

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
OCTOBER 29, 2010**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST. BUILDING E
CRIMINAL LAW ENFORCEMENT BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Charles Crenshaw
Honorable Doris Washington

BOARD MEMBERS NOT PRESENT:

Honorable Stella Caldera

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
Wayne Mueller, Deputy Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
JoJo Heselmeyer, Senior Manager, Licensing and Registration Service,
Regulatory Services Division;
Lori Periman, Senior Manager, Operations and Shared Services,
Regulatory Services Division;
Steve Moninger, Senior Staff Attorney, Regulatory Services Division,
Texas Department of Public Safety;
Sherrie Zgabay, Manager, Licensing and Registration Service,
Regulatory Services Division;
Reggie Andrews, Program Supervisor II – Licensing and Registration Service,
Regulatory Services Division;
Adam Park, Lieutenant – Compliance and Enforcement Service, Regulatory Services
Division;
Tommy Hunt, Lieutenant- Compliance and Enforcement Service, Regulatory Services
Division;
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 work session meeting. This 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.

Chairman Chism also recognized the return of Board Member Doris Washington, stating he was happy to see her back after her leave from the Board for medical reasons.

Agenda Item I: Approval of Minutes for Board Meeting from July 9, 2010.

Chairman Chism introduced this agenda item. On a motion made by Secretary Smith and seconded by Board member Crenshaw, the Board voted unanimously to approve the Minutes for the Board meeting of July 9, 2010 as written.

Agenda Item II: Report from Private Security Bureau.

Reggie Andrews presented the Licensing totals for the third quarter, 6/1/10-8/31/10. He stated, for this time period, the Bureau received 283 original company applications, 1,331 company renewals, 10,608 original individual applications, and 9,019 individual renewals not including online applications. He went on to say that for the same time period the Bureau processed the following licenses/registrations: 184 original company licenses (85 online, 99 manual), 1,332 company renewals (829 online, 503 manual), 9,790 individual registrations (2,407 online, 7,383 manual), 8,439 individual renewals (3,329 online, 5,110 manual), and 4,633 employee information updates (789 online, 3,844 manual). He also stated this time period showed 5,771 active company licenses, 241 active school licenses, and 124,923 active individual registrants.

Sherrie Zgabay next addressed the Board regarding an update on security at the 2011 Super Bowl being held in Arlington in February 2011. She stated that some members of the Private Security industry will remember the volume of work involved in Texas hosting the Super Bowl from the 2005 event. She stated that because of that they are working with Florida Safe Management in readying all security for this event. She also stated the Department of Public Safety recognizes that this stadium is a critical infrastructure, and as such will require a lot of coordinating on all levels. She stated the bureau's role with Florida Safe Management has been to ensure they understand all of the rules and regulations for operating within the state of Texas. She went on to say it was her understanding that FSM has reached out to several members of ASSIST and enlisted their help in providing security for this event. The licensing and registration service has been developing teams to work the applications for this event while continuing normal business. Chairman Chism asked if the security company Florida State Management has obtained a company license for this state and if they were in the process of registering their individuals. Ms. Zgabay informed him that they had already obtained their company license and the licensing and registration service had already received several packets and were processing them. Board member Doris Washington asked what type of on the spot

inspections were in place to inspect the security for the event. Ms. Zgabay stated that she did not oversee that portion, but rather that Lieutenant Park would be informing the Board of that portion.

Lieutenant Park next addressed the Board. He stated that during an inspection of Platinum Security on September 19th at the Chicago Bears vs. Dallas Cowboys football game, there were 46 guards inspected with zero violations. He also stated that the compliance and enforcement service had developed an excellent working relationship with Ron Underwood who is the representative to the Dallas Cowboys for NFL security. Sergeant Whitworth cultivated the relationship with Mr. Underwood and the service is able to obtain field passes for inspections at any time. Lieutenant Park then read a list of vendors for Platinum Security who will be working the Super Bowl event: Texas Star Security Incorporated (stationed at the league hotel- Hilton), D and L Entertainment (Commissioned, non-commissioned and off duty police officers stationed at the NFL Experience located at the Dallas Convention Center), Innovative Solutions (non-commissioned guards stationed on the grounds of the Dallas Cowboy Stadium), Platinum Events (non commissioned guards stationed on the grounds of the Dallas Cowboy Stadium), Ameritex Guard Services (stationed at the media center at the Dallas Sheraton), Whelan Security Company (stationed at the media center at the Dallas Sheraton), Point to Point Global (stationed at both the stadium and the NFL Experience located at the Dallas Convention Center), and Kent Security of Texas (stationed at the NFL Experience located at the Dallas Convention Center). Lieutenant Park then presented the Investigation statistics for District A to the Board. He stated there were 378 violations investigated for the third quarter, 6/1/10-8/31/10. He further stated there were 4 cases of operating with an expired license, 1 case of operating with a suspended license, 25 cases of operating without a license, and 10 cases of failure to register employees. He went on to say there were 4 cases presented to prosecutors during this time period.

