

BILL ANALYSIS

C.S.H.B. 4661
By: Thompson, Senfronia
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In recent years the legislature has made a concerted effort to better target and address sexual harassment and misconduct in the workplace. These efforts notwithstanding, it has been suggested that current law fails to adequately deter or prevent a lobbyist who engages in conduct constituting sexual harassment from continuing to communicate directly with the legislative branch. Currently, the Texas Ethics Commission (TEC) may rescind a lobbyist's registration for conflicts of interest and other offenses under the law, but not for sexual harassment.

Legislative rules and policies related to sexual harassment cannot be meaningfully enforced with respect to lobbyists. If an employee of the legislature engages in conduct that constitutes sexual harassment, they can be terminated. No similar enforcement mechanism exists for a registered lobbyist that harasses an employee, officer, or member of the legislature or a lobbyist who has been charged with, but not yet convicted of, a sexually assaultive offense. Lobbyists work closely with legislators and legislative staff on a daily basis during session and throughout the interim, and it is imperative that there is an avenue for redress for members, officers, and employees of the legislature who have experienced harassment by a lobbyist.

C.S.H.B. 4661 seeks to require lobbyists to complete sexual harassment training following registration with the TEC and every two years thereafter and makes sexual harassment of a member, officer, or employee of the legislature by a registrant a violation of law within the jurisdiction of the TEC. Additionally, the bill directs the executive director of the TEC to temporarily suspend or restrict the registration of a lobbyist charged with sexual assault, indecent assault, or aggravated sexual assault.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4661 amends the Government Code to prohibit an individual required to register under statutory provisions relating to lobbyist registration from engaging in conduct that constitutes sexual harassment of a member, officer, or employee of the legislature. The bill classifies a violation of this prohibition as a Category Two violation for purposes of the Texas Ethics Commission's (TEC) complaint and hearing procedures and defines "sexual harassment" as an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if one of the following circumstances applies:

- submission to or rejection of the advance, request, or conduct is used as the basis for a decision in making an authorized expenditure;

- the advance, request, or conduct has the purpose or effect of unreasonably interfering with the performance of the individual's duties as a member, officer, or employee of the legislature; or
- the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment for the member, officer, or employee of the legislature.

C.S.H.B. 4661 requires the TEC, not later than the 180th day after the date a complaint is filed with the TEC alleging a sexual harassment violation, to complete a preliminary review and, if necessary, conduct a formal hearing regarding the complaint. The bill authorizes the hearing to be conducted by electronic means and excepts a formal hearing regarding the complaint from state open meetings law.

C.S.H.B. 4661 authorizes the TEC to deny, suspend, or revoke a registration if the TEC issues an order finding that the registrant violated the prohibition against sexual harassment or if the person is convicted of an offense under Penal Code provisions relating to bribery and corrupt influence or an offense under provisions governing the registration of lobbyists. The bill requires the executive director of the TEC to temporarily suspend or restrict the registration of a person charged with sexual assault, indecent assault, or aggravated sexual assault for a period not to exceed 90 days. Before the expiration of the temporary suspension or restriction, the TEC must conduct a hearing to determine whether to continue the suspension or restriction. The bill authorizes the hearing to be conducted by electronic means.

C.S.H.B. 4661 requires a registrant to complete an initial sexual harassment training program approved by the TEC not later than the 30th day after the date the individual files an initial registration and an additional approved sexual harassment training program not later than each two-year anniversary of the deadline for completion of the initial program. The bill requires a registrant to file written evidence of completing each program with the TEC and requires the TEC to approve a sexual harassment training program, which may be a training program that is made available by a house of the legislature to members, officers, and employees of that house. An approved sexual harassment training program must provide an individual with written evidence of completion of that program.

C.S.H.B. 4661 requires the TEC to approve at least one sexual harassment training program not later than September 1, 2021, and requires an individual who is registered with the TEC on September 1, 2021, to complete the initial training not later than October 1, 2021.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4661 differs from the original in minor or nonsubstantive ways to conform to certain bill drafting conventions, the following summarizes only the substantial differences between the introduced and committee substitute versions of the bill.

With respect to sexual harassment training for registrants, the substitute clarifies that the TEC is required to approve a training program for such purposes and includes the following provisions not in the original:

- a requirement for the TEC to approve at least one training program not later than September 1, 2021; and
- a requirement for an individual who is registered with the TEC on September 1, 2021, to complete the initial training not later than October 1, 2021.

With respect to the hearing process for a complaint alleging a sexual harassment violation, whereas the original required a formal hearing to be conducted on such a complaint not later

than the 180th day after the date the complaint was filed, the substitute retains that deadline, but specifies that a formal hearing is to be conducted only if necessary.

The substitute omits a provision from the original relating to the applicability of state public information law to a formal hearing by the TEC on a sexual harassment complaint.