

SUBJECT: Requiring attorney general action on Human Rights Commission claims

COMMITTEE: State Affairs — favorable, with amendment

VOTE: 10 ayes — Wolens, S. Turner, Carter, Counts, Craddick, Hunter, Longoria, McCall, Ramsay, Stiles

0 nays

5 absent — Alvarado, Brimer, Danburg, Hilbert, D. Jones

WITNESSES: For — None

Against — None

On — William Hale, Texas Commission on Human Rights

BACKGROUND : The Texas Commission on Human Rights (TCHR), established in 1983, is empowered to receive and investigate employment discrimination claims made under chapter 21 of the Labor Code. TCHR is allowed to pass on such allegations or file civil actions to remedy the discrimination.

DIGEST: HB 1453, as amended, would require that in any proceeding in which TCHR has authorized the attorney general to commence a legal action, the attorney general would have to commence such action within 30 days of receipt of the commission's authorization.

The attorney general would be required to review the commission's request for the commencement of legal action within ten days of receipt to determine if the reasonable cause findings by TCHR were well grounded in fact and warranted by law. If the attorney general found the complaint to be well grounded in fact and law, the action would have to be commenced within 30 days of the authorization. If the attorney general determined that the findings were not well grounded in fact or warranted by law, the attorney general would be required to inform in writing the executive director of TCHR of the reasons for refusing to commence the action. The written response of the attorney general would have to be received within 10 days of the commission's authorization to begin legal action.

If the attorney general refused to commence legal action, TCHR at a regularly scheduled meeting could vote to proceed with the action previously authorized. If a majority of the members authorized the action, the attorney general would have to commence the action within 30 days of the meeting or provide within 10 days authorization for TCHR to obtain outside legal counsel. TCHR would be authorized to obtain legal counsel to file the action within 30 days of the commission meeting authorizing action if the attorney general refused to commence the action. The TCHR meeting to discuss the filing of an action could be a closed meeting.

HB 1453 would also clarify that venue for an action commenced for employment discrimination would be the county in which the alleged discrimination occurred.

HB 1453 would take effect September 1, 1997 and apply to perfected complaints filed with the commission on or after that date.

**SUPPORTERS
SAY:**

The Texas Commission on Human Rights now lacks the authority to require the attorney general to pursue an employment discrimination or obtain outside legal counsel without the attorney general's authorization. This lack of authority has affected federal funding of TCHR by the Equal Employment Opportunity Commission (EEOC). The performance measures established by the EEOC require TCHR to take action on employment discrimination complaints within certain time periods.

HB 1453 would create a balance between authorizing TCHR to obtain rapid commencement of legal action for employment discrimination complaints in order to meet federal performance measures and the authority of the attorney general to refuse to commence legal action on a complaint that was not well grounded in fact or warranted by law. Requiring the Attorney General's Office to make a decision on the commencement of an action within 10 days of receipt of the complaint would not place a burden on the attorney general's staff, but it would allow TCHR to obtain a prompt determination of whether a complaint would be filed by the attorney general. A prompt determination is necessary to allow TCHR to review options for pursuing the complaint should the attorney general refuse to commence the action.

State agencies are empowered in Art. 9 of the general appropriations act to obtain outside counsel if the attorney general refuses to file a claim or defend a suit on behalf of the agency. HB 1453 would track the authorization of outside counsel found in that legislation. Because TCHR would receive a written explanation of why the attorney general refused to pursue a particular action, the commission would not seek to obtain outside counsel in actions that could result in penalties or sanctions being assessed against the commission but only those actions in which the refusal was based on reasons other than the strength of the case.

**OPPONENTS
SAY:**

Allowing TCHR to automatically obtain outside counsel to pursue legal actions may be fiscally dangerous and also circumvent the constitutional authority of the attorney general to act as chief legal counsel for state agencies under Art. 4, sec. 22 of the Texas Constitution. When obtaining outside counsel for suits that may be considered not well grounded in fact or warranted by law, TCHR could be subject to civil penalties or other sanctions if a court found the case to be frivolous.

NOTES:

The committee amendment would make the commencement of legal action by the attorney general discretionary. The amendment would require the attorney general to respond in writing to TCHR's authorization to file suit within 10 days and would provide a process where the commission could vote to pursue the action through outside legal counsel.

A related bill, HB 1691 by Eiland, which would allow the attorney general to determine whether or not complaints from TCHR on the Fair Housing Standards Act are well grounded in fact and warranted by law before commencing an action based on the complaint, was reported favorably, as substituted, by the House State Affairs Committee on April 24.