SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 221.51. *Law Enforcement Polygraph Certificate*.
The proposed new rule would establish the requirements for obtaining and maintaining a law enforcement polygraph certificate and would describe who needs the certificate to conduct which polygraph examinations.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 221.51. *Certificado de polígrafo para las fuerzas del orden.*
La nueva norma propuesta establecería los requisitos para obtener y mantener un certificado de polígrafo para las fuerzas del orden y describiría quién necesita el certificado para realizar qué exámenes de polígrafo.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §221.51, Law Enforcement Polygraph Certificate. This proposed new rule would establish a certificate to conduct certain polygraph examinations for law enforcement purposes. Specifically, the certificate would be required for a peace officer to conduct a polygraph examination for pre-appointment screening or criminal investigation purposes. It would also be required for any person to conduct a polygraph examination for pre-appointment screening purposes. 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. The proposed new rule would require completion of a polygraph training program to obtain the certificate and continuing education to maintain the certificate.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new 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 new 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 anticipated economic costs to persons required to comply with the proposed rule to include a Commission application fee and training and continuing education fees from outside training entities.

Mr. Beauchamp has determined that for each year of the first five years this proposed new 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 require an increase in fees paid to the agency for an individual to obtain the law enforcement polygraph certificate;
(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 certification of individuals who are not peace officers to conduct pre-appointment polygraph examinations;
(7) the proposed rule does increase the number of individuals subject to the rule's applicability by requiring certification of individuals who are not peace officers to conduct pre-appointment polygraph examinations; and
(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission is requesting comments regarding the proposed new rule and information related to the cost, benefit, or effect of the proposed new rule, including any applicable data, research, or analysis, from any person required to comply with the proposed new 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 new 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 new rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§221.51. Law Enforcement Polygraph Certificate.
(a) To qualify for a law enforcement polygraph certificate, an applicant must:
(1) meet initial training and examination requirements by:

(A) successful completion of a current polygraph training program provided by a polygraph school that is accredited by the American Polygraph Association (APA) or is recognized by the American Association of Police Polygraphists (AAPP); or

(B) current membership with the APA or AAPP on January 1, 2027, and previous successful completion of a polygraph training program provided by a polygraph school that was accredited by the APA or was recognized by the AAPP; and

(2) submit a completed application, in the format currently prescribed by the commission, and any required fee.

(b) To keep the certificate valid, the holder must complete 30 hours of commission-approved polygraph continuing education every two-year training unit to include 16 hours of continuing education obtained through attendance at a commission-approved polygraph conference.

(c) If the certificate becomes invalid, a holder may renew the certificate by completing all outstanding continuing education hours.

(d) A person who is a peace officer is required to hold a valid law enforcement polygraph certificate to conduct polygraph examinations for:

(1) a pre-appointment examination of a candidate applying for a position that requires a commission license; or

(2) a criminal investigation.

(e) A person, regardless of their status as a peace officer, is required to hold a valid law enforcement polygraph certificate to conduct polygraph examinations for a pre-appointment examination of a candidate applying for a position that requires a commission license.

(f) A certificate holder should adhere to the relevant ethics, policies, and standards of practice currently prescribed by the APA or AAPP when conducting a polygraph examination that requires a certificate.

(g) The effective date of this section is January 1, 2027.