

SUBJECT: Due process in disciplinary procedures for TABC employees

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 9 ayes — Wilson, Kubiak, Goolsby, Haggerty, Hamric, D. Jones, Pickett, Torres, Yarbrough

0 nays

WITNESSES: For — Arthur A. Valdez, Donelda Nix, B.J. Browning and Jack Means, Texas Conference of Police and Sheriffs

Against — None

DIGEST: HB 207 would amend the Alcoholic Beverage Code to prohibit the Texas Alcoholic Beverage Commission (TABC) from taking disciplinary action against officers and employees in grade classifications below salary group 21 without just cause or without providing due process.

The bill would require TABC to adopt and disseminate to employees a rule establishing procedures for internal appeals of employment actions. Employees dismissed for cause would have to be placed on administrative leave until final disposition of the appeal. If allegations that led to the termination were dismissed on appeal, TABC would have to reinstate the employee to his or her former position. The employee also would be entitled to all back pay withheld during the period covered by the administrative leave.

HB 207 would take effect September 1, 1997, and apply to disciplinary actions taken on or after that date.

SUPPORTERS SAY: HB 207 would ensure TABC employees of due process during disciplinary procedures and could help prevent unjustified employment actions. Political and other questionable considerations can make law enforcement officers and employees vulnerable to demotion or termination for invalid reasons. HB 207 would work to remedy these types of unjustified personnel actions.

HB 207 would not eliminate at-will employment of TABC employees because it would not take away the administrator's authority to fire an employee. It would simply ensure that the agency establish and follow fair and reasonable procedures in dealing with its employees by conforming within the law existing agency policies that outline employee grievance procedures. Currently, TABC internal guidelines are subject to the whim of the department head and may be changed without restriction. HB 207 would provide consistency with respect to internal employee policies.

The bill would not apply to high-level officers of the agency but would leave intact the long-standing privilege granted to agency heads to assemble their own command staff in order to ensure that the agency runs efficiently and fulfills its mandates.

HB 207 also would help ensure uniformity throughout the state with respect to standards for personnel actions involving law enforcement officers . TABC is one of only a few state agencies with law enforcement personnel that does not offer the protection of an internal review process to officers and employees. Current law provides that troopers and employees with the Texas Department of Public Safety cannot be terminated without cause and without an appeals procedure. HB 207 would extend the same protection to TABC commissioned peace officers and employees.

**OPPONENTS
SAY:**

HB 207 would virtually eliminate at-will employment in the TABC and grant employees an unnecessary due process property interest in their employment positions. Employment at-will, with few exceptions, is the law in Texas with respect to state agencies, and there is no reason to treat TABC employees differently from other state employees. For these reasons, Gov. Bush vetoed an identical bill in 1995.

TABC is not the only statewide law enforcement agency that does not offer statutory protections to its employees. Law enforcement officers in the Parks and Wildlife Department by statute serve at the will of the agency's director.

TABC already has in place internal policies that allow for procedural review of adverse employment actions. Absent any indication of problems, there is no need to codify these into law.

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OTHER
OPPONENTS
SAY:

HB 207 would go too far by eliminating at-will employment for most TABC employees. Uniformity among Texas law enforcement officers would dictate that only TABC's commissioned peace officers be offered due process protection.

NOTES:

SB 914 by Armbrister, containing the same provisions as HB 207, was enacted by the 74th Legislature in 1995 but did not become law because it was vetoed by Gov. Bush. In his veto message, the governor said that SB 914 would have virtually eliminated the at-will doctrine of employment as applied to TABC and granted employees a due process property interest in their employment positions. The governor also said that the bill was unnecessary in that TABC already had internal policies allowing procedural review of adverse employment actions.