Lieutenant Hunt presented the investigation statistics for District B to the Board. He stated there were 604 violations investigated for the third quarter, 6/1/10-8/31/10. He further stated there were 6 cases of operating with an expired license, 1 case of operating with a suspended license, 30 cases of operating without a license, and 21 cases of failure to register employees. He went on to say there were 28 cases presented to prosecutors during this time period. Chairman Chism asked if the Bureau got involved in the investigation going on with the Fort Ben Sherriff's office. Lieutenant Hunt stated that they were made aware of the investigation and made contact to offer their help, but have not been taken up on that offer. Chairman Chism asked if an arrest had been made in that case, to which Lieutenant Hunt stated he did not have that information.

Steve Moninger was the next person to address the Board. He stated there were currently no rules pending for publication or before the Public Safety Commission regarding private security. He stated there were three rules to go before the PSC, but they were pulled down and would be discussed at the current meeting. He went on to say that the pending amendment to rule §35.46, adding Class A misdemeanor assaults to the list of "related offenses," is being held and will be brought before the PSC at such time as there are more rule changes to be made pending the outcome of the current meeting.

Wayne Mueller addressed the Board regarding the changes in the Private Security Bureau to the Regulatory Licensing Division. He began by stating that he would be giving the Board an

update on what he means when he says Regulatory Services Division and gave a broader scope of the vast changes within the agency, not only to private security but other regulated services. He stated that back in April 2009 he took over as Assistant Chief for Valerie Fulmer and stated there was a plan in place to make significant changes within the agency to restructure the regulatory programs. He went on to say that he assured the Board at that time that they would not be losing a Bureau so much as gaining an entire Division, and he was happy to show the Board this had indeed come to fruition. He began his slide show presentation by showing the 5 regulated bureaus that became the Regulatory Services Division: Concealed Handgun Licensing, Private Security, Narcotics Registration and Regulation, Metals Registration, and Vehicle Inspection Services; and that they fall into three services: Licensing and Registration, Compliance and Enforcement, and Operations and Shared Services. He stated that while there are some nuances specific to each bureau, the basic work for each is the same: licensing, compliance and investigation, and administration. The first step, he stated was to reorganize the work into like processes. The next step was to identify the employees and place them with their particular skill sets. Next is to rely on the existing technology and updating where needed. Once all of that is accomplished it should leave the division in a transparent, easy to understand manner.

He stated that the management of the division was as follows: RenEarl Bowie as Assistant Director with himself, Wayne Mueller, Deputy Assistant Director. Also on the Executive management team are Lori Periman, who oversees Operations and Shared Services, JoJo Heselmeyer, who oversees Licensing and Registration, and Major Bob Burroughs, who oversees Compliance and Enforcement. Along with this executive team the division is assisted by the budget analyst who works through Accounting, as well as the Office of Regulatory Counsel who is a subset of the Office of General Counsel, but works specifically with this division.

He went on to say that Major Burroughs has been with the department for over 20 years, working in the Drivers License Division, Motor Carrier Bureau, and Vehicle Inspection Bureau. He brings a wealth of experience to handle all activity coming into compliance and enforcement, both criminal activities as well as administrative enforcement activity. Within the Service will be the Regulatory Crimes Bureau. This bureau houses all of the private security and vehicle inspection commissioned officers. He stated they will concentrate their efforts on investigations involving criminal activity such as fraud in the inspection stickers and unlicensed activity in the private security area. Another bureau under CES is Audit and Administration. This bureau, he stated, currently has 196 civilian auditors who currently inspect vehicle inspection stations, but in time, with cross-training, will begin to do private security company audits as well. Finally, he addressed the functions of the compliance support bureau. This bureau will oversee all of the administrative enforcement, such as monetary fines and license suspensions.

Mr. Mueller then introduced JoJo Heselmeyer, stating she also had over 20 years experience with the Department in Drivers License, Motor Carrier, and Vehicle Inspection. He stated she did incredible things in the Vehicle Inspection Bureau cutting the fat and reducing the number of FTEs needed to do the job. She is in charge of the processes for 1000s and 1000s of licenses in private security as well as concealed handguns. He also introduced Lori Periman, stating she came to the Department last year with a broad resume, having been a network engineer for several years. He also stated she holds an undergraduate degree in management as well as a law

degree. She is tasked with consolidating the process as well as heading the process improvement team who will constantly be going over the current processes and tweaking them to find the most efficient way of doing things.

