

By: Dunnam

H.B. No. 2863

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the functions of the State Office of Administrative
3 Hearings, including hearings functions transferred to the office
4 from the Texas Department of Licensing and Regulation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 552, Government Code, is
7 amended by adding Section 552.141 to read as follows:

8 Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE
9 LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The
10 following working papers of an administrative law judge at the
11 State Office of Administrative Hearings are excepted from the
12 requirements of Section 552.021:

13 (1) notes recording the observations, thoughts, or
14 impressions of an administrative law judge;

15 (2) drafts of a proposal for decision;

16 (3) drafts of orders made in connection with
17 conducting contested case hearings; and

18 (4) drafts of orders made in connection with
19 conducting alternative dispute resolution procedures.

20 SECTION 2. Section 2003.021, Government Code, is amended by
21 adding Subsection (g) to read as follows:

22 (g) The office shall conduct all hearings in contested cases
23 under Chapter 2001 that are before the Texas Department of
24 Licensing and Regulation under Chapter 51, Occupations Code.

1 SECTION 3. Section 2003.022, Government Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) The appointment of the chief administrative law judge
4 shall be made without regard to the race, color, disability, sex,
5 religion, age, or national origin of the appointee.

6 SECTION 4. Subchapter B, Chapter 2003, Government Code, is
7 amended by adding Section 2003.0221 to read as follows:

8 Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE.
9 It is a ground for removal from the position of chief administrative
10 law judge that an appointee:

11 (1) does not have at the time of taking office the
12 qualifications required by Section 2003.022(b);

13 (2) does not maintain during service as chief
14 administrative law judge a license to practice law in this state;

15 (3) is ineligible to hold the position under Section
16 2003.0225;

17 (4) cannot, because of illness or disability,
18 discharge the appointee's duties for a substantial part of the
19 appointee's term; or

20 (5) engages in the practice of law in violation of
21 Section 2003.022(c).

22 SECTION 5. Subchapter B, Chapter 2003, Government Code, is
23 amended by adding Sections 2003.0225 and 2003.0226 to read as
24 follows:

25 Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section,
26 "Texas trade association" means a cooperative and voluntarily
27 joined statewide association of business or professional

1 competitors in this state designed to assist its members and its
2 industry or profession in dealing with mutual business or
3 professional problems and in promoting their common interest.

4 (b) A person may not hold the position of chief
5 administrative law judge and may not be employed by the office in a
6 "bona fide executive, administrative, or professional capacity,"
7 as that phrase is used for purposes of establishing an exemption to
8 the overtime provisions of the federal Fair Labor Standards Act of
9 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
10 amendments, if:

11 (1) the person is an officer, employee, or paid
12 consultant of a Texas trade association in any field regulated by an
13 agency for which the office is required to conduct administrative
14 hearings; or

15 (2) the person's spouse is an officer, manager, or paid
16 consultant of a Texas trade association in any field regulated by an
17 agency for which the office is required to conduct administrative
18 hearings.

19 (c) A person may not hold the position of chief
20 administrative law judge or act as the general counsel to the chief
21 administrative law judge or the office if the person is required to
22 register as a lobbyist under Chapter 305 because of the person's
23 activities for compensation on behalf of a profession related to
24 the operation of the office, including a profession that is
25 licensed by an agency for which the office is required to conduct
26 administrative hearings.

27 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR

1 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
2 judge or the chief administrative law judge's designee shall
3 provide to office employees, as often as necessary, information
4 regarding the requirements for employment under this chapter,
5 including information regarding a person's responsibilities under
6 applicable laws relating to standards of conduct for state
7 employees.

8 SECTION 6. Section 2003.023, Government Code, is amended to
9 read as follows:

10 Sec. 2003.023. SUNSET PROVISION. The State Office of
11 Administrative Hearings is subject to review under Chapter 325
12 (Texas Sunset Act), but is not abolished under that chapter. The
13 office shall be reviewed during the periods in which state agencies
14 abolished in 2015 [~~2003~~] and every 12th year after 2015 [~~2003~~] are
15 reviewed.

