SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 211.16. *Establishment or Continued Operation of an Appointing Entity*.
The proposed amended rule would require law enforcement agencies to adopt a policy relating to polygraph examiners.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 211.16. *Establecimiento o continuidad de las operaciones de una entidad designante.*
La norma enmendada propuesta exigiría a los organismos encargados de hacer cumplir la ley que adopten una política relativa a los examinadores de polígrafo.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.16, Establishment or Continued Operation of an Appointing Entity. This proposed amended rule would require a law enforcement agency to adopt a policy on polygraph examiners used by the agency for certain types of polygraph examinations, as suggested by the Law Enforcement Polygraph Examinations Advisory Committee.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.318. There will be no anticipated economic costs to persons required to comply with the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed rule.

Mr. Beauchamp has determined the following:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not limit or repeal an existing regulation, but does expand an existing regulation by requiring the adoption by a law enforcement agency of a policy on polygraph examinations;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission is requesting comments regarding the proposed amended rule and information related to the cost, benefit, or effect of the proposed amended rule, including any applicable data, research, or analysis, from any person required to comply with the proposed amended rule or any other interested person. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments and information may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, and Texas Occupations Code §1701.318, Certification Required for Peace Officers to Conduct Polygraph Examinations. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.318 requires the Commission to adopt rules prohibiting a peace officer from conducting certain polygraph examinations unless they have completed Commission-approved training and allows the Commission to establish minimum requirements for the training, testing, and certification of peace officers to conduct certain polygraph examinations.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, and Texas Occupations Code §1701.318, Certification Required for Peace Officers to Conduct Polygraph Examinations. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§211.16. Establishment or Continued Operation of an Appointing Entity.
(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law enforcement agency, the agency must provide evidence that the agency:
(1) provides public benefit to the community;
(2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the agency;
(3) has physical resources available to officers, including:
(A) at least one firearm per officer on duty;
(B) at least one less lethal force weapon per officer on duty;
(C) effective communications equipment, specifically:
(i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point,

acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and

(ii) at least one radio communication device or cell phone device for any other officer on duty who may have contact with the general public;

(D) at least one bullet-resistant vest per officer on duty with vest panels that:

(i) have been certified as compliant by the National Institute of Justice (NIJ);

(ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and

(iii) have never been shot or otherwise compromised;

(E) access to at least one breaching tool and one ballistic shield;

(F) for agencies with primary jurisdiction over a school district or open-enrollment charter school, one breaching tool and one ballistic shield available at each campus;

(G) at least one uniform per officer whose duties include any of the following:

(i) performing patrol;

(ii) courtroom security;

(iii) traffic enforcement;

(iv) responding to calls for service;

(v) assigned to a controlled access point;

(vi) acting as a visual deterrent to crime;

(vii) warrant execution; or

(viii) service of civil process;

(H) at least one motor vehicle owned and insured by an agency created on or after June 1, 2024; and

(I) patrol vehicles provided to officers whose duties include either performing patrol, traffic enforcement, or responding to calls for service that:

(i) are owned, insured, and equipped by the agency; or

(ii) may be personally owned for agencies in existence before June 1, 2024, that have not provided agency-owned patrol vehicles from June 1, 2024, to the present;

(4) has physical facilities, including:

(A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following:

(i) performing patrol;

(ii) traffic enforcement;

(iii) criminal investigations;

(iv) responding to calls for service; or

(v) executing search or arrest warrants;

(B) a dispatch area for any agency appointing and employing telecommunicators; and

(C) a public area including written notices posted and visible 24 hours a day explaining:

(i) how to receive the most immediate assistance in an emergency;

(ii) how to make a nonemergency report of a crime; and

(iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone;

(5) has policies, including policies on:

(A) use of force;

(B) vehicle pursuit;

(C) professional conduct of officers;

(D) domestic abuse protocols;
(E) response to missing persons;
(F) supervision of part-time officers;
(G) impartial policing;
(H) medical and psychological examination of licensees;
(I) active shooters, including a detailed written policy based on current best practices for responding to an active shooter incident at a primary or secondary school facility and a recommendation for the frequency at which simulated emergency drills should be conducted;
(J) barricaded subjects;
(K) evidence collection and handling;
(L) eyewitness identification;
(M) misconduct investigations;
(N) hiring a license holder;
(O) personnel files;
(P) uniform and dress code;
(Q) training required to maintain licensure;[~~and~~]
(R) outside and off-duty employment; and
(S) polygraph examiners;
(6) has an assigned public information officer who must hold a valid public information officer certificate or must obtain the certificate within the first year of assignment, if the agency is:
(A) a municipal police department;
(B) a sheriff's office;
(C) a county constable's office;
(D) a school district police department; or
(E) the Texas Department of Public Safety;
(7) has an established administrative structure, including:
(A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel;
(B) a projection for the number of full-time peace officers, part-time peace officers, and reserve law enforcement officers that the agency would employ during the year if at full staffing; and
(C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) police department;
(8) has liability insurance for the agency and any vehicles used for agency purposes;
(9) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees; and
(10) any other information the commission requires.
(b) An entity applying to create a law enforcement agency is presumed to provide public benefit to the community if any of the following conditions are satisfied:
(1) the agency's chief administrator is an officer elected under the Texas Constitution;
(2) the agency is required by statute;
(3) the agency serves a municipality that contains a population of at least 10,000 people and the municipality is without an agency;
(4) the agency consists of investigators for a county or district attorney's office; or
(5) the agency serves a school district, open-enrollment charter school, private school, state institution of higher education, public technical institute, or private institution of higher education with an enrollment of at least 2,500 students.