Mr. Mueller stated the question now was what this will accomplish. He stated the acronym he tells his staff is LENS: lean, efficient, nimble, and scalable. Lean is eliminating cost redundancy. As an example he stated that when the division was first brought together, he had one program that needed their applications and correspondences scanned into electronic form and had contracted with a vendor to do this at X dollars. He had a second program that also needed scanning of documents and contracted with a different vendor at Y dollars. He had a third program in need of scanning and had not contracted with any vendor. He stated that by bringing them all together with one vendor there was a significant cost savings. He stated efficiency occurs in identifying the processes, whether processing licenses for private security, concealed handguns, or vehicle inspection. The core work is the same and by bringing everyone together to assist in processing will gain efficiency for the division. He continued by saying the division needs to be nimble or agile. The Division cannot be slow to react to surges in the industries. He stated the best example of this is what occurred in the concealed handgun bureau in December 2008 and the first half of the year in 2009. That bureau had an unprecedented level of concealed handgun applications which they weren't prepared for and it paralyzed that bureau. The staff worked tirelessly to dig out of that whole. He stated the Agency was not prepared to provide resources or help necessary to get out quickly enough and didn't react quickly enough to the needs of their customers. Finally, he stated, by being lean, efficient, and nimble the division will achieve scalability, meaning being able to grow. If and when the legislature decides the division needs to take on any other regulated services, the division will be ready for that.

He completed his presentation by stating that they did not lose a bureau so much as gain a division. Private Security went from having 15 employees processing applications to 53 employees, all working together to process applications for the division. He stated that on the enforcement side, private security went from a handful of officers to an army of 196 field officers who will be doing inspections for the division. He introduced Jessica Islet, who he stated, would address the problems and solutions with CLIPS, which is not an adequate program and outdated.

Jessica Islet, with the IT Division of the Texas Department of Public Safety, next addressed the Board. She stated her primary responsibility was as resource manager for a team of software developers that supports the Regulatory Services Division as well as the Driver License Division. In addition to this, she stated, she is assigned as the program manager to work with the executive team of RSD to do long-term technological strategic planning according to their business plans. She stated they are aware of several areas of high interest and critical needs for the industry, such as the unworkable pocket cards. Another area being identified as a potentially great benefit is the ability for profession heads to be able to do online self management of their staff and online certification for managers. The problem, she stated, is that the division is working with a system with outdated software. It is not scalable, and is using unsupported technologically due to the age that it is. She stated it could be patched and modified to provide the logic that is required to meet those needs; however it would be a risk. By doing this, it would be a risk of doing more harm than good and possible causing a system crash.

She went on by saying the Department's IT department has set up programs for each major section or bureau within the Agency today. The primary responsibility of the programs are to develop the right partnerships between Information Technology and each major business unit to work on, from an agency strategic level and enterprise level on how they can get the agency's technology road mapped and up to date.

One of the first things the program did was come up with a program definition: to provide a complete regulatory licensing IT solution that inspires confidence in regulatory data systems and enable the division to be proactive in providing critical data analysis and services to regulatory program oversight, citizens, constituents, and stakeholders, and law enforcement. She stated that in order to achieve this goal, they set up the following program objectives:

- allow for scalability,
- support a process driven organization
- support continuous process improvement
- provide quality and trusted metrics for RSD management and stakeholders and DPS executives
- improve cost effectiveness
- enhance regulatory services capabilities through automation
- enhance regulatory services customer experience through technological capability improvements

She stated that when each of the bureaus came together, each was working with their own systems and many of them are very out of date. As things are now there is limited data sharing across departments, duplicate data stored across departments, multiple systems increasing expenses, different data formats across systems, and most of them are manual processes that require much human intervention. The way the division is working to bring it together is to have one system for the division, with one data source. The division wants to have a service based model where these services can talk to all of those external entities and provide self service capability to the end users. That is all based on a work flow engine that is easily modifiable with a much quicker turnaround time. Historically, she stated, the agency has only provided quick fixes to problems due to budget constraints. She stated that with the new executive management team in place and with the changes they are implementing, the division has been able to do things the correct way. (please refer to "roadmap" slide/handout for specifics) The division's phased solution delivery model is: 1) planning delivery based on priorities, 2) usable services over time, 3) integration with existing data sources, and 4) taking advantage of agency enterprise architecture.