16 SECTION 7. Section 2003.024, Government Code, is amended to
17 read as follows:

18 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
19 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
20 to the office during any of the three most recent state fiscal years
21 for which complete information about the agency's hourly usage is
22 available and the costs to the office of conducting hearings and
23 alternative dispute resolution procedures for the [~~a~~] state agency
24 [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid
25 by appropriations to the office during a state fiscal biennium, the
26 office and the agency shall enter into an interagency contract for
27 the biennium under which the referring agency pays the office, at

1 the start of each fiscal year of the biennium, a lump-sum amount to
2 cover the costs of conducting all hearings and procedures during
3 the fiscal year [a hearing or procedure]. The lump-sum amount
4 [costs] paid to the office under the contract must be based on:

5 (1) an hourly rate that is set by the office~~[. The~~
6 ~~office shall set the hourly rate for a biennium]~~ in time for the
7 rate to be reviewed by the legislature as part of the legislature's
8 review of the office's legislative appropriations request for the
9 biennium; and

10 (2) the anticipated hourly usage of the office's
11 services by the referring agency for each fiscal year of the
12 biennium, as estimated by the office under Subsection (a-1).

13 (a-1) Before the beginning of each state fiscal biennium,
14 the office shall estimate for each fiscal year of the biennium the
15 anticipated hourly usage for each state agency that referred
16 matters to the office during any of the three most recent state
17 fiscal years for which complete information about the agency's
18 hourly usage is available. The office shall estimate an agency's
19 anticipated hourly usage by evaluating:

20 (1) the number of hours spent by the office conducting
21 hearings or alternative dispute resolution procedures for the state
22 agency during the three most recent state fiscal years for which
23 complete information about the agency's hourly usage is available;
24 and

25 (2) any other relevant information, including
26 information provided to the office by the state agency, that
27 suggests an anticipated increase or decrease in the agency's hourly

1 usage of the office's services during the state fiscal biennium, as
2 compared to past usage.

3 (a-2) If a state agency did not refer matters to the office
4 during any of the three state fiscal years preceding a state fiscal
5 biennium for which complete information about the agency's hourly
6 usage would have been available and did not provide information to
7 the office sufficient for the office to reasonably and timely
8 estimate anticipated usage and enter into a contract with the
9 agency before the start of the state fiscal biennium, and the costs
10 to the office of conducting hearings and alternative dispute
11 resolution procedures for the state agency are not paid by
12 appropriations to the office for the state fiscal biennium, the
13 referring agency shall pay the office the costs of conducting
14 hearings or procedures for the agency based on the hourly rate that
15 is set by the office under Subsection (a) and on the agency's actual
16 usage of the office's services.

17 (b) If the costs to the office of conducting hearings and
18 alternative dispute resolution procedures for a state agency that
19 refers matters to the office are anticipated to be ~~otherwise~~ paid
20 by a lump-sum appropriation ~~appropriations~~ to the office for
21 ~~during~~ a state fiscal biennium, the office shall timely provide
22 to the legislature the information described by Subsection (c)
23 ~~[office and the agency shall enter into an interagency contract for~~
24 ~~each state fiscal year during the biennium under which the~~
25 ~~referring agency pays the office the costs for the number of hours~~
26 ~~spent by the office conducting hearings or alternative dispute~~
27 ~~resolution procedures for the agency during the fiscal year that~~

1 ~~exceeds by 10 percent or more the number of hours spent by the~~
2 ~~office conducting hearings or alternative dispute resolution~~
3 ~~procedures for the agency during the state fiscal year that ended~~
4 ~~August 31, 1998. The costs paid under the contract must be based on~~
5 ~~an hourly rate that is set by the office. The office shall set the~~
6 ~~hourly rate for a biennium in time for the rate to be reviewed by the~~
7 ~~legislature as part of the legislature's review of the office's~~
8 ~~legislative appropriations request for the biennium].~~

9 (c) Each state fiscal biennium, the office as part of its
10 legislative appropriation request shall file:

11 (1) information, as estimated under Subsection (a-1),
12 related to the anticipated hourly usage of each state agency that
13 refers matters to the office for which the costs of hearings and
14 alternative dispute resolution procedures are anticipated to be
15 paid by appropriations to the office; and

16 (2) an estimate of its hourly costs in conducting each
17 type of hearing or dispute resolution procedure. The office shall
18 estimate the hourly cost based on the average cost per hour during
19 the preceding state fiscal year of:

20 (A) [(1)] the salaries of its administrative law
21 judges;

22 (B) [(2)] the travel expenses, hearing costs,
23 and telephone charges directly related to the conduct of a hearing
24 or procedure; and

25 (C) [(3)] the administrative costs of the
26 office, including docketing costs and the administrative costs of
27 the division of the office that conducts the hearing or procedure.

