them that the document submitted did not meet the criteria. Mr. Chism went on to say that the Rules Committee convened to come up with acceptable language to these rules that would satisfy the criteria. He asked Rules Committee chairman Charles Crenshaw to address this issue.

Mr. Crenshaw stated that while the Rules Committee met and did draft language they felt was acceptable, an additional draft of language was proposed at the ASSIST conference the previous Friday and this was the version he suggested the Board take into consideration. He then went on the record stating: "The Rules Committee came up with a proposal and may be in conflict with the statute. The industry and people I represent are in agreement with the proposal. We do want to comply with statute."

Vice-Chairman Johnsen introduced an additional document making changes to the proposed document dated October 4, 2013. He stated item number one of the document could be misinterpreted and would like to add additional language to state "registration must be made electronically and a CCR number for fingerprints is received". Additional changes he wanted made to the proposed rule is to state "fingerprints must be obtained electronically", "Non-commissioned officers should be given a priority", and "Funds for application processing will be pulled when prints are received by the Regulatory agency". He stated the intent with these changes was to see all application submissions done electronically as well as fingerprinting being done electronically.

Chairman Chism asked a question regarding item number two on the proposal for §35.85: if electronic registration is not possible due to technical issues or geographic availability can it be restricted to the same as the Concealed Handgun Licensing, making it so that they have to check within 25 miles of the office for availability? Assistant Director Bowie responded stating he would defer to the Rules Committee and their intent, as he could only assume that was their intent. He went on to say that HB698 changed the distance to only 25 miles for Concealed Handgun Licensing based fingerprinting, however the current state contract states a distance of 50 miles regarding any fingerprinting. He stated HB698 was specific to Concealed Handgun Licensing. Mike Samulin, representing TBFAA, asked which would take precedence, the law as established by the last Texas Legislature or the current state contract. Mr. Bowie stated the legislature was informed of the current contract and the department was holding to the legislative mandate but as far as the legality of it, the department has no stance on that.

Board member Crenshaw stated the intent of the Rules Committee's proposed rule was merely to complete within time before dropping the 5 day rule. He went on to say that if fingerprints were not done electronically, they should be allowed to go "old school" and get them done. If fingerprints are not obtained in a timely manner they would be in violation of the statute and rules and that is what they were trying to avoid.

Vice-Chairman Johnsen stated that the committee's intent was just what Board member Crenshaw stated. He also said the committee was open to amending the proposal. Their intent was to just give the opportunity to people, who can't get online or are located in an areas where they can't get their fingerprints taken easily, a means to get this done. He went on to say that 72

hours is a flexible number. If an applicant cannot get an appointment in 72 hours they should call Regulatory Services Division and they can assist in helping them find a location.

Chairman Chism stated his concern is if he were to employ someone how far would he need to have that person drive before they could get fingerprinted. He stated the current contract states a radius of 50 miles, but asked if that could be reduced. He asked if the Board's rules could be changed to reduce the amount enough to satisfy the department. If there were 4 or 5 places in that radius the applicant would have to look at each place to see if there were an opening. Assistant Director Bowie stated that he was not sure that the Board had the authority to enforce a change to 25 miles to mirror HB698. Mr. Samulin asked if counsel for the department would give his legal opinion, to which Mr. Moninger replied that he was not inclined to weigh in on this topic as it was DPS's General Counsel that would need to speak to the legality of the issue.

Mark Gillespie, representing TALI, stated he was part of the group that drafted the second rule draft and it was revised with the intent to allow DPS to establish how far the distance range would be. He stated they did not feel it was in the industry's power to decide that.

Board member Hayden asked if there was a problem with excessive amounts of fingerprint cards and paper or was this all done just to generate interest in having people go online for applications and fingerprinting? Vice-chairman Johnsen stated this didn't really have anything to do with mileage. If a person sends in ink prints, DPS has to digitalize those prints before being able to send them to the FBI. He stated this takes more time, and it was already known that the Regulatory Services Division can process an electronic application and fingerprints much easier and faster. He stated he understood this to be about finding the most efficient, quickest way for the industry to get their people to work. Board member Hayden asked if that wasn't what they wanted to do anyway; why it would be necessary to draft a rule. Board member Crenshaw asked what happens if an applicant can't get to a place to have prints done or the site is down, what is the contingency plan? He stated this problem ranged from the small 2 or 3 man shops to the large companies with thousands of employees. He stated he understood why there was a need to get rid of the paper prints, but what if the statute cannot physically be met?