She finished by answering questions. Vice-chairman Johnsen asked to revisit the "roadmap" slide/handout and asked if the information was representing things that have been completed. Jessica stated that the items completed are: TORVET communications System, Private Security Board Application Enhancements, CHL Instructor Training online-Interim, CHP (CHL) TXOnline Application Re-write, Concealed Handgun/Identix Fingerprint Project, and Regulatory License Application Shared Services and Common components. Items that have been implemented, but that are not yet complete are: New application for Narcotics Regulation Bureau, Metals E-pay and Administrative Rules Enhancements, and RS Requirements for a Shared Solution. The remaining items are planned, but are not yet approved. Mr. Johnsen stated

that it was his understanding that new equipment would be needed to accommodate this and asked if the new equipment had been purchased yet. He stated it was a \$60million dollar funding for new computers and programming. Jessica stated that she did not know the specifics of the budget, but was aware of a new mainframe that had been purchased and is in use. She also stated there is a blade center that has a lot of powerful servers that have the same capabilities as a mainframe. She further stated a lot of hardware and software have been put in place to be used by the agency, with more to come. Vice-Chairman Johnsen stated it was the board's understanding that once this hardware and software was purchased it would have the capability of issuing pocket cards. Jessica stated that it depends on the business role and technological requirements to address, those without driver license photos on file with the agency. Another consideration is contract negotiations with a licensed production vendor to be able to send them all of the data and have them provide the cards. Vice-Chairman Johnsen asked if there were a time-line on this, to which Jessica stated it would be sometime by September 1, 2011 assuming all goes as is planned. She stated there is a lot to work out such as the images having to be a certain resolution, size, etc. Board member Crenshaw asked if the Private Security Board is the only board or commission the division has to work with. Wayne Mueller responded that there is an advisory board for the vehicle inspections bureau that the division would give information to, but not in the same capacity as the private security board. He also stated the division is seeking input from their stakeholders in the different industries as well. Vice-Chairman Johnsen thanked them for the information they provided. As this is an ongoing project, he stated, he and the rest of the board would be appreciative of ongoing updates more often than once every three months.

Agenda Item III: Report from Private Security Board's Advisory Committee.

Secretary Mark Smith addressed the rest of the Board regarding topics the Committee was charged with discussing and developing. He stated the Committee would address the board on each topic as it appeared in the Agenda; items V, VII, and IX. He further stated that one topic not listed on the Agenda was how to classify the resident alien cards. He stated the cards he had seen stated permanent resident card. Being that the government changes its terminology so often, the Committee and Board Attorney, Steve Moninger, decided to come up with a generic term to use when referring to this type of card. Mr. Moninger stated that the issue of which term to use would also be addressed at each agenda item.

Agenda Item IV: Discussion of the Texas Attorney General's opinion, GA-800, as it relates to Repossession Services and Private Security.

Steve Moninger addressed the Board regarding the recent Texas Attorney General's opinion. He began by stating the Board requested an Attorney General opinion regarding the scope of exception for repossession agents as stated in 1702.324. He went on to say that this exception has been in place for 20 something years and was put in place when the statute regulated private investigators and security guards; locksmiths weren't required to be licensed until 2003. He stated the question had arisen whether repossession agents were exempt from locksmith requirements. As examples, he gave the case of an agent going to a house and being asked to rekey the door for the benefit of the bank foreclosing the property, or the case of a vehicle being repossessed and the yard retaining the vehicle having an onsite electronic key making device for making keys. He stated the AG found that the exemption is broad and does include locksmith

services. The AG also found that if the services of repossession require locksmith services to be performed then the repossession services are exempt, but only if the locksmith services are necessary to the actions of a repossession agent.

Chairman Chism asked if this meant that if his car was repossessed then the agent can do whatever they needed to gain access to the vehicle, but they could not rekey his home at the same time. Mr. Moninger stated that was correct. Vice-chairman Johnsen asked if a vehicle is sitting somewhere and they have a key they can repossess, but if an ignition system requires more manipulation in order to move the vehicle, would they need a locksmith license? Mr. Moninger answered that the question becomes what is related to the services of repossession. Do you step over the line if you fabricate a key of the vehicle you are repossessing and do you need a locksmith license or is that a critical part of being a repossession agent? He stated that the AG's opinion suggested that the Board clarify this point; "we suggest that it (PS Board) make appropriate determinations about the locksmith services or other security services that are 'directly related to and dependent on the provision of' repossession services."

Vice-chairman Johnsen stated that the Board would need to understand the new function of the key these days, as vehicles have much more sophisticated systems than just turn the key and the car going. He stated that he thought it would probably require equipment only available through locksmiths and most wreckers do not have such equipment, but would have to hire someone to accompany them and then that person should be licensed. Mr. Moninger replied that that was part of the question posed to the AG's office: if a wrecker company does have such equipment, do they need to be licensed. He went on to say the bureau was confronted with a situation where someone did have an electronic key making device, where he entered the Vehicle Identification Number and the machine would make an electronic key as a dealership could. It was the individual's argument that it was necessary for him to have that equipment in order to do repossessions. Mr. Moninger further stated that what was needed was some clarification from the Board for enforcement purposes. Vice-chairman Johnsen stated he felt that the line would be drawn at whether or not they own the equipment. He stated that if they did own the equipment and used it for the sole purpose of repossession that would be non-licensed. However, he stated, if the company did not own the necessary equipment and needed to hire someone for those purposes, then they would need to hire a licensed locksmith unless it is a dealership. Mr. Moninger added that if they did own the equipment and decided to sell the service outside the scope of repossession, they would also need a license. He continued by saying this would require more discussion before a rule could be drafted and voted on by the Board.