1 (d) This section does not apply to hearings conducted:

2 (1) by the natural resource conservation division or
3 the utility division; or

4 (2) under the administrative license revocation
5 program.

6 SECTION 8. Section 2003.050, Government Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) Rules adopted by the chief administrative law judge
9 under this section shall specify procedures to permit a witness to
10 testify over the telephone at a hearing conducted by the office.
11 The rules must require the consent of all parties to the contested
12 case or other matter before a witness is permitted to testify over
13 the telephone and must include procedures for verification of the
14 identity of the witness by a third party.

15 SECTION 9. Subchapter C, Chapter 2003, Government Code, is
16 amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055,
17 and 2003.056 to read as follows:

18 Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office
19 shall maintain a file on each written complaint filed with the
20 office. The file must include:

21 (1) the name of the person who filed the complaint;
22 (2) the date the complaint is received by the office;
23 (3) the subject matter of the complaint;
24 (4) the name of each person contacted in relation to
25 the complaint;

26 (5) a summary of the results of the review or
27 investigation of the complaint; and

1 (6) an explanation of the reason the file was closed,
2 if the office closed the file without taking action other than to
3 investigate the complaint.

4 (b) The office shall provide to the person filing the
5 complaint and to each person who is a subject of the complaint a
6 copy of the office's policies and procedures relating to complaint
7 investigation and resolution.

8 (c) The office, at least quarterly until final disposition
9 of the complaint, shall notify the person filing the complaint and
10 each person who is a subject of the complaint of the status of the
11 investigation unless the notice would jeopardize an undercover
12 investigation.

13 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
14 The chief administrative law judge or the chief administrative law
15 judge's designee shall prepare and maintain a written policy
16 statement that implements a program of equal employment opportunity
17 to ensure that all personnel decisions are made without regard to
18 race, color, disability, sex, religion, age, or national origin.

19 (b) The policy statement must include:

20 (1) personnel policies, including policies relating
21 to recruitment, evaluation, selection, training, and promotion of
22 personnel, that show the intent of the office to avoid the unlawful
23 employment practices described by Chapter 21, Labor Code; and

24 (2) an analysis of the extent to which the composition
25 of the office's personnel is in accordance with state and federal
26 law and a description of reasonable methods to achieve compliance
27 with state and federal law.

1 (c) The policy statement must:

2 (1) be updated annually;

3 (2) be reviewed by the state Commission on Human
4 Rights for compliance with Subsection (b)(1); and

5 (3) be filed with the governor's office.

6 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
7 administrative law judge or the chief administrative law judge's
8 designee shall provide to office employees information and training
9 on the benefits and methods of participation in the State Employee
10 Incentive Program.

11 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
12 administrative law judge shall develop and implement a policy
13 requiring the chief administrative law judge and office employees
14 to research and propose appropriate technological solutions to
15 improve the office's ability to perform its functions. The
16 technological solutions must:

17 (1) ensure that the public is able to easily find
18 information about the office on the Internet;

19 (2) ensure that persons who want to use the office's
20 services are able to:

21 (A) interact with the office through the
22 Internet; and

23 (B) access any service that can be provided
24 effectively through the Internet; and

25 (3) be cost-effective and developed through the
26 office's planning processes.

27 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The

1 chief administrative law judge shall develop and implement a policy
2 to encourage the use of alternative dispute resolution procedures
3 where appropriate to assist in the internal and external resolution
4 of disputes within the office's jurisdiction.

5 SECTION 10. Section 51.305, Occupations Code, is amended to
6 read as follows:

7 Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
8 respondent requests a hearing, the hearing shall be conducted by
9 the State Office of Administrative Hearings [~~department shall set a~~
10 ~~hearing and give written notice of the hearing to the respondent~~].

