SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 211.29. *Responsibilities of Agency Chief Administrators*.
The proposed amended rule would prohibit a law enforcement agency from allowing a person without the law enforcement polygraph certificate to conduct a pre-appointment polygraph examination or from allowing a peace officer without the certificate to conduct a criminal investigation polygraph examination.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 211.29. *Responsabilidades de los administradores principales de la agencia.*
La norma enmendada propuesta prohibiría a los organismos encargados de hacer cumplir la ley permitir que una persona sin el certificado de polígrafo para agentes del orden público realice un examen de polígrafo previo a la contratación, o permitir que un agente del orden público sin dicho certificado realice un examen de polígrafo en una investigación criminal.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.29, Responsibilities of Agency Chief Administrators. This proposed amended rule would prohibit a law enforcement agency from using a person who does not have a law enforcement polygraph certificate to conduct a polygraph examination for a pre-appointment screening or from using a peace officer who does not have a law enforcement polygraph certificate to conduct a polygraph examination for a criminal investigation. This conforms with the requirements in Texas Occupations Code § 1701.318 made by Senate Bill 2180 (89R) and is recommended 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 prohibiting a law enforcement agency from using a person who is not a peace officer and who does not have a law enforcement polygraph certificate to conduct a polygraph examination for a pre-appointment screening;
(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.

§211.29. Responsibilities of Agency Chief Administrators.
(a) An agency chief administrator is responsible for making any and all reports and submitting any and all documents required of that agency by the commission.

(b) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 days of such appointment.
(c) An agency chief administrator must comply with the appointment and retention requirements under Texas Occupations Code, Chapter 1701.
(d) An agency chief administrator must report to the commission within 30 days, any change in the agency's name, physical location, mailing address, electronic mail address, or telephone number.
(e) An agency chief administrator must report, in a standard format, incident-based data compiled in accordance with Texas Occupations Code §1701.164.
(f) For purposes of this subsection, an active shooter incident is an incident involving one or more individuals actively engaged in killing or attempting to kill people in a populated area. Following a response to an active shooter incident at a primary or secondary school facility by any member of a law enforcement agency, the agency chief administrator must submit to the commission on a form prescribed by the commission:
(1) a preliminary report on an evaluation of the agency's response to the incident within 45 days of the incident, or as soon as practicable thereafter; and
(2) a final report on an evaluation of the agency's response to the incident within 90 days of the incident, or as soon as practicable thereafter.
(g) Line of duty deaths shall be reported to the commission in current peace officers' memorial reporting formats.
(h) An agency chief administrator must report to the commission on a form prescribed by the commission within seven days of discovery by any member of the agency that one of the following does not currently meet or did not meet the minimum standards for enrollment or initial licensure at the time of application, enrollment, or appointment:
(1) a licensee applying for enrollment or appointment with the agency;
(2) a person enrolled in the agency's academy;
(3) a person enrolled in any academy and sponsored by the agency; or
(4) a licensee appointed with the agency.
(i) An agency chief administrator has an obligation to determine that all appointees are able to safely and effectively perform the essential job functions. An agency chief administrator may require a fit for duty review upon identifying factors that indicate an appointee may no longer be able to perform job-related functions safely and effectively. These factors should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical or psychological condition or impairment.
(j) An agency chief administrator shall notify the commission of any failed medical (L-2) or psychological (L-3) examination within 30 days on a form prescribed by the commission. An agency chief administrator shall notify the commission upon a final determination of a failed fit-for-duty examination (FFDE) or drug screen within 30 days on a form prescribed by the commission.
(k) An agency must provide training on employment issues identified in Texas Occupations Code §1701.402 and field training. If successfully completed, the agency must report these trainings to the commission within 30 days.
(l) An agency must provide continuing education training required in Texas Occupations Code §1701.351 and §1701.352.

(m) Before an agency appoints any licensee to a position requiring a commission license it shall complete the reporting requirements of Texas Occupations Code §1701.451.
(n) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.
(o) An agency must notify the commission electronically following the requirements of Texas Occupations Code §1701.452, when a person under appointment with that agency resigns or is terminated.
(p) An agency chief administrator must comply with orders from the commission regarding the correction of a report of resignation/termination or request a hearing from SOAH.
(q) An agency chief administrator must:
(1) at the time the agency becomes aware of an allegation of misconduct, as defined in the model policy required by Texas Occupations Code § 1701.4522(a)(1), that may result in suspension, demotion, or termination, initiate an appropriate administrative or criminal investigation into alleged misconduct of a licensee who was appointed by the law enforcement agency at the time the alleged misconduct occurred;
(2) ensure completion of the investigation into alleged misconduct in a timely manner consistent with the law enforcement agency's policies even if the licensee has separated from the law enforcement agency;
(3) submit a report of a completed investigation into alleged criminal misconduct for which criminal charges are filed against a licensee to the commission within 30 days after the investigation is completed on a form prescribed by the commission;
(4) submit a report of a completed investigation into alleged administrative misconduct to the commission in a timely manner, but not later than 30 days after the licensee's separation from the law enforcement agency, on a form prescribed by the commission;
(5) if the investigative findings or disciplinary action taken are appealed, notify the commission that the matter is under appeal and notify the commission of the disposition of an appeal within 30 days after receipt of the decision; and
(6) include documentation of the completed investigation in the licensee's personnel or department file, as appropriate.
(r) An agency chief administrator must:
(1) maintain a personnel file and department file for each licensee appointed with the law enforcement agency;
(2) submit to the commission a complete copy of the personnel file of a licensee within 30 days after separation of the licensee from the law enforcement agency in a manner prescribed by the commission; and
(3) submit to the commission a complete copy of the personnel file and department file of a licensee upon request as part of an ongoing investigation relating to the licensee.
(s) An agency chief administrator may not allow a person who does not hold a law enforcement polygraph certificate to conduct a pre-appointment polygraph examination of a candidate applying for a position that requires a commission license. An agency chief administrator may not allow a peace officer who does not hold a law enforcement polygraph certificate to conduct polygraph examinations for a criminal investigation done by the agency.
(t)[~~(s)~~] Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:
(1) the licensees name, date of birth, last four digits of the social security number, or PID;

(2) the requested change; and

(3) the reason for the change.

(u)[~~(t)~~] An agency chief administrator may not appoint an applicant subject to pending administrative action based on:

(1) enrollment or licensure ineligibility; or

(2) statutory suspension or revocation.

(v)[~~(u)~~] The effective date of this section is January 1, 2027[~~September 1, 2026~~].