

- SUBJECT:** Transferring Human Rights Commission to attorney general's office
- COMMITTEE:** Government Reform — committee substitute recommended
- VOTE:** 5 ayes — Swinford, Allen, Casteel, R. Cook, T. Smith  
0 nays  
2 absent — Gallego, Callegari
- WITNESSES:** For — Gary Bledsoe, Texas State Conference of NAACP Branches; Bill Hale, Bill Hale & Associates; Marilou Morrison; Ana Yanez-Correa, Texas League of United Latin American Citizens  
Against — Christopher Knepp, Texas Employment Law Council  
On — Vickie Covington, Rhonda Lane, J.D. "Dave" Powell, and Glenn Skiles, Texas Commission on Human Rights; Pam Ross, State Auditor's Office
- BACKGROUND:** The Texas Commission on Human Rights enforces state equal opportunity employment and fair housing laws that prohibit discrimination on the basis of race, sex, age, religion, or other factors. The commission investigates and resolves employment and housing discrimination complaints as an alternative to litigation. It also provides training and technical assistance on federal or state antidiscrimination laws to state agencies and businesses.
- DIGEST:** CSHB 2933 would transfer the Commission on Human Rights to the civil rights division of the Office of the Attorney General (OAG). Governed by a seven-member commission appointed by the governor, the division would be responsible for administering laws prohibiting discrimination in employment and housing. The commission would be the state's fair employment practice agency and could grant relief, seek relief, or initiate criminal proceedings for an unlawful employment practice.  
  
The commission would have to include one representative of industry, one representative of labor, and five public representatives. The governor would

appoint the public representatives from a list of names suggested by civil rights organizations and groups. The commission would have to appoint an executive director, who should have experience with housing or employment discrimination claims. Also, the director would have to have experience in working to prevent the types of discrimination the division would be charged with preventing and would have to demonstrate a commitment to equal opportunity for minorities, women, and the disabled.

An investigator could not conduct an investigation without having completed a training and education program. The training would have to provide information on the Americans with Disabilities Act, types of disabilities and accommodations appropriate in an employment setting, and fair employment and housing practices. Investigators would have to complete an annual continuing education program.

The division would collect and report statewide information on employment and housing discrimination complaints. Information collected by the division on complaints filed with the division, federal agencies, or local commissions would have to include:

- an analysis of employment or housing complaints by basis of the complaint;
- an analysis of employment or housing complaints by issue;
- an analysis of employment or housing cases closed; and
- the average processing time for complaints resolved by the division.

The bill would take effect September 1, 2003. The governor would have to appoint new commissioners by November 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2933 would make the Human Rights Commission an independent division within the OAG. The commission has a history of management problems and complaints of employment discrimination. The State Auditor's Office (SAO) found gross fiscal mismanagement at the agency from 1998 through 2001, putting state and federal funds at the risk of loss or abuse. The SAO report also found that the agency had failed to perform nearly 70 percent of the required reviews of state agency or higher education institution employment policies.

Despite a change of leadership in 2001, the agency remains troubled by poor management. In reviewing the commission's management, the League of United Latin American Citizens (LULAC) found that directors and managers of the housing program do not have adequate experience to run the program and estimated that the agency will lose out on \$660,000 in revenue from federal housing programs during fiscal 2004-05. LULAC also estimated that the commission will miss out on additional revenue from the U.S. Equal Employment Opportunity Commission (EEOC) because of failing to meet the number of case closures called for by the EEOC contract. Moreover, 12 employment discrimination complaints have been filed against the agency with EEOC and are pending in court. LULAC analyses indicate that a number of the complainants had superior qualifications, yet were passed over for employment opportunities.

Making the commission an independent division within the OAG would improve the state's efforts to combat employment and housing discrimination and to enforce antidiscrimination policies. The move would mirror the federal structure, in which the U.S. Department of Justice contains a separate civil rights division. The commission is top-heavy with management, having a 3:1 manager-to-employee ratio. Moving the agency could eliminate redundant positions and save the state money, while enhancing the agency's mission. Establishing a separate governor-appointed commission to oversee the division would ensure that the civil rights division was truly independent.

**OPPONENTS  
SAY:**

Abolishing the commission and transferring its duties to the OAG would not benefit the state, victims of discrimination, or the general public. In fact, it would create a number of problems. After the transfer, the new division would have to be certified by the federal government, a process that could take up to two years, during which time the state could lose out on \$2 million in contract reimbursements from the federal government. Also, the transfer of responsibilities could create confusion among clients and could lead to some agency duties being abandoned.

The bill could create a perception of a conflict of interest. The commission is a neutral fact-finding agency charged with enforcing antidiscrimination laws. When a person filed an employment discrimination complaint against a state agency, the commission could find itself in the position of filing a lawsuit against a state agency for violating an antidiscrimination statute. In a lawsuit

or arbitration, the attorney general would represent the state agency. If both of these functions were housed in one agency, a victim of discrimination could perceive bias and decide not to pursue a complaint.

New management at the commission has remedied many problems of the past. The commission suffered from gross fiscal mismanagement under former management. Since new management took over in 2001, however, the commission has made substantial progress in correcting past problems. In less than one year, the commission has completed 98 percent of the measures in its remedial plan approved by the state auditor. In addition, the agency has met or exceeded nearly all of its performance measures.

Many of the problems attributed to the commission are inaccurate or misleading. LULAC's estimates are based on erroneous information and faulty assumptions. Both the U.S. Department of Housing and Urban Development and the EEOC have stated that the commission fulfilled its contract obligations for fiscal 2002 and that they have an excellent working relationship with the commission's new management.

Despite critics' claims of discrimination, EEOC found no reasonable cause to believe that discrimination had occurred in any of the complaints of former commission employees.

**OTHER  
OPPONENTS  
SAY:**

The bill would create a biased commission by specifying that the five public members would have to be selected from a list of people suggested by civil rights groups. If these members were to represent the public, they should be selected from the public at large, not from a specific list of people approved by activist groups. Also, the bill would go too far in specifying qualifications for an executive director. Employment qualifications should be determined by the commission, not set in statute.

**NOTES:**

The committee substitute differs substantially from the bill as introduced. Under the filed version, the commission would have carried out its duties under the direction of the attorney general.

The companion bill, SB 1333 by Barrientos, has been referred to the Senate Government Organization Committee.

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HB 3441 by Pickett, which would implement the provisions of Art. 1 of HB 1 by Heflin, the general appropriations bill for fiscal 2004-05 and contains substantially the same provisions as HB 2933, is on today's Major State Calendar.