

BILL ANALYSIS

Senate Research Center

H.B. 1976
By: Bosse (Madla)
State Affairs
5/5/1999
Engrossed

DIGEST

Currently, the Texas Commission on Human Rights (commission) enforces state equal employment opportunity and fair housing laws prohibiting discrimination on the basis of race, sex, age, religion, national origin, and disability. The commission investigates and resolves employment and housing discrimination complaints as an alternative to litigation and provides training and technical assistance to state agencies and private businesses on federal and state anti-discrimination laws. The commission is subject to the Sunset Act and will be abolished on September 1, 1999, unless it is continued by the legislature. As a result of its review of the commission, the Sunset Advisory Commission recommended continuation of the commission and several statutory modifications.

PURPOSE

As proposed, H.B. 1976 sets forth provisions for the continuation and functions of the Commission on Human Rights.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Commission on Human Rights in SECTIONS 12 and 15 (Section 21.0035(a), Chapter 21A, Labor Code; Section 21.543(b), Chapter 21I, Labor Code; and Section 21.556(e), Chapter 21K, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 461.002, Government Code, to provide that the Commission on Human Rights (commission) is abolished and this chapter expires on September 1, 2011, rather than September 1, 1999, unless continued as provided by Chapter 325, Government Code.

SECTION 2. Amends Section 461.052, Government Code, to define "Texas trade association." Prohibits a person from being a member of the commission and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments under certain conditions. Makes conforming changes.

SECTION 3. Amends Chapter 461B, Government Code, by adding Section 461.0535, as follows:

Sec. 461.0535. COMMISSIONER TRAINING. Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section. Sets forth the topics required to be included in the training program. Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 4. Amends Section 461.054, Government Code, to provide that it is a ground for removal from the commission that a member, rather than if a member does not have at the time of taking office the qualifications required by Section 461.051, rather than 461.051 or 461.052(a); is ineligible for membership under Section 461.052; cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or is absent from more than half of the regularly scheduled

commission meetings that the member is eligible to attend during a calendar year without an excuse approved, rather than unless the absence is excused, by a majority vote of the commission. Provides that the validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists. Requires the executive director to notify the presiding officer of the commission of the potential ground, if certain conditions exist. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Require the executive director to then notify the governor and the attorney general that a potential ground for removal exists, if the potential ground for removal involves the presiding officer. Deletes text providing that it is a ground for removal from the commission that a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability.

SECTION 5. Amends Sections 461.058(c) and (d), Government Code, to require the executive director of the commission or the executive director's designee, rather than commission, to provide to members of the commission and to commission employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities. Requires the commission to develop and implement policies that clearly separate, rather than define, the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 6. Amends Section 461.060, Government Code, as follows:

Sec. 461.060. New heading: PUBLIC INTEREST INFORMATION. Sets forth the commission's required use of various outreach methods to provide the public with certain information relating to the commission's complaint process. Sets forth what is required to be included in the information provided under Subsection (b). Requires the commission to ensure that a commission employee who is knowledgeable regarding functions of the commission is available during regular business hours to answer questions. Deletes text requiring the commission to notify the parties to a complaint of its status under certain conditions. Makes conforming changes.

SECTION 7. Amends Chapter 461B, Government Code, by adding Section 461.0605, as follows:

Sec. 461.0605. COMPLAINTS. Requires the commission to maintain a file on each written complaint filed with the commission. Sets forth the required information to be included in the file. Requires the commission to provide to the person filing the complaint and to each person who is a subject of the complaint, a copy of the commission's policies and procedures relating to complaint investigation and resolution. Requires the commission, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation, unless the notice would jeopardize an undercover investigation.

SECTION 8. Amends Section 461.061, Government Code, as follows:

Sec. 461.061. New heading: PLAN FOR REASONABLE ACCESS TO COMMISSION PROGRAMS; ACCOMMODATIONS. Sets forth the required actions of the commission.

