

BILL ANALYSIS

Senate Research Center
76R815 JMC-D

S.B. 364
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Jurisprudence
3/19/1999
As Filed

DIGEST

Currently, the Texas Human Rights Commission (commission) is subject to the Sunset Act and will be abolished on September 1, 1999, unless the Legislature continues the commission. The commission enforces state equal employment opportunity and fair housing laws by investigating and resolving employment and housing discrimination complaints as an alternative to litigation. The commission also provides comprehensive training and technical assistance to state agencies and private businesses on the federal and state anti-discrimination laws.

The Sunset Review Commission reviewed the commission and recommended continuing the commission and making the following statutory modifications: enhance the commission's public outreach and investigator training efforts; strengthen the commission's technical assistance and training roles by codifying equal employment opportunity riders; extend the availability of compensatory damages to all public employees who suffer employment discriminations; and provide for other changes as recommended by the Sunset Commission. S.B. 364 would continue the commission for a 12-year period and make statutory modifications.

PURPOSE

As proposed, S.B. 364 continues the Human Rights Commission for a 12-year period and makes statutory modifications recommended by the Sunset Review Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Human Rights Commission in SECTION 12 (Section 21.0035, Labor Code) and SECTION 15 (Section 21.453, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 461.002, Government Code, to abolish the Human Rights Commission (commission) on September 1, 2011, rather than 1999.

SECTION 2. Amends Section 461.052, Government Code, to define a "Texas trade association." Prohibits a person from being a member or employee of the commission in a "bona fide executive, administrative, or professional capacity" if the person or the person's spouse is involved in certain Texas trade association activities. Makes conforming changes.

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

Sec. 461.0535. COMMISSIONER TRAINING. Prohibits a person appointed as a member of the commission from participating in certain commission activities until the person completes a requisite training program. Requires the training program to provide the person with certain information regarding the commission and state law. Authorizes the person to receive travel reimbursements as provided by the General Appropriations Act, regardless of when the person qualifies for membership.

SECTION 4. Amends Section 461.054, Government Code, to require the executive director of the commission to notify the presiding officer of the commission when a potential ground for removal exists. Requires the presiding officer to notify the governor and attorney general, rather than the governor only, of that potential ground. Requires the executive director to notify the next highest ranking officer of the commission when the potential ground for removal exists against the presiding officer. Provides that a

member can be removed for grounds including a member who does not hold the qualification required by Section 461.051 at the time of taking office, does not maintain those qualifications required by Section 461.051, is not eligible for membership under Section 461.052, cannot discharge membership duties because of illness or disability, or is absent from more than half of certain commission meetings without an excuse approved by a majority vote of the commission. Provides that action of the commission, rather than an act, is not affected whether it was taken when a ground for removal existed. Deletes grounds for removal regarding qualification for holding office at the time of appointment, holding those qualifications under Section 461.051 or 461.051(a), not maintaining the qualifications, violating a prohibition established by Section 461.042(b), inability to discharge duties for which the member is appointed because of illness or disability, and that does not have an absence excused by majority vote of the commission. Makes conforming change.

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 to provide members and employees with information regarding the requirements for office or employment under this chapter including information regarding a person's responsibilities, rather than require the commission to provide information regarding their qualifications and responsibilities for office or employment.

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

Sec. 461.060. New heading: PUBLIC INTEREST INFORMATION. Requires the commission to use various outreach methods to provide complaint process information to the public. Sets forth requirements to include in the information under Subsection (b). Requires the commission to ensure the availability of a knowledgeable commission employee to answer questions during business hours. Deletes a notification requirement regarding a written complaint filed with the commission. Makes conforming changes.

SECTION 7. Amends Subchapter 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. Sets forth requirements for the file. Requires the commission to provide the person filing the complaint and the subject of the complaint a copy of the commission's policies and procedures regarding investigation and resolution procedures. Requires the commission to give the status of the investigation, except under certain investigations, to the filing person and the subjects of the complaint.

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

Sec. 461.061. New heading: PLAN FOR REASONABLE ACCESS TO COMMISSION PROGRAMS; ACCOMMODATIONS. Requires the commission to provide the option of a telephone operator to assist deaf, mobility-impaired, or cognitive dysfunctional persons; to provide Section 461.060 public interest information in certain alternative formats; and to make the commission's Internet site accessible to a disabled person.

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

Sec. 461.063. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. Prohibits commission investigators from conducting an investigation until a comprehensive training and education program for investigators that complies with this section is completed. Sets forth educational requirements for the training program. Requires each investigator to complete an annual continuing education program covering updates to the initial training as well as judicial and legislative changes. Requires the commission to develop and biennially update an investigation procedures manual that must include investigation procedures and information and may include information from the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

Sec. 461.064. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. Requires the commission to collect and report information on statewide employment and housing discrimination complaints. Requires the commission each fiscal year to collect and analyze

information regarding employment and housing discrimination complaints filed with the Equal Employment Opportunity Commission, the U.S. Department of Housing and Urban Development, and local commission in this state. Sets forth analyzing requirements for the information. Requires the commission to include in an annual report to the governor and legislature the results of the analyses.

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 authority for the commission to require state agencies and public institutions of higher education to develop and implement personnel policies that comply with this chapter.

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

Sec. 21.0035. CIVILIAN WORKFORCE COMPOSITION. Requires the commission to biennially determine, by rule, certain percentages regarding statewide workforces. Requires the commission to report within a certain time period the percentages to the governor and the legislature.

SECTION 13. Amends Section 21.2585(d), Labor Code, by prohibiting the sum of the amount of compensatory damages for each complaint from exceeding \$50,000 in the case of a respondent that has fewer than 101 employees, rather than has more than 14 and few than 101 employees.