Board member Washington asked what the frequency actually was where this type of equipment was used. She stated that a company could tow a vehicle without any key whatsoever, is the making of keys for repossession really used often. Mr. Moninger stated he did not know how often such a service is used. Vice-chairman Johnsen stated that it happens more often than one would think. He went on to explain that once the vehicle is repossessed and it arrives where it needs to be, they have to have a key made for the vehicle. Chairman Chism directed the Board's Advisory Committee to look at this issue for the next Board meeting.

Chairman Chism called for a 10 minute break at 10:13am.

Chairman Chism called the meeting back to order at 10:30am.

Agenda Item V: Discussion and possible action relating to proposed amendment to Rule §35.142, “Application for a Security Officer Commission”, repealing reference to obsolete “Level 1: course”; allowing for electronic fingerprint submission; updating requirements for non-citizens and non-Texas residents; allowing for use of Drivers’ License photos upon development of Department interface.

Steve Moninger presented this rule to the Board. Mr. Moninger stated that the original thought was to only take out the reference to Level I, as stated in the rule, but as the committee and staff began looking at this rule it was decided that modifications were needed relating to drivers licenses and ID cards for out of state residents who are licensed. He also stated that the federal issue on part 6 of the rule was to ensure they are qualified to possess a hunting license or any other license under federal law.

Secretary Mark Smith stated the advisory committee originally wanted any government issued ID to qualify as adequate documentation to apply to be a registrant. However, in speaking with staff it was explained that the new system with the driver’s license being part of the pocket cards for those in the security industry, the committee went back to saying people should have Texas license or id or proof of having applied for one because they shouldn’t have to wait for 90 days. He went on to say that with the military id, there are so few occurrences per year that they could each be dealt with individually.

On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to accept the amendments to this rule as written.

Agenda Item VI: Discussion and possible action relating to proposed amendments to Rule §35.186, “Registration Applications”, addressing the acceptance of electronic fingerprints and striking the reference to Level I certificates (which are no longer required), updating the requirements for non-citizens and non-Texas residents, and requiring the applicants provide court documents when requested.

Steve Moninger presented this rule to the Board. He stated the issues in this rule were similar to the previous rule discussed with the exception of there being no reference to the federal firearms law and section 5 was added to provide court documents upon request of the Department. He stated this was already stated in the statute 1702.282, but this further articulates the rules.

On a motion made by Secretary Smith and seconded by Board member Washington, the Board voted unanimously to accept the amendments to this rule as written.

Agenda Item VII: Discussion and possible action relating to proposed Rule §35.187, “Renewal Applications”, clarifying the Board’s interpretation of the statutory requirements relating to renewal applications, including the effect of the one-year grace period for submission of a renewal application following expiration, the prohibition against performing regulated services during such period, and the requirement of fingerprints submission at renewal.

Steve Moninger presented this rule to the Board. He stated this was a new rule drafted to articulate existing policy as well as provide new policy. He stated that section 4 of this rule was the area that should be considered most by the Board. The attempt with this section, he explained, was to clean up the PSB database. He went on to say there are some people who are currently licensed who are not eligible, but have slipped through the system because they have been grandfathered in. These individuals are not having their criminal histories checked upon renewal nor are their fingerprints on file, so there has been no way to check their out of state or federal offenses. He further stated that the previous two legislative sessions have seen the statute change regarding eligibility criteria, but the body of the licensees has not been reviewed. The theory of this provision is to check everyone’s eligibility once upon their first renewal following the date of this rule.

Chairman Chism pointed out that section 4 of this rule stated “the first renewal following the effective date of this rule”, but it was his understanding that there were some negotiation with the advisory committee previously that it should be re-written to read, “the first renewal following September 1, 2011 or all Level III and Level IV registrants”. Vice-chairman Johnsen stated that this was only to refer to commissioned officers, body guards, personal protection officers; essentially anyone carrying a weapon. He went on to say that section 4 of the rule should be modified to refer to commissioned officers, beginning September 1, 2011. Then at that time, the Board and staff would have an idea of the impact of having this completed. Secretary Smith asked if he was correct in understanding the provision as once this is done, with a \$25 fee and new fingerprint cards submitted for FBI, new applicants would not be subjected to this same provision upon renewal. Vice-chairman Johnsen stated this if the board modified section 4 at this time, then the Board and staff would have time to view the impact of this, and as they move forward they would be able to make other changes as needed. He went on to say that eventually there will be a “rapback”, meaning every time an applicant is arrested for a crime, it would be reported back to the Department and therefore there would be no need for additional fingerprints to be submitted. AD Bowie stated that Vice-chairman Johnsen was correct, as a “rapback” is a record of arrest and anytime an individual is arrested the Department would be notified. He also stated the Department currently had that function for this state only, but eventually would receive “rapback” nationally through NCIC. Vice-chairman Johnsen stated this was why the advisory committee decided that only the weapon carrying individuals would be subject to this at this time, and as long as the FBI’s time frame held up, there would be no need to subject other registrants to this process. AD Bowie stated that was correct assuming the FBI was on its target date and that the first set of fingerprints were viable upon submission.