SECTION 9. Amends Chapter 461B, Government Code, by adding Sections 461.063 and 461.064, as follows:

Sec.461.063. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. Prohibits a person who is employed by the commission as an investigator from conducting an investigation until the person completes a comprehensive training and education program for investigators that complies with this section. Sets forth the required information to be included in the training program. Requires each investigator to annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b). Requires the commission to develop and biennially update an investigation procedures manual. Requires the manual to include investigation procedures and information and may include information regarding the United States Department of Housing and Urban Development (HUD).

Sec. 461.064. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. Requires the

commission to collect and report statewide information relating to employment and housing discrimination complaints as required by this section. Requires the commission, each state fiscal year, to collect and analyze information regarding employment and housing discrimination complaints filed with the commission, the Equal Employment Opportunity Commission, HUD, and local commissions in this state. Sets forth what must be included in the information. Requires the commission to include the results of an analysis required under this section in the commission's annual report to the governor and legislature.

SECTION 10. Amends Section 21.002, Labor Code, by amending Subdivision (8) and adding Subdivision (14), to redefine "employer," and define "state agency."

SECTION 11. Amends Section 21.003(a), Labor Code, to delete existing Subdivision (9) and to make a conforming change.

SECTION 12. Amends Chapter 21A, Labor Code, by adding Section 21.0035, as follows:

Sec. 21.0035. CIVILIAN WORKFORCE COMPOSITION. Sets forth the determinations required to be made, by rule, by the commission. Requires the commission to report the percentages of the statewide workforce as determined under this section to the governor and the legislature within a certain time.

SECTION 13. Amends Section 21.2585(d), Labor Code, to prohibit the sum of certain compensatory damages and other nonpecuniary losses and amounts of punitive damages awarded under this section from exceeding for each complainant, certain amounts in correspondence with certain numbers of employees, including \$50,000 in the case of a respondent that has fewer than 101 employees, rather than more than 14 and fewer than 101 employees.

SECTION 14. Amends Chapter 21A, Labor Code, by adding Section 21.010, as follows:

Sec. 21.010. EMPLOYMENT DISCRIMINATION TRAINING FOR STATE EMPLOYEES. Requires each state agency to provide an employment discrimination training program to employees of the agency. Sets forth the information required to be imparted to the employee. Requires each employee of the state to attend the training program required by this section within a certain time period. Requires the commission to develop material for use by state agencies in providing employment discrimination training. Requires each state agency to require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee's attendance at the training program. Requires an agency to file the statement in the employee's personnel file.

SECTION 15. Amends Chapter 21, Labor Code, by adding Subchapters I-K, as follows:

SUBCHAPTER I. PERSONNEL POLICIES AND PROCEDURES

Sec. 21.451. DEFINITION. Defines "state agency."

Sec. 21.452. DEVELOPMENT AND IMPLEMENTATION OF PERSONNEL POLICIES AND PROCEDURES. Requires each agency to develop and implement personnel policies and procedures that comply with this chapter.

Sec. 21.453. REVIEW. Requires the commission to review the personnel policies and procedures of each state agency on a six-year cycle to determine whether the policies and procedures comply with this chapter. Requires the commission by rule, to establish a system to stagger the reviews of state agency personal policies and procedures required under this section. Requires the commission to recommend appropriate revisions to the policies and procedures, if the commission determines that the personnel policies and procedures of a state agency do not comply with this chapter. Sets forth the required actions to be accomplished by written order within a certain time period. Requires the review of a state agency's personnel policies and procedures and the implementation of any recommended revisions to be completed within one year.

Sec. 21.454. ANNUAL COMPLIANCE REPORT. Requires the agency to submit a report

detailing the agency's compliance with the policies and procedures to the governor, legislature, and the Legislative Budget Board within a certain time period, after the commission completes the review of a state agency's personnel policies and procedures and the agency implements any recommended revisions.