SECTION 14. Amends Subchapter 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 program, including providing employees with certain information on nondiscrimination and sexual harassment. Requires each employee to attend within a certain date the training program and to attend supplemental training every two years. Requires the commission to develop training materials for state agencies. Requires the state agency to have each state employee sign an attendance sheet when attending the training program and to file the sheet with 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 state agency to develop and implement personnel policies and procedures that comply with this chapter, including personnel selection procedures that incorporate a workforce diversity program.

Sec. 21.453. REVIEW. Requires the commission to review in a six-year cycle the policies and procedures of each state agency and to determine whether they comply with this chapter. Requires the commission to develop, by rule, a staggered system for reviewing the agencies’ policies and procedures. Requires the commission to recommend appropriate revisions to an agency’s inadequate personnel policies and procedures. Requires the state agency to implement the revisions within one year.

Sec. 21.454. ANNUAL COMPLIANCE REPORT. Requires the commission to submit to the governor and legislature a report on an agency’s policies and procedures, after review of the agency and implementation of any Section 21.453 revisions.

Sec. 21.455. REIMBURSEMENT. Requires an agency to reimburse by interagency contract the commission for the reviews conducted under Section 21.453. Provides that the actual expenses shall be determined by the General Services Commission and may not exceed \$5,000 per state agency.

Sec. 21.456. FAILURE TO COMPLY WITH SUBCHAPTER; ADMINISTRATIVE PENALTY. Requires the commission to certify whether an agency has not complied with this subchapter and to notify the comptroller if so. Requires the comptroller to notify the agency that its appropriations will be subject to a \$5,000 reduction if the agency does not, within a certain time, comply with this subchapter. Requires the comptroller to take certain action if the agency has not changed its policies and procedures or reimbursed the commission.

SUBCHAPTER J. HIRING PRACTICES.

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

Sec. 21.502. RECRUITMENT PLAN. Requires each state agency, except certain junior colleges, to develop a plan to recruit African Americans, Hispanic Americans, and females if they are underemployed by the agency in a job category. Requires the agency to base the plan on the workforce analysis prepared under Section 21.501 and on any other 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.

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

Sec. 21.504. ANNUAL REPORT. Requires each state agency by a certain date to report to the commission, the Legislative Budget Board, and the governor, the certain demographic statistics required by this chapter.

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 to submit to the commission each year information on equal employment opportunity, on a certain report, by a certain date. Requires the commission to compile the information. Sets forth statistics required for the submissions.

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

Sec. 21.554. FORM. Requires the commission to notify by a certain date each state agency of the form used to make a report under this chapter for the following year.

Sec. 21.555. FAILURE TO FILE REQUIRED REPORT; ADMINISTRATIVE PENALTY. Requires the commission to certify with the comptroller whether an agency has failed to file a report required under this subchapter. Requires the comptroller to notify the agency that its appropriations will be subject to a \$2,000 reduction if the agency does not within a certain time comply with this subchapter. Requires the comptroller to take certain action if the agency has not submitted proof of complying with this subchapter.

Sec. 21.556. REQUIRED COMPLIANCE TRAINING FOR STATE AGENCIES. Requires a state agency to participate in a comprehensive equal employment opportunity program provided by the commission, if the agency has received three or more complaints with cause of employment discrimination in a fiscal year. Requires the commission to notify the state agency of the training

requirement as well as the time and place of the training program. Requires a state agency that receives notice under Subsection (b) to designate appropriate supervisory and managerial employees and any employee named as a respondent in a complaint contributing to the agency's required program participation to participate in the training program. Requires the agency to pay the cost of training and reimburse the commission. Requires the cost of the program to be determined and approved by the commission in cooperation with the General Services Commission.

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

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

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

(b) Makes application of this Act prospective regarding membership on the commission. Provides that this Act does not prohibit a member currently serving from being reappointed if the person meets the qualifications under Chapter 461, Government Code.

(c) Requires the commission to develop by January 1, 2000, certain training programs and manuals for training.

(d) Makes application of Section 461.0535, Government Code, prospective for a person appointed as a member of the commission, until March 1, 2000.

(e) Requires the commission to provide by January 1, 2000, certain telephone and operator services.

(f) Makes application of Section 461.063, Government Code, prospective for investigators of the commission.

(g) Requires the commission to complete by November 1, 1999, the first employment and housing discrimination analysis under Section 461.064, Government Code.

(h) Makes application of Section 21.2585(d), Labor Code, prospective.

(i) Requires the commission to develop and provide by November 1, 1999, each state agency the employment discrimination materials under Section 21.010, Labor Code.

(j) Provides that an agency is not required to provide employment discrimination training, as required by Section 21.010, Labor Code, until December 1, 1999.

(k) Requires each agency to develop and implement by October 1, 1999, the personnel policies and procedures under Subchapter 21I, Labor Code.

(l) Requires the commission to develop by October 1, 1999, the staggered system for reviewing personnel policies and proceeds under Subchapter 21I, Labor Code.

(m) Provides that the commission is not required until October 1, 1999, to review the personnel policies and procedures under Subchapter 21I, Labor Code.

(n) Requires each state agency to complete by November 1, 1999, the agency workforce analysis and to develop by January 1, 2000, the recruitment plan, under Subchapter 21J, Labor Code.

(o) Requires the commission with the comptroller to adopt by December 1, 1999, the form used by a state agency to make a report under Subchapter 21K, Labor Code.

(p) Establishes that an agency is not required to participate in a Subchapter 21K, Labor Code, training program, on the basis of an employment discrimination filed prior to the effective date of this Act.

SECTION 18. Emergency clause.