

- SUBJECT:** Revising administrative procedures for SOAH
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 9 ayes — Bosse, Janek, Alvarado, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek
0 nays
- WITNESSES:** For — None
Against — None
On — Shelia Bailey Taylor, State Office of Administrative Hearings
- BACKGROUND:** The State Office of Administrative Hearings (SOAH) was created in 1991 to consolidate the administrative hearings process for certain state agencies. SOAH conducts hearings for agencies that do not employ full-time hearings officers and for agencies whose hearing functions have been transferred to SOAH by statute. In 1995, the office assumed responsibility for administrative drivers license revocations referred by the Texas Department of Public Safety. SOAH also provides alternative dispute resolution services to state agencies upon request.
- A chief administrative law judge appointed by the governor for a two-year term serves as director of the office. SOAH is scheduled to be reviewed by Sunset Advisory Commission in 2003. During fiscal 1998, approximately 19,000 case were referred to SOAH. Over 16,000 of those were referred by the Texas Department of Public Safety.
- DIGEST:** CSHB 2556 would apply to SOAH the prohibitions against ex parte communications — communications between the judge and only one party — that currently are applied to state agencies under §2001.061 of the Government Code. The exception would be when the agency is conducting alternative dispute resolution. For those cases, the chief administrative law judge would be allowed to establish rules governing ex parte communications.

CSHB 2556 would clarify that administrative law judges are responsible only to the chief administrative law judge or a designated senior or master law judge, and not subject to the influence of employees, officers, or agents of another state agency.

CSHB 2556 also would make numerous changes to the administrative procedures of the State Office of Administrative Hearings including:

- ! creating an agency mission statement;
- ! allowing SOAH to adopt a seal to authenticate official acts;
- ! requiring SOAH to conduct hearings required by laws other than chapter 2001 of the Government Code (the Administrative Procedure Act);
- ! allowing SOAH to conduct alternative dispute resolution for a voluntary fee for other governmental entities;
- ! requiring the chief administrative law judge to adopt a code of conduct for administrative law judges and to monitor the quality of hearings conducted by the office;
- ! allowing the chief administrative law judge to be reappointed and clarifying that the position is a full-time position;
- ! allowing the chief administrative law judge to create teams or divisions of judges within SOAH;
- ! allowing the appointment of, and establishing qualifications for, senior or master administrative law judges;
- ! allowing the chief administrative law judge to appoint senior or master judges to oversee other judges in the office;
- ! providing that fees for cases heard by SOAH on behalf of the Texas Natural Resources Conservation Commission and the Public Utility Commission would be set in the General Appropriations Act;
- ! prohibiting agencies that have referred cases to SOAH from taking adjudicative actions; and
- ! making other conforming changes.

CSHB 2556 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS
SAY:

CSHB 2556 would clarify rules and establish needed administrative authority for this important agency, which has experienced significant growth since its creation in 1993. The most significant changes include clarifying the rules regarding ex parte communication and establishing the independence of

administrative law judges from the state agencies involved in cases. Other changes would provide needed authority to the chief administrative law judge to organize and manage the operations of the office.

Rules prohibiting ex parte communication are needed to ensure that individual parties are not allowed to speak with judges outside of the presence of all parties. The same ex parte prohibitions currently apply to state agencies when reviewing contested cases. Also, clearly stating that SOAH administrative law judges are not subject to influence from employees or officers of other state agencies would help clarify SOAH's role as an independent arbiter of cases under its jurisdiction.

Even if jurisdiction over certain cases was removed from or added to the office, the changes made by CSHB 2556 would still be needed to promote the effective management and independence of SOAH.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would allow appointment of master administrative law judges to perform duties assigned by the chief administrative law judge and allow the chief administrative law judge to promulgate rules on ex parte communications in alternative dispute resolution proceedings before the office.

The companion bill, SB 757 by Duncan, passed the Senate on April 8 and was reported favorably, without amendment, by the House Civil Practices Committee on April 14, making it eligible to be considered in lieu of SB 2556. As passed by the Senate, SB 757 would establish different requirements relating to fees charged to the TNRCC and the PUC. It also would allow for the creation of interagency contracts for all hearings referred by agencies except the TNRCC, PUC, and administrative license revocations referred by DPS. Such contracts would be based on an hourly fee schedule established by SOAH and submitted to the Legislature each biennium as part of the appropriations process.

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A related bill, HB 45 by Pitts, which would require administrative license revocation hearings to be conducted by a justice of the peace if the opposing party lived in a county with a population less than 150,000, has been referred to the House Civil Practices Committee.