Sec. 21.455. REIMBURSEMENT; AUDIT. Requires a state agency to reimburse the commission through interagency contract for the reasonable and necessary expenses incurred by the commission in conducting a review under Section 21.453. Requires the actual expenses incurred by the commission to be determined by the General Services Commission. Requires the commission to maintain a record of the time expended and the actual costs and travel expenses incurred by the commission in conducting a review under Section 21.453. Provides that the amount of reimbursement paid by a state agency under Subsection (a) and the record maintained by the commission under Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 21.456. FAILURE TO COMPLY WITH SUBCHAPTER; ADMINISTRATIVE PENALTY. Requires the commission to certify a determination to the comptroller, if the commission determines that a state agency has failed to comply with this subchapter. Requires the comptroller of public accounts (comptroller), on receipt of a certification by the commission under Subsection (a), to notify the state agency that is subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of \$50,000, unless, within a certain time period, the agency submits proof that the agency has complied with this subchapter to the comptroller. Sets forth the actions required by the controller, if an agency fails to submit the proof required by this subsection to the comptroller.

SUBCHAPTER J. HIRING PRACTICES

Sec. 21.501. WORKFORCE ANALYSIS. Requires each state agency, each state fiscal biennium, to analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by an agency in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category.

Sec. 21.502. RECRUITMENT PLAN. Requires each state agency, other than a public junior college, to develop, update, and implement a recruitment plan to recruit capable and qualified African Americans, Hispanic Americans, and females, if African Americans, Hispanic Americans, or females are underemployed by the agency in a job category. Requires an agency to base the plan on the workforce analysis prepared under Section 21.501, and on any applicable remedy, agreement, or settlement that has been ordered or approved by a court. Requires the plan to comply with this chapter. Requires the commission to monitor state agencies to determine compliance with this section.

Sec. 21.503. EFFECT ON REMEDIES UNDER OTHER LAWS. Provides that this subchapter does not affect a remedy, agreement, settlement, or affirmative action plan that has been ordered or approved by a court or that has been adopted in accordance with other law.

Sec. 21.504. ANNUAL REPORT. Requires each agency, within a certain time period, to report the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the agency during the preceding state fiscal year to the commission. Requires the commission to compile this information and submit a report based on the information to the governor and the Legislative Budget Board, not later than January 1 of the subsequent calendar year.

SUBCHAPTER K. EQUAL EMPLOYMENT OPPORTUNITY REPORTS

Sec. 21.551. DEFINITION. Defines "racial and ethnic group."

Sec. 21.552. EQUAL EMPLOYMENT OPPORTUNITY REPORT REQUIRED. Requires each state agency, within a certain time period, excluding legal holidays and weekends, to report equal employment opportunity information for the preceding calendar year to the commission. Requires the report to be made in the form prescribed by the commission and to include

information compiled on a monthly basis. Requires the commission, each year, to compile equal employment opportunity information reported to the commission by a state agency. Sets forth what is required to be included in the equal employment opportunity information.

Sec. 21.553. COOPERATION WITH COMPTROLLER AND UNIFORM STATEWIDE ACCOUNTING SYSTEM; REPORT TO LEGISLATURE. Requires the commission to compile the information reported to the commission with the assistance of the comptroller and the uniform statewide accounting system. Requires the commission to conduct an analysis of the information reported to the commission under this subchapter and to report the results of that analysis to the legislature with a certain time period. Requires the report required under this subsection to be written in plain language.

Sec. 21.554. FORM. Requires the commission to notify each state agency of the form to be used to make a report under this subchapter for the following year, not later than December 15 of each year.

Sec. 21.555. FAILURE TO FILE REQUIRED REPORT; ADMINISTRATIVE PENALTY. Requires the commission to certify a determination to the comptroller, if the commission determines that a state agency has failed to file a report required under this subchapter. Requires the comptroller, on receipt of a certification by the commission under Subsection (a), to notify a state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of \$2,000, unless within a certain time period, the agency submits proof that the agency filed the report required under this subchapter to the comptroller. Sets forth the required actions of the comptroller, if the agency fails to submit the proof required by this subsection to the comptroller.