Chairman Chism stated one of the reasons why they want to go to electronic fingerprinting is because 70% of the prints are done on paper cards. He stated it's a big change for the industry and people have trouble with change. He further stated there were simply not enough companies taking advantage of doing the application processes electronically. Vice-chairman Johnsen agreed stating again that ink prints have to be digitized and by going to electronic versions only it would save the State time and expense and the applicant time in waiting for licensure. He went on to say that the "5 day rule" was misunderstood. He stated the rule was understood by the industry that if a paper application and paper prints were done within 5 days of hiring someone that person could go to work without waiting for clearance. However, he said, DPS sees this differently and the goal is to try to find a compromise.

Mr. Samulin stated that as a member of the Rules Committee it was their intent to come up with language for this rule before the Public Safety Committee repealed the rule later this month. He stated that since there was a representative of DPS's General Counsel attending the meeting, he wanted to ask what their position was regarding this revised rule, as 72 hours does meet the

contract requirements of L-1 currently. He wanted to know if counsel felt this was an acceptable rule. He stated a big concern is the PSC resending Rule §35.185 and leaving a void in this area. He stated there would be people who would not be able to get prints done within the time as stipulated by the contract and would then not be able to be hired. He wanted to know if everyone would be able to come out of the meeting with something that would be acceptable to DPS. Mr. Moninger stated that he would not comment on this as it needed to be DPS's General Counsel, Phil Adkins, to be the one to weigh in on this. However, he stated, if the Board wanted he could enlighten them on a few points with problems in the language of this rule. The first line stating "No applicant may begin work in a regulated capacity until a completed application for registration has been submitted", he pointed out that there is a big difference between a completed application and a substantially completed application. He stated it was his opinion that the word substantially should be inserted into that language. He also pointed out that on the second line the phrase "technical issues" is vague and leads to trouble with interpretation, as it would be subject to interpretation by applicant. Some reasons applicants might see as an excuse would be that their electricity was off or their cable provider had shut off their internet, etc. He also stated the portion stating that it could not be scheduled in 72 hours is open to interpretation. Would the applicant use this as an excuse just because it wasn't convenient for them?

Chairman Chism stated geographical availability is a question that has been discussed many times. Sometimes the applicants will check only the location that is most convenient and not look at other locations. He stated the Board needed the wording down to say that they have to access more than 2 blocks away. He went on to say that if the contract says 50 miles, what is wrong with 25 miles? He asked how many places have to be considered to find a place to send an individual for fingerprinting.

Mr. Moninger stated that his interpretation of substantially complete is when all bulleted items are completed, whereas just completed refers to the back and forth in needing documents, court records, etc. Statute states applications should be substantially complete. Vice-chairman Johnsen stated that Manager Sherrie Zgabay indicated that if applications were sent electronically they would be complete because the system will not allow an applicant to submit an application that is not complete. At that time a receipt comes back and the person uses that to make an appointment with MorphoTrust for fingerprinting. He went on to say once the money is submitted for fingerprinting the application is complete. Mr. Moninger stated add substantially complete and that takes care of this issue. He also stated he could not draft language without direction from the Board, DPS's General Counsel and the Director, but the Board could vote on the language or changes to the language.

Board member Hayden stated in regards to number two of the proposal, it states "allow for paper application process" and he wanted to know if it was the department's concern that there were not enough electronic applications? He stated that if someone still wanted or needed to do it the "old school" way they are only penalizing themselves in terms of timely licensure. He stated he was hearing that there needed to be a back up plan to allow paper applications, but he is also hearing that they want it done quickly. By nature, wouldn't everyone want to do this electronically? Board member Crenshaw stated they were trying to communicate that the industry wants to do the electronic fingerprinting but also wants a contingency plan if those means are not available. He stated that companies can get fined if they are out of compliance.

He stated this is a big change for the industry, including that applicants now, upon renewal, have to submit fingerprints, which has not happened before. He stated he has been in the business for 37 years and this is a big change. He even has concerns on whether this can be enforced.