Mr. Moninger asked for clarification regarding the \$25 fee for fingerprints to be submitted to the FBI. Vice-chairman Johnsen stated that the \$25 fee would stay in place. Chairman Chism stated that the fee would be required whether the Department had a set of viable prints on file or if the individual needed to submit a new set. Mr. Moninger stated that he would amend the rule to

reflect the changes discussed at this meeting and the Chairman could confirm that the changes did adequately reflect the intention of the Board.

On a motion made by Vice-chairman Johnsen and seconded by Board member Washington, the board voted unanimously to accept this rule as would be amended to reflect the discussion of the Board during the current meeting.

Agenda Item VIII: Discussion and possible action relating to proposed amendments Rule §35.292, “Requirements for Continuing Education Courses”, striking reference to specific fee amount for annual license fee assessed to continuing education school, in response to previously adopted changes to Rule §35.70 on “Fees”.

Steve Moninger presented this item to the Board. He stated this rule was before the Board previously, but the fee needed to be modified to reflect the same fee already adopted in the Fee Rule §35.70. He further stated that to make Rule §35.292 less confusing the reference to fees was taken out of this rule.

Michael Samulin, with TBFAA, asked to address the Board on this rule amendment. He stated there were concerns regarding the fee for continuing education schools going up from \$0 to \$350 and \$100 for the instructors, along with proper insurance, and background checks on the instructors. He stated that usually these continuing education courses are provided at no cost to the students, in an effort to make the process as easy as possible, but this change may force the instructors to have to charge. He further stated the schools are the ones responsible for keeping records on the students and courses taken. He stated the only time the Department gets involved is when there is an audit of the school. A modest fee, he went on, was fine, but many did not think that \$350 was acceptable. Finally, he stated that the industry representatives would like to see the exact wording of rule changes before they are presented to the Board during open meetings, to give everyone a chance to consider what will work best for the industry.

Vice-chairman Johnsen asked if he received the information prior to the meetings when he sat on the Board. Mr. Samulin stated that the Board members did receive the information previous to the meetings and tried to get the exact language out to the groups for discussion as a way to educate the industry of changes. He went on to suggest that the rule changes be posted on the PSB website prior to the meeting.

Board member Crenshaw stated that this rule was visited a few meetings back, and he remembered the problems discussed during that time. He suggested the rule be tabled for this meeting and that it be discussed by the advisory committee along with members of each of the associations. Chairman Chism stated that the reference to fees had been stricken from this rule, so there would be no reason to not approve this rule as written, and have the advisory committee look at Rule §35.70 for changes instead.

Board member Washington asked Mr. Samulin if the industry were to receive the proposed rule changes prior to the meetings, what they would do with their concerns. She asked if they would then suggest alternate changes to the advisory committee. Mr. Samulin stated that he believed that was the requirement after the Sunset Commission’s recommendation for negotiated rule making during the last session. He went on to explain that negotiated rule making means that those who are affected by the rules must have the opportunity to be part of the process. Mr.

Samulin further suggested that when rules come up for discussion within the advisory committee, it may be a good idea to always include members of the industry for their input resulting in the language of the rules being worked on together. As it is presently, he continued, it seems that it is the Board and Staff making the changes and the industry is not having a say before things go to the board for voting and adoption.

Chairman Chism pointed out that the discussion of fees and continuing education schools have actually been in discussion since 2004. He stated it has been the discussion of two-thirds of the meeting since then. He stated he had a committee put together consisting of industry members in 2004 that discussed these things and agreed with it. He stated it was his recommendation that the advisory committee discuss this issue and include members of the industry in the discussion.

Mr. Samulin again addressed the Board stated that often times rules are brought before the Board, a motion is made and seconded and then the rule is passed. He pointed out that some boards of the past would have a discussion portion during the rule consideration that would allow members of the industry to give input before a decision was made. He stated he, and several other members of the industry, would like to see that happen again. He went on to say that in negotiated rule making by the Sunset Commission, it is important for those being directly affected by the rule changes to be part of the process both on the front end as well as the back end, and this would give the opportunity for those who haven't received a previous chance to also be part of the decision making.

On a motion made by Vice-Chairman Johnsen, and seconded by Board member Washington, the Board voted unanimously to accept the amendments to this rule as written.

Agenda Item IX: Discussion and possible action relating to proposed Rule §35.211, referring to substitution of locksmith training course completion for experience requirements, pursuant to §1702.105 (Occ. Code).