Sec. 21.556. REQUIRED COMPLIANCE TRAINING FOR STATE AGENCIES. Requires a state agency that receives three or more complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit, to participate in a comprehensive equal employment opportunity training program provided by the commission or another entity or person approved by the commission as provided by Subsection (e). Requires the commission to notify a state agency required to participate in a training program under this section of that requirement and the time and place of the training program. Requires an agency that receives notice under Subsection (b) to designate appropriate supervisory and managerial employees of the agency to participate in the program. Requires the agency to also designate an employee who is a named respondent in a complaint that is the basis for the agency's required participation in the program to participate in the program. Requires an agency required to participate in a program under this section to pay the cost of attending the program or reimburse the commission through interagency contract. Requires the cost of the providing the program to be determined and approved by the commission in cooperation with the General Services Commission. Requires the commission, by rule, to adopt minimum standards for a training program described by Subsection (a). Authorizes the commission to approve an entity or person to provide a training program under this section, only if the program complies with the minimum standards adopted by the commission under this subsection.

SECTION 16. Amends Chapter 301D, Property Code, by adding Section 301.070, as follows:

Sec. 301.070. ACCESSIBILITY ASSISTANCE AND INFORMATION FOR LANDLORDS. Requires the commission to provide to landlords technical and other assistance relating to the accessibility requirements under this chapter.

SECTION 17. (a) Effective date: September 1, 1999.

(b) Provides that the changes made to the law regarding the qualifications of and prohibitions on members of the commission do not affect the entitlement of a member who is serving on the commission immediately before the effective date of this Act to continue to perform the functions of the commission for the remainder of that member's term. Makes application of this Act prospective. Provides that this Act does not prohibit a person who is a member of the commission on the effective date of this Act from being reappointed to the commission under certain conditions.

- (c) Requires the commission to develop certain training programs and an investigation procedures manual, not later than January 1, 2000.
- (d) Provides that a person who is appointed to the commission on or after the effective date of this Act is not required, as a condition to voting, deliberating, or being counted as a member in attendance at a meeting of the commission, to complete a commissioner training program, as required by Section 461.0535, Government Code, as added by this Act, until March 1, 2000.
- (e) Sets forth requirements for the Commission on Human Rights, not later than January 1, 2000.
- (f) Provides that a person who is employed by the commission as an investigator on or after the effective date of this Act is not required, as a condition of eligibility to conduct an investigation, to complete an investigator training program as required by Section 461.063, Government Code, as added by this Act, until March 1, 2000.
- (g) Requires the commission to complete the first analysis of employment and housing discrimination complaints, as required by Section 461.064, Government Code, as added by this Act, not later than November 1, 1999.
- (h) Makes application of this Act prospective.
- (i) Requires the commission to develop and provide to each state agency employment discrimination materials, as required by Section 21.010, Labor Code, as added by this Act, not later than November 1, 1999.
- (j) Provides that a state agency is not required to provide employment discrimination training, as required by Section 21.010, Labor Code, as added by this Act, until December 1, 1999.
- (k) Requires a state agency to develop and implement personnel policies and procedures, as required by Chapter 21I, as added by this Act, not later than October 1, 1999.
- (l) Requires the commission to establish a system to stagger reviews of personnel policies and procedures, as required by Chapter 21I, Labor Code, as added by this Act, not later than October 1, 1999.
- (m) Provides that the commission is not required to review personnel policies and procedures of a state agency, as required by Chapter 21I, Labor Code, as added by this Act, until October 1, 1999.
- (n) Requires each state agency to complete the first analysis of the agency's workforce, as required by Chapter 21J, Labor Code, as added by this Act, not later than November 1, 1999, and develop a recruitment plan, as required by Chapter 21J, Labor Code, as added by this Act, not later than January 1, 2000.
- (o) Requires the commission, with the assistance of the comptroller, to adopt the form to be used by a state agency to make a report under Chapter 21K, Labor Code, as added by this Act, not later than December 1, 1999.
- (p) Provides that a state agency is not required to participate in a training program under Chapter 21K, Labor Code, as added by this Act, on the basis of an employment discrimination complaint filed before the effective date of this Act.
- (q) Requires the commission to adopt minimum standards for a comprehensive equal employment opportunity training program as required by Section 21.556, Labor Code, as added by this Act, not later than October 1, 1999.

SECTION 18. Emergency clause.