Mr. Samulin stated that as someone who spent 8 years on the board, rules and language were discussed and changed at the time of the meeting. He stated he felt legal counsel was stonewalling. Mr. Moninger stated there was a big difference in what kind of signs are on vehicles and this issue. He stated this indicates Department policy and the Director's policy and he would not comment on that policy. Assistant Director Bowie commented on what Mr. Hayden asked, by stating the board and the industry are behind electronic fingerprinting and the department does currently accept paper fingerprints. He stated he was hearing form the industry at this meeting that the application process itself is fine, but it's the fingerprinting that is the problem. He stated he received these revised rules from the Director of DPS, who has asked the Chief of General Counsel to look at this to advise him on what is in the best interest of the department as well as the industry. He went on to say Mr. Moninger was not in a position to answer on behalf of the department.

Vice-Chairman Johnsen stated he hoped the Public Safety Commission would be advised that the Private Security Board is working toward finding a compromise and hoped they would not make a change to the rule. He stated he didn't want the industry to look like they are unable to act when DPS makes known there is a concern. Board member Crenshaw asked if the Board made a motion to pass the revised rule would legal counsel make a recommendation. Mr. Moninger stated it was not completely with the legal department to make that recommendation, as it is a matter of department policy. Assistant Director Bowie stated that on the behalf of the department yes, it would come from the office of the Director. Advisement will come from the Director's office after several working parts are considered: crime records, regulatory services, and legal. Those three entities will submit their recommendations to the Director, who will make the decision.

Rodney Hooker, representing TBFAA, stated that two of the issues brought up by Mr. Moninger could be changed in the language: adding "substantially" before "completed" on line one of the proposal, and striking "technical issues" from line two. He also stated that it may all be a mute point but at least the PSC would see that the industry was trying to be reactive to the needs of the department as well as the industry.

Board member Crenshaw asked what the sense of emergency was with the "5 day" rule being repealed. Mr. Hooker explained that the repeal of the rule would leave the industry in limbo and would leave the industry taking direction from the department. He stated the industry needed something in place. Mr. Samulin added that the industry would not have anything to guide them on registering people. Mr. Moninger reminded them that this possibly repealed rule was only repealing the 5 day grace period. Mr. Hooker stated the agency wanted to go with electronic fingerprinting and that the industry wanted and needed to go to electronic fingerprinting, but how could they put a band-aid on this issue until the Sunset date? He stated he understood the necessity for electronic fingerprinting, and if it were available everywhere this would not be discussed, but that is not the case.

Mr. Samulin asked if statute says electronic fingerprinting or does it just say an application has to be submitted. Mr. Moninger stated that statute states an application has to be submitted. Mr. Salmulin pointed out that by rescinding §35.185, there is no demand for or a rule stating that application or fingerprints have to be electronic.

On a motion made by Board member Crenshaw and seconded by Board member Hayden the Board voted to accept the proposed rules as submitted by the industry dated October 4, 2013 with the following revisions: the addition of the word “substantially” before completed in line one of §35.185 and striking the phrase “technical issues” from line two of §35.185. Rule §35.187 was adopted with no changes to the document. The motion passed with 4 members affirming (Chism, Johnsen, Crenshaw, and Hayden) and 1 member choosing to abstain (Black).

On a second motion made by Board member Crenshaw and seconded by Board member Hayden the Board voted unanimously to not accept the revisions to §35.185 and §35.187 as submitted by the Rules Committee.

Vice-chairman Johnsen asked Mr. Moninger if the PSC repealed this rule, would he work with DPS’s General Counsel to come up with new language to Rules §35.185 and §35.187 that would be found acceptable to everyone while utilizing some of the ideas from this meeting. Mr. Moninger stated that he would take these ideas to his supervisor and be a liaison for the Board. Vice-chairman Johnsen also stated that he would like Denise Hudson to know that there were people at this meeting who think themselves to be small business people and micro business people who this has had a big impact on.

Mr. Bob Marquee asked to be heard. He stated that he, in fact, was a small business and wants to comply with all of the statute and rules. He stated he wants to put unemployed people to work. In the last 10 years there has been a lot of cooperation between the industry and DPS, but all of a sudden this comes up and it seems there is no cooperation. He finished by stating that between Washington and DPS he is not sure who will put him out of business first.

Agenda Item II: Adjournment

Chairman Chism introduced this agenda item. Board member Crenshaw made a motion for adjournment. Board member Black seconded the motion, and the Board voted unanimously in favor of the motion. At 10:13 am, the October 8, 2013 meeting of the Private Security Board was adjourned.