(c) An entity applying to create a law enforcement agency may be found to provide public benefit to the community based upon a balance of the following factors:

(1) the unmet law enforcement needs of the subject community;

(2) a consideration of the presence of other agencies within the subject community, including but not limited to:

(A) the number and types of agencies that serve the community;

(B) the consistency of jurisdictional coverage to be provided;

(C) the unique law enforcement needs to be provided that are not already provided by another agency; and

(D) the ability of other agencies to provide the desired law enforcement services to the community through agreements or contracts;

(3) the desired law enforcement functions, roles, and responsibilities of the prospective agency within the subject community;

(4) a comparison of establishing an agency versus other options to address the desired law enforcement needs;

(5) the ability to provide continuity of law enforcement services;

(6) the provision of full-time versus part-time coverage;

(7) the staffing to be achieved by full-time, part-time, or reserve law enforcement officers;

(8) the ability to recruit and retain qualified licensees for appointment;

(9) the ability to recruit or retain a chief administrator;

(10) the ability to supervise, train, and develop licensees;

(11) the ability to fulfill administrative obligations required by law, including but not limited to:

(A) training compliance;

(B) maintaining required records in compliance with applicable laws;

(C) reporting compliance;

(D) appointment and separation processes;

(E) investigating and resolving allegations of misconduct; and

(F) policy development, implementation, and compliance;

(12) access to legal support and other supportive resources;

(13) oversight and support to be provided by the governing body;

(14) prior agency and governing body history with the commission; and

(15) any other factor the commission considers relevant.

(d) A law enforcement agency may be found to no longer provide public benefit to the community based upon a balance of the following factors:

(1) the relevant factors contained in subsection (c) of this section;

(2) the turnover rate of agency staff;

(3) the history and seriousness of the agency's audit and inspection deficiencies and violations;

(4) the history and seriousness of administrative and criminal misconduct of the agency's appointees;

(5) neglect of the agency's duties;

(6) lack of oversight or abuse by the agency's governing body;

(7) involvement in activities not related to the statutory purpose for the type of agency; and

(8) any other factor the commission considers relevant.

(e) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the creation and continued

operation of a new agency before applying to create a new law enforcement agency. This training consists of:

(1) an introduction to the new agency creation process that outlines the objectives, process, and timelines for creating a new agency;

(2) review and completion of the new agency workbook, including the gathering of required information and completion of required worksheets; and

(3) an in-person commission staff working group.

(f) After completing the required training, the entity may then submit the initial application for the creation of a new law enforcement agency by:

(1) submitting the current agency number application form;

(2) demonstrating that the prospective new agency would provide public benefit to the community and has sustainable funding sources; and

(3) outlining the prospective agency plan.

(g) If the executive director denies the initial application, the entity may appeal to the commissioners during a public meeting of the commission. If the commissioners approve the initial application, the entity may submit the final application demonstrating all requirements of subsection (a) of this section have been met.

(h) If the executive director approves the initial application, the entity may submit the final application demonstrating all requirements of subsection (a) of this section have been met.

(i) After submission of the final application, the commission will perform an inspection to confirm that the prospective agency meets the minimum standards for the creation of a law enforcement agency. If the minimum standards are met, a new law enforcement agency will be created.

(j) A denial of the initial or final application may include conditions which must be satisfied before an entity may reapply to create a new law enforcement agency.

(k) A law enforcement agency that no longer meets the minimum standards for the continued operation of an agency may be deactivated. Deactivation of an agency requires the separation of all licensees, including the chief administrator, and the revocation of the authority to appoint licensees.

(l) The governing body of an agency that has been deactivated must continue to maintain records required by the commission as prescribed by law and must report motor vehicle stop data for all years and partial years that elapsed prior to deactivation.

(m) An entity authorized by Local Government Code, §361.022 to operate a correctional facility to house inmates, in this state, convicted of offenses committed against the laws of another state of the United States, and appoint jailers requiring licensure by the commission, may make application for an agency number by submitting the current agency number application form, any associated application fee, and a certified copy of the contract under which the facility will operate.

(n) A political subdivision wanting to establish a consolidated emergency telecommunications center and appoint telecommunicators, as required by Texas Occupations Code, §1701.405, may make application for an agency number by submitting the current agency number application form, any associated application fee and a certified copy of the consolidation contract.

(o) The Texas Department of Criminal Justice - Pardon and Parole Division, a community supervision and corrections department, or a juvenile probation department may make application for an agency number if seeking firearms training certificates for parole officers, community supervision and corrections officers, or juvenile probation officers by submitting the current agency number application form and any associated application fee.

(p) All law enforcement agencies must complete and submit an annual report due between January 1st and March 1st of each year documenting their continued compliance with the requirements of this rule.
(q) The effective date of this section is January 1, 2027[~~September 1, 2026~~].