Steve Moninger presented this item to the Board. He stated he was asked to prepare, in rule form, the recommendations of the advisory committee regarding the training requirements for locksmith companies. He further stated that this began with the idea that the locksmith industry should have similar substitutions for experience requirements as are currently in place for investigators, so he patterned this rule after that. However, he stated, subsection (2) of this rule was legally problematic as it refers to specific private associations and therefore delegate authority to them rather than the Board. His suggestion was to strike the reference to these associations. Vice-chairman Johnsen stated he was part of the discussion and this rule was made with the approval of the locksmith industry. However, he continued, in knowing that the proper parameters were not set in which to draft this rule, his recommendation would be to pass it back to the advisory committee to re-draft the rule.

On a motion made by Vice-chairman Johnsen and seconded by Board member Crenshaw, the Board voted unanimously to table further discussion of this rule and refer it to the advisory committee for further recommendations.

Agenda Item X: Discussion and possible action relating to pocket card requirements for all persons doing alarm or lock work in detention centers and hotels (presented by Chuck Foreman).

Chuck Foreman presented this item to the Board for discussion. Mr. Foreman stated that he wished to see pocket cards issued and used by everyone working on detention centers whether private, city, state or federal. He stated he has had experience working with other companies, being project manager in these facilities. Unfortunately, he stated, the interaction between the inmates and trustees is a safety issue that needs to be addressed. He went on to say that all individuals sent to work in these facilities should be required to have a background check done and carry some sort of picture identification. Mr. Foreman stated that through his research as to why this is not currently being done, he feels that it comes down to terminology as to what is considered a security system and what isn't. He stated that integrated systems should still be considered a security system, even though they pick and choose what electronics are in the system. He also stated that he would like the board to not only require background checks and pocket cards on those working with the security systems, but also see some regulation as to who works on the cell locks as well. Currently, he pointed out, this work is not done by licensed locksmiths.

Vice-chairman Johnsen asked if the modifications and installs being performed were being done by Texas based companies or national businesses. Mr. Foreman stated, to his knowledge and experience, the companies are Texas based. He went on to say that there are new facilities being built as well as older facilities being modified. He also stated there are the combination jobs, where new facilities are being built next to existing facilities and what is happening is that the companies are using trustees to cut down on the labor costs. At one point, he continued, there was an occurrence of a trustee running off from the facility. Mr. Chism commented that that issue would be handled by the Sheriff's department. Mr. Chism also asked Assistant Director Bowie if there was someone to investigate this issue further. Mr. Bowie stated he would like to see Mr. Foreman speak to the Lieutenants regarding this issue and further investigation.

Mr. Foreman finished by stated that he would also like the Board to look into hotel locks within hotels. He stated that he was aware that lock work needed to be completed by a licensed locksmith, if not done by an in house handyman, but he was not sure that the information is being received by the hotel owners. He went on to say he has firsthand knowledge of one person running four hotels in the state of Texas who was not aware of these rules, and wonders how wide spread this lack of knowledge goes. Hotel owners and general contractors should be aware of the need for out of state companies to use licensed locksmiths to do the lock work in these places. Chairman Chism stated that he would like for this issue to be discussed with the Lieutenants and investigated as well.

Agenda Item XI: Public Comment

Bob Burt-, president of ASSIST, addressed the Board. He commented that his concern was with Rule 35.187, section (b). He stated that the concern was that an individual whose pocket card has expired be treated as a new hire would be. In doing the new hire paperwork, he pointed out, the company has 5 days to submit the paperwork but can still allow the individual to work during this period. He stated that he hoped it was the same for an employee who is renewing their

license and that they be allowed to work while going through the paperwork process. His second comment was regarding electronic fingerprinting. He stated they were in favor of electronic fingerprinting, but pointed out that it should not be relied upon as the sole way of fingerprinting, especially in the rural areas, where it can take days to schedule an appointment to have them done.

Secretary Smith stated that until such time as electronic is the only means available, the manual fingerprint cards would still be accepted. Board member Washington pointed out that in the real estate industry, electronic submission is the only way that fingerprints are accepted. She also stated that she sees it eventually going to electronic means for everything, and until everything is done electronically the processes will continue to be slower than wanted.

Bonnie Brown Morse-, president of Locksmith Association of San Antonio, addressed the Board. She began by thanking Deputy Assistant Director Wayne Mueller for his overview of the changes to the division. She also stated that one concern she still had was that with the increase of personnel and the cross-training involved, the staff may not be as well trained in the differences between the five areas. She went on to say she still has concerns regarding the electronic fingerprinting. She stated that while she understands the desire and need to go paperless, it is unrealistic. She stated she lives in San Marcos, which is not far from Austin, but that city does not have a location in which to have electronic fingerprints taken. She wished for the board to keep this in mind when requiring electronic means for fingerprinting. Her third point of concern, she stated, was regarding pocket cards and the continuing education requirements and renewals for each. As an example, she asked, if a person were licensed as a locksmith, an alarm installer, and an electronic access control installer, while each has a different requirement for the number of hours of continuing education, which would be accepted? Would it be the greatest number of hours, the total number of hours, or somewhere in between? Also, since each card was received at a different time, would each card have different renewal dates or would they all renew at the same time.