11 (b) The State Office of Administrative Hearings shall
12 consider the department's applicable substantive rules and
13 policies when conducting a hearing under this subchapter [~~The~~
14 ~~executive director may employ a hearings officer to conduct the~~
15 ~~hearing~~].

16 (c) An administrative law judge at the State Office of
17 Administrative Hearings [~~The hearings officer~~] shall:

- 18 (1) make findings of fact and conclusions of law; and
19 (2) promptly issue to the commission a proposal for
20 decision as to the occurrence of the violation and the amount of any
21 proposed administrative penalty.

22 SECTION 11. Section 51.354(a), Occupations Code, is amended
23 to read as follows:

24 (a) A respondent is entitled to a hearing conducted by the
25 State Office of Administrative Hearings if the executive director
26 proposes to deny, suspend, or revoke a license.

27 SECTION 12. Section 1802.203, Occupations Code, is amended

1 to read as follows:

2 Sec. 1802.203. HEARING. [~~(a)~~] If the amount determined by
3 the department under Section 1802.202 is disputed by the auctioneer
4 or the aggrieved party, the department shall refer the matter to the
5 State Office of Administrative Hearings for a hearing on the
6 disputed claim [~~department's hearings examiner shall:~~

7 ~~[(1) conduct a hearing on the claim in accordance with~~
8 ~~department rules; and~~

9 ~~[(2) determine the amount owed to the aggrieved~~
10 ~~party].~~

11 ~~[(b) A hearing on a claim may be conducted at the~~
12 ~~department's Austin office or at another location as provided by~~
13 ~~department rule.~~

14 ~~[(c) After the hearing, the hearings examiner shall prepare~~
15 ~~a proposal for decision for the commissioner.]~~

16 SECTION 13. Sections 51.354(b) and (c), Occupations Code,
17 are repealed.

18 SECTION 14. On September 1, 2003:

19 (1) all functions and activities performed by the
20 Texas Department of Licensing and Regulation that relate to
21 conducting administrative hearings at the department are
22 transferred to the State Office of Administrative Hearings;

23 (2) two full-time equivalent employee positions are
24 transferred from the Texas Department of Licensing and Regulation
25 to the State Office of Administrative Hearings to provide the
26 hearing services described in Sections 51.305, 51.354, and
27 1802.203, Occupations Code, as amended by this Act. When filling

1 the two full-time equivalent employee positions, the State Office
2 of Administrative Hearings shall give first consideration to an
3 applicant employed as a hearings examiner or administrative
4 technician at the Texas Department of Licensing and Regulation;

5 (3) all property, including records, in the custody of
6 the Texas Department of Licensing and Regulation related to
7 providing administrative hearings under the former Sections
8 51.305, 51.354, and 1802.203, Occupations Code, becomes the
9 property of the State Office of Administrative Hearings, but stays
10 in the same physical location unless moved in accordance with the
11 plan created under Section 15 of this Act; and

12 (4) all funds appropriated by the legislature to the
13 Texas Department of Licensing and Regulation for purposes relating
14 to conducting administrative hearings under the former Sections
15 51.305, 51.354, and 1802.203, Occupations Code, are transferred to
16 the State Office of Administrative Hearings.

17 SECTION 15. The Texas Department of Licensing and
18 Regulation and the State Office of Administrative Hearings shall
19 establish a transition plan for the transfer described in Section
20 14 of this Act. The plan must include:

21 (1) a timetable for any necessary or advisable
22 movement of the physical location of property;

23 (2) an inventory of records and other property
24 required to be transferred; and

25 (3) a plan for continued support and cooperation the
26 Texas Department of Licensing and Regulation must provide the State
27 Office of Administrative Hearings to ensure an efficient transfer

1 of services and planning for future needs, including:

2 (A) an informational training session conducted
3 by the Texas Department of Licensing and Regulation for hearings
4 officers at the State Office of Administrative Hearings; and

5 (B) procedures for forwarding requests for
6 administrative hearings submitted to the Texas Department of
7 Licensing and Regulation to the State Office of Administrative
8 Hearings.

9 SECTION 16. (a) This Act takes effect September 1, 2003.

10 (b) The change in law made by this Act to Section 2003.024,
11 Government Code, applies only in relation to the state fiscal
12 biennium beginning September 1, 2005, and any subsequent state
13 fiscal biennium.