

SUBJECT: Continuing the Texas Commission on Human Rights

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Wolens, S. Turner, Alvarado, Bailey, Craddick, Danburg, Hilbert, Hunter, D. Jones, Longoria, McCall, Marchant

0 nays

3 absent — Brimer, Counts, Merritt

WITNESSES: For — None

Against — None

On — Michael Johnson, Sunset Advisory Commission; Laura Ayoub Keith, Texas Commission on Human Rights; David Manning, Texas Commission on Human Rights

BACKGROUND: The Texas Commission on Human Rights was created in 1983 to protect against employment discrimination on the basis of race, national origin, sex, religion, age, or mental or physical disability. The agency is responsible for enforcing the Texas Commission on Human Rights Act, chapter 461 of the Government Code, and, since 1990, the Texas Fair Housing Act, chapter 301 of the Property Code. The goal of these statutes, and of the commission, is to reduce the incidence of employment and housing discrimination in Texas.

The commission has the authority to investigate and resolve complaints of employment discrimination at private and public businesses with at least 15 employees, state agencies, colleges and universities, employment agencies, and labor organizations. The commission provides technical assistance and training to employers on laws prohibiting employment discrimination.

The agency is governed by a six-member commission, appointed by the governor for overlapping, six-year terms. It is composed of one representative each from industry and labor, and four public members.

DIGEST: CSHB 1976 would continue the Texas Commission on Human Rights for 12 years, until September 1, 2011, and would require the commission to:

- ! make information more accessible to the public through a toll-free telephone number and other outreach methods;
- ! develop “plain-language” material about the complaint resolution process;
- ! require all newly-hired investigators to complete a formal training process and require all investigators to complete annual training;
- ! conduct annual workforce analyses of all state agencies and public higher education institutions;
- ! establish a technical assistance program on equal employment opportunity (EEO) laws for state agencies including reviewing and revising agencies’ personnel policies, procedural systems, and diversity plans;
- ! provide comprehensive EEO training to all state agencies; and
- ! collect and report data on illegal discrimination in the state.

CSHB 1976 also would specify that compensatory damages, already allowed under the Texas Commission on Human Rights Act, apply to all governmental entities regardless of size.

CSHB 1976 would make other, across-the-board changes recommended by the Sunset Advisory Commission and would take effect September 1, 1999, except as noted below.

Public outreach. CSHB 1976 would require the commission to establish and maintain a toll-free telephone number, provide public information on the commission’s Internet site, and develop and publish materials written in plain language. The commission would be required to provide information that describes each type of complaint it has authority to resolve, a step-by-step explanation of the resolution process, a description of the role of each participant, and a list of information required to be supplied to the commission to process a complaint.

CSHB 1976 would require the commission to maintain a file on each written complaint that includes the name of the complainant, the date of filing, the subject matter, the persons contacted, a summary of results of the review, and an explanation of the reason the file was closed. The commission would be required to provide every person filing a complaint a copy of the commission’s policies and procedures for complaints. The commission also

would have to provide a quarterly status update to the complainant until the complaint was finally disposed. Each person who is a subject of the complaint also would be entitled to a status report, unless such notice would jeopardize an undercover investigation.

CSHB 1976 would require the commission to make information available in appropriate formats to persons with disabilities. The commission also would be required to provide landlords with technical assistance relating to access requirements.

The bill would require the procedures manual and toll-free telephone number to be in place by January 1, 2000.

Investigator training. Investigators employed by the commission would be required to complete a comprehensive training and education program before conducting investigations. The training program would include training on the Americans with Disabilities Act, various types of disabilities, appropriate accommodations in the work place for various types of disabilities, and fair employment and housing practices. Each investigator also would be required to complete an annual continuing education program.

The commission would be required to develop an investigation procedures manual and update it every two years. The training and education program would have to be developed and implemented by January 1, 2000. Current investigators would not be required to complete investigator training until March 1, 2000.

Collection and analysis of workforce data. The commission would be required to collect and report statewide information relating to employment and housing discrimination complaints. Bases for complaints and the average time for processing complaints resolved would be included in the commission's annual report to the governor and Legislature. The commission would be required to report percentages of the statewide civilian workforce in various categories established in the bill, including ethnicity, gender, and job categories.

The commission would be required to complete its first report no later than November 1, 1999.

Technical assistance and training programs. CSHB 1976 would mandate that every state agency provide an employment discrimination program after December 1, 1999. The training program would have to include information regarding the agency's policies on employment discrimination, including sexual harassment, and be developed by October 1, 1999. Employees would be required to attend training within 30 days of employment, with supplemental training every two years. The commission would be required to develop training material for state agencies by November 1, 1999.

CSHB 1976 also would codify equal opportunity provisions currently found in Article 9 of the general appropriations bill. The provisions included would be substantially similar to the provisions included in sections 142-145 of Article 9 of HB 1 by Junell as passed by the House. The bill would cover provisions relating to:

- ! the review of state agency personnel policies and procedures by the commission at least every six years,
- ! workforce analysis reports of state agencies prepared by the commission,
- ! recruitment of African Americans, Hispanic Americans, and females, if they are underemployed in a job category,
- ! annual equal employment opportunity reports by state agencies, and
- ! required equal opportunity compliance training by state agencies that receive a certain number of complaints in any fiscal year.