Susan Griswold-, representing ASSIST, addressed the Board. She stated that her concern was with the Board passing the amendments to Rule §35.186 (3). The language "Level I" was stricken from the rule, but on the application includes alarm installers and registrants who are required to submit the Level I certificate. She suggested that the language be changed to say "Level I and/or Level II" in order to comply with both the alarm and guard sides of the industry. The second issue she discussed was concerning continuing education. She stated that in 2008, ASSIST went to the Board and asked that the continuing education training for their officers be approved. She stated it was approved and changes to the rules have been made but there has not been a designation made as to the hours. A Level II is 8 hours, Level III is 40 hours and Level IV is 40 hours. She went on to say that in teaching the Level II course over the last few months, it really does not take more than 6 hours to teach the required curriculum. She stated it was her opinion that the rules should state a certain number of required hours.

Rodney Hooker-, vice-president of TBFAA, addressed the Board. Mr. Hooker stated TBFAA held its annual convention in Galveston recently and was appreciative of the attendance of Chairman Chism, Board member Crenshaw, and Assistant Director Bowie.

At 11:28 am, Chairman Chism called for a lunch break. With only 3 items left on the Agenda, he decided to reconvene the meeting at 11:29 am.

Agenda Item X: Administrative Hearings on Licensing and Disciplinary Contested Cases

Sarah Carnes-Lemp presented the Hearing cases to the Board.

Terry Pollard- Docket No. 005832010

Mr. Pollard was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Pollard's application for licensure as a non-commissioned security guard was denied based on a Class A misdemeanor conviction for Mob Action. He was sentenced to three years probation/community supervision, which was completed on October 25, 2007. The denial was based on three allegations: 1) the offense is related to private security and that the conviction is therefore disqualifying for five years from the date of the completion of the sentence; 2) if the offense is not related, the conviction is disqualifying for five years from the date of the commission; and 3) that Mr. Pollard is ineligible for the license because he failed to disclose a material fact on his application, viz., the above-referenced Class A misdemeanor conviction. SOAH found that the Department did not establish that the misdemeanor conviction was either related to security or that it was a Class A misdemeanor. However, they did find that Mr. Pollard's failure to disclose this conviction on his application was a material misrepresentation and sufficient grounds for the denial.

Secretary Smith made a motion to uphold SOAH's decision to deny Mr. Pollard's application as a non-commissioned security guard. Vice-Chairman Johnsen seconded the motion, and the Board voted unanimously in favor of the motion.

Mark Ugarte- Docket No. 007592010

Mr. Ugarte was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Ugarte's application for registration as an alarm systems installer was denied based on his conviction for the Class A misdemeanor offense of Assault Causes Bodily Injury – Married. Following a hearing on the merits, SOAH found that the Department has the legal authority to deny the application, but recommended that it exercise its discretion in granting the registration.

Board member Crenshaw made a motion to deny Mr. Ugarte's registration as an alarm systems installer. Vice-chairman Johnsen seconded the motion, and the Board voted unanimously in favor of the motion.

Ricardo Munoz- Docket No. 00322010

Mr. Munoz was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Munoz's application for registration as an alarm salesperson was denied based on the following convictions: 1) Felony Escape, and 2) Class A Misdemeanor Failure to Identify Fugitive Intent to Give False Information. Following two separate hearings at which Mr. Munoz failed to appear, SOAH granted the motion for default and found that Mr. Munoz's application should be denied based on his prohibitive criminal history.

Board member Washington made a motion to uphold SOAH's decision to deny Mr. Munoz's application for registration as an alarm salesperson. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Dave Armstrong- Docket No. 005842010

Mr. Armstrong was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Armstrong's security officer commission was revoked based on his conviction of Aggravated Assault and Battery. Following a hearing at which Mr. Armstrong failed to appear, SOAH granted the motion for default, and found that Mr. Armstrong is federally disqualified from possessing a firearm, and is therefore not eligible for the commission, and that the Department is authorized to revoke the commission.

Secretary Smith made a motion to revoke Mr. Armstrong's license as a Commissioned Security Guard. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Agenda Item XI: Executive Session (consultation with attorney) as authorized under §551.071, if necessary.

The Board did not take Executive Session at this time.

Agenda Item XI: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion. At 11:40 am, the October 29, 2010 meeting of the Private Security Board was adjourned.