

SUBJECT: Administrative remedy exhaustion for elected county officials' compensation

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — Lewis, W. Smith, Casteel, Chisum, Farabee, Flynn, Olivo, Quintanilla

0 nays

1 absent — Farrar

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Scott Brumley, Potter County Attorney's Office; Gary Freeman, Justice of the Peace and Constables Association of Texas; Sonya Letson, Potter County Attorney's Office

Against — None

On — Jeff Fisher, Van Zandt County

BACKGROUND: Texas Constitution, Art. 16, sec. 61 requires county commissioners courts to set salaries for justices of the peace, constables, and certain other county officers. Justices of the peace and constables are elected county officials.

Local Government Code, sec. 152.016 authorizes elected county officials to request hearings before county grievance committees if the officials believe their salaries or compensation for expenses are not reasonable. An aggrieved elected official must deliver a hearing request to the committee chair within five days of receiving notice of the salary or expense compensation. The grievance committee must hold a public hearing within 10 days of receiving the request.

Nine voting members and the judge of the commissioners court form the grievance committee. If all nine voting members sign a recommendation to increase the aggrieved elected official's compensation, the commissioners court must increase the official's salary or compensation for the next budget year. If six, seven, or eight committee members vote to recommend an

increase, the committee must send its recommendation to the commissioners court for consideration at its next meeting.

DIGEST:

CSHB 554 would require an aggrieved, elected county official to complete the grievance process under Local Government Code, sec. 152.016, before filing a civil action seeking an increase in salary or compensation for personal expenses.

The bill would take effect September 1, 2003, and apply only to civil actions filed on or after the effective date.

SUPPORTERS
SAY:

CSHB 554 reasonably would require elected officials and counties to try an existing, low cost alternative to trial court for deciding salary disputes. Grievance committees already exist in all counties, and the bill would not strip an aggrieved official's right to sue later in court. The bill would save county resources and diminish the incentive for people to hold elected office merely to bring actions under Texas Constitution, Art. 16, sec. 61.

The grievance process affords both parties a fair chance to resolve salary disputes before resorting to litigation. Existing law requires a commissioners court to adopt the grievance committee's unanimous recommendation of salary increase, and at least to consider recommendations made by a two-thirds majority of the grievance committee. Accordingly, facts revealed through a grievance hearing may persuade — or compel — a commissioner's court to increase an official's compensation without litigation.

Likewise, the composition of the grievance committee gives it credibility in the eyes of the aggrieved county official. Because a minimum of three public members serve on every grievance committee, an aggrieved official could use the grievance hearing to weigh the strength of the claim based on the evaluations of county residents — people similar to those serving on juries. Thus, even an unfavorable grievance committee recommendation might persuade the aggrieved official to forego filing suit.

This bill would not unreasonably delay aggrieved county officials from seeking redress of their salary complaints. Local Government Code, sec. 152.016 requires a grievance committee to hold its hearing within 10 days after receiving the aggrieved official's request for a hearing. Once the hearing

had been held, the aggrieved official would have exhausted the administrative remedy mandated by CSHB 554 and would not need to wait for the commissioners court to act before filing suit.

CSHB 554 would implement a commonplace requirement that plaintiffs pursue administrative remedies for claims before filing suit. Other state and federal laws, including those protecting civil rights and whistle blowers, require plaintiffs to exhaust administrative remedies before filing suit.

**OPPONENTS
SAY:**

This bill would threaten the right of an elected county official to obtain timely relief for a county's violation of his or her constitutional right to a reasonable salary under Texas Constitution, Art. 16, sec. 61.

In many cases, CSHB 554 would jeopardize the right of a county official to seek relief in trial court. This would occur when an aggrieved official failed to deliver a request for a grievance hearing within five days of receiving notice of the disputed salary and expense compensation, as required by current law. By procedural default, the aggrieved official no longer would be entitled to a grievance hearing, and because this bill would require completion of a grievance hearing before a county official could file suit, failure to request a hearing within the tight deadline would extinguish the official's opportunity to obtain relief in trial court. A constitutional right should not be so unreasonably and arbitrarily jeopardized.

CSHB 554 simply would shift administrative burdens from the courts to the county grievance committees. By compelling aggrieved officials to request grievance hearings in order to preserve their rights to sue in court, the bill would clog grievance committees with requests for hearings.

Moreover, the current operation of county grievance committees does not enable timely completion of grievance hearings. Some commissioners courts experience great difficulty enrolling county residents as public members on grievance committees, thus causing delays in the hearing of grievances. Under CSHB 554, difficulties in assembling grievance committees would delay unfairly a county official's right to seek reasonable compensation for salary and expenses.

**OTHER
OPPONENTS
SAY:**

CSHB 554 does not contain include adequate requirements to ensure meaningful grievance committee hearings. Aggrieved officials who prevail in the grievance process should be limited to their original demands for salary and expenses if they later file suit in court; otherwise, some officials might be tempted to use the grievance process frivolously to “test the waters” for future litigation. This requirement would help ensure a more thorough review of the case by all parties, improving their chances of reaching a satisfactory outcome through the grievance process.

NOTES:

The substitute modified the original version of the bill by removing a requirement that the grievance committee consider only the salary and expenses expressly included in the officer's request for a hearing. Also, the substitute preserved language in existing law identifying “personal expenses” as a proper subject for grievance hearings, rather than limiting the expenses to “office and travel expenses, or other allowances.”

A related bill, HB 608 by Denny, which would permit commissioners courts to select additional names from grand jury lists for use as alternate grievance committee members, was reported favorably, without amendment, by the County Affairs Committee on March 19 and recommended for the Local, Consent, and Resolutions Calendar.