Expanding compensatory damages to all governmental entities. Current law limits the amount of compensatory and punitive damages awarded for employment discrimination claims based on the number of workers. CSHB 1976 would remove the 15-employee minimum floor requirement for receiving compensatory or punitive damages for employment discrimination against a public employee. This change only would apply to an action filed on or after the effective date of the bill, September 1, 1999.

**SUPPORTERS
SAY:**

The Commission on Human Rights performs invaluable service to the state by helping to resolve employment and housing discrimination cases and providing technical assistance, training, and monitoring of state agency employment practices. CSHB 1976 would continue this agency for another 12 years, improving the commission's public outreach efforts. It also would improve the commission's ability to collect and analyze workforce information and codify its responsibilities in state agency technical assistance,

training, and reporting requirements. CSHB 1976 also would ensure adequate compensatory relief for all public employees who suffer employment discrimination.

Public outreach. The commission currently is required to provide information to the public through training sessions and conferences. This information is often highly technical and does not inform the general public about work place or housing rights, or what the commission could do to resolve complaints. Because there is limited information about the complaint resolution process, complainants often are uncertain about procedures, including deadlines, for resolving complaints. Many other public service agencies already are providing toll-free telephone access, plain language materials, and other public outreach efforts.

Providing better information to the public could significantly reduce the number of complaints mistakenly referred to the commission, as well as the number of complaints filed without legal basis. This would allow investigators to concentrate on claims that merit attention.

Investigator training. Investigators perform the bulk of the work of the commission, constantly dealing with complex legal and technical issues. A formal training process and manuals for investigators would ensure that they clearly understand and apply regulations. It would increase the likelihood that a complainant would receive the best possible service from the agency.

In 1997, the State Auditor's Office recommended that the commission implement a process to assess training needs. The commission has begun to do so by reviewing training needs in annual employee evaluations. Other agencies such as the federal Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development and state agencies such as the Worker's Compensation Commission provide formal training for investigators.

Collection and analysis of workforce data. This reporting requirement would provide for full disclosure of all data relating to employment discrimination in the state. This information, with analyses of the commission's actions each year, would give the Legislature better information on the level of these problems. The commission only processes about 9

percent of all employment discrimination complaints. Others are processed by federal or local agencies.

Technical assistance and training programs. Under current law, most of the commission's authority over training, technical assistance, and data collection for state agencies is contained in rider in the appropriations bill. The commission needs clear, continuing direction regarding its duties and oversight of state agency employment practices. The state agencies also need clear guidance in developing workforce plans that this measure would provide.

Courts have recently struck down certain requirements placed in riders in the appropriations bill due to the prohibition against amending general law through appropriations riders. While the EEO rules have not been struck down, they could be subject to such a challenge. Placing these provisions in statute would give the Legislature the opportunity to examine the appropriateness of the requirements as a stand-alone measure, rather than as part of the 900 pages of the appropriations bill.

The provisions included in CSHB 1976 are substantially similar to the provision included in HB 1 by Junell, passed by the House on April 13. Those provisions included numerous changes to fund only the actual costs of the commission in reviewing the policies and procedures of state agencies.

Expanding compensatory damages to all governmental entities. Under current EEO law, employees must try to settle their cases through the commission's administrative procedures before they go to court. If it is determined that there is reason to believe discrimination occurred, the commission may bring a civil action. Individuals may also bring actions if settlement efforts fail.

If a court finds the employer engaged in unlawful employment practices, it may order various equitable relief and compensatory damages. The amount of damages is limited based on the number of employees, and the minimum category is \$50,000 for employers with 15 to 100 employees.

This floor has meant that public employees in small governmental entities are unable to receive full protection from employment discrimination. Removing this floor would be consistent with the Texas Whistleblower Act and the

Texas Tort Claims Act, neither of which apply to agencies based on a minimum number of employees. Federal law does not provide a range of compensatory damages for employers with fewer than 15 employees. But the EEOC has interpreted federal law to allow employees to recover damages from labor organizations and employment agencies, regardless of the number of their employees.

OPPONENTS
SAY:

Expanding compensatory damages to governmental agencies with fewer than 15 employees could open up a variety of small governmental entities, including agencies of local governments, to substantial damage awards. The 15-employee cutoff in federal law exempts smaller employers because a single damage award could be an insurmountable financial burden. Employees in these small offices still have the ability to seek redress for their grievances through the commission, and most small employers are very willing to make changes necessary to accommodate employees, rather than pay large judgments.

OTHER
OPPONENTS
SAY:

CSHB 1976 should require the commission to provide additional technical assistance to both public and private employers on accommodating persons with disabilities, including mental impairments. The bill also should establish a process for appealing decisions made by three-member panels of the commission to the full six-member panel.

NOTES:

The committee substitute changed provisions relating to technical assistance and training provided by the commission to state agencies to conform with the House-passed version of HB 1 by Junell, the general appropriations bill. The substitute would require the commission to maintain a record of time expended and actual costs in reviewing agency policies, and allow for reimbursement to the commission based on that record. It also would require the commission to adopt minimum standards for a training program, including approving an entity or person to provide a training program.

The companion bill, SB 364 by Madla, has been referred to the Senate State Affairs Committee.

SB 174-178 by Ratliff would codify various provisions previously contained within appropriations bill riders. All six were passed by the Senate and are

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currently pending in the House Appropriations Committee The bills do not include provisions relating to equal employment opportunity provisions contained in CSHB 1976.