

By: Shapleigh

S.B. No. 1147

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

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

(2) drafts of a proposal for decision;

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

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

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

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of 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
26 section, "Texas trade association" means a cooperative and
27 voluntarily joined statewide association of business or

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

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

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

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

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

1 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR
2 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
3 judge or the chief administrative law judge's designee shall
4 provide to office employees, as often as necessary, information
5 regarding the requirements for employment under this chapter,
6 including information regarding a person's responsibilities under
7 applicable laws relating to standards of conduct for state
8 employees.

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

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

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

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

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

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

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

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

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

26 (2) any other relevant information, including
27 information provided to the office by the state agency, that

1 suggests an anticipated increase or decrease in the agency's hourly
2 usage of the office's services during the state fiscal biennium, as
3 compared to past usage.

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

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

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

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

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

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

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

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

26 (C) [(3)] the administrative costs of the
27 office, including docketing costs and the administrative costs of

1 the division of the office that conducts the hearing or procedure.

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

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

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

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

9 (c) The rules of the office regarding the participation of a
10 witness by telephone must include procedures to verify the identity
11 of the witness who is to appear by telephone.

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

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

18 (1) the name of the person who filed the complaint;

19 (2) the date the complaint is received by the office;

20 (3) the subject matter of the complaint;

21 (4) the name of each person contacted in relation to
22 the complaint;

23 (5) a summary of the results of the review or
24 investigation of the complaint; and

25 (6) an explanation of the reason the file was closed,
26 if the office closed the file without taking action other than to
27 investigate the complaint.

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

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

10 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

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

16 (b) The policy statement must include:

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

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

25 (c) The policy statement must:

26 (1) be updated annually;

27 (2) be reviewed by the state Commission on Human

1 Rights for compliance with Subsection (b)(1); and

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

3 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
4 administrative law judge or the chief administrative law judge's
5 designee shall provide to office employees information and training
6 on the benefits and methods of participation in the state employee
7 incentive program.

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

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

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

18 (A) interact with the office through the
19 Internet; and

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

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

24 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The
25 chief administrative law judge shall develop and implement a policy
26 to encourage the use of alternative dispute resolution procedures
27 where appropriate to assist in the internal and external resolution

1 of disputes within the office's jurisdiction.

2 SECTION 10. Section 51.305, Occupations Code, is amended to
3 read as follows:

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

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

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

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

19 SECTION 11. Subsection (a), Section 51.354, Occupations
20 Code, is amended to read as follows:

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

24 SECTION 12. Section 1802.203, Occupations Code, is amended
25 to read as follows:

26 Sec. 1802.203. HEARING. [~~(a)~~] If the amount determined by
27 the department under Section 1802.202 is disputed by the auctioneer

1 or the aggrieved party, the department shall refer the matter to the
2 State Office of Administrative Hearings for a hearing on the
3 disputed claim [~~department's hearings examiner shall:~~

4 ~~(1) conduct a hearing on the claim in accordance with~~
5 ~~department rules; and~~

6 ~~(2) determine the amount owed to the aggrieved~~
7 ~~party].~~

8 ~~(b) A hearing on a claim may be conducted at the~~
9 ~~department's Austin office or at another location as provided by~~
10 ~~department rule.~~

11 ~~(c) After the hearing, the hearings examiner shall prepare~~
12 ~~a proposal for decision for the commissioner.]~~

13 SECTION 13. The heading to Section 1802.253, Occupations
14 Code, is amended to read as follows:

15 Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE
16 HEARINGS.

17 SECTION 14. Subsection (a), Section 1802.253, Occupations
18 Code, is amended to read as follows:

19 (a) Before denying an application for a license or
20 suspending or revoking a license, the commissioner shall:

21 (1) set the matter for a hearing to be conducted by the
22 State Office of Administrative Hearings; and

23 (2) before the 30th day before the hearing date,
24 notify the applicant or license holder in writing of:

25 (A) the charges alleged or the question to be
26 determined at the hearing; and

27 (B) the date and location of the hearing.

1 SECTION 15. Subsections (b) and (c), Section 51.354,
2 Occupations Code, are repealed.

3 SECTION 16. On September 1, 2003:

4 (1) all functions and activities performed by the
5 Texas Department of Licensing and Regulation that relate to
6 conducting administrative hearings at the department are
7 transferred to the State Office of Administrative Hearings;

8 (2) two full-time equivalent employee positions are
9 transferred from the Texas Department of Licensing and Regulation
10 to the State Office of Administrative Hearings to provide the
11 hearing services described in Sections 51.305, 51.354, 1802.203,
12 and 1802.253, Occupations Code, as amended by this Act. When
13 filling the two full-time equivalent employee positions, the State
14 Office of Administrative Hearings shall give first consideration to
15 an applicant employed as a hearings examiner or administrative
16 technician at the Texas Department of Licensing and Regulation;

17 (3) all property, including records, in the custody of
18 the Texas Department of Licensing and Regulation related to
19 providing administrative hearings under the former Sections
20 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
21 the property of the State Office of Administrative Hearings, but
22 stays in the same physical location unless moved in accordance with
23 the plan created under Section 17 of this Act; and

24 (4) all funds appropriated by the legislature to the
25 Texas Department of Licensing and Regulation for purposes relating
26 to conducting administrative hearings under the former Sections
27 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are

1 transferred to the State Office of Administrative Hearings.

2 SECTION 17. The Texas Department of Licensing and
3 Regulation and the State Office of Administrative Hearings shall
4 establish a transition plan for the transfer described in Section
5 16 of this Act. The plan must include:

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

8 (2) an inventory of records and other property
9 required to be transferred; and

10 (3) a plan for continued support and cooperation the
11 Texas Department of Licensing and Regulation must provide the State
12 Office of Administrative Hearings to ensure an efficient transfer
13 of services and planning for future needs, including:

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

17 (B) procedures for forwarding requests for
18 administrative hearings submitted to the Texas Department of
19 Licensing and Regulation to the State Office of Administrative
20 Hearings.

21 SECTION 18. (a) This Act takes effect September 1, 2003.

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