

BILL ANALYSIS

C.S.H.B. 4771
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County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Persons of low income and those on disability income have limited resources to protect their rights to housing and are less likely to be able to obtain legal representation for eviction proceedings. According to data produced by the National Coalition for a Civil Right to Counsel, tenant representation in eviction cases across the nation averaged three percent. For tenants who have access to legal representation, the likelihood of remaining in their homes increases. C.S.H.B. 4771 seeks to reduce the economic damage caused by evictions, which can result in a loss of access to housing, employment, and education, by authorizing the creation of tenant legal services offices by local governments to assist low-income residential tenants in eviction cases and in cases involving discrimination based on the tenants' disabilities.

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. 4771 amends the Local Government Code to authorize a local government, defined by the bill as a municipality or county or any combination of municipalities or counties, to create a tenant legal services office to provide legal representation and services to tenants. The bill authorizes such an office to provide full legal representation to a tenant in a residential eviction case if the tenant is indigent or in a case involving a violation of disability discrimination provisions of the Texas Fair Housing Act if the tenant is a low-income individual with a disability. A tenant legal services office may provide brief legal assistance to a tenant in a residential eviction case if the tenant is a low-income individual who is not indigent. The bill authorizes a local government to establish a department of the local government, or by contract designate a nonprofit corporation, to serve as the tenant legal services office for the local government. The bill authorizes any combination of municipalities or counties to agree by entering into an interlocal contract under the Interlocal Cooperation Act to jointly implement or administer a tenant legal services office. The bill authorizes a local government by ordinance, order, or interlocal contract to adopt rules and procedures necessary to implement the bill's provisions.

C.S.H.B. 4771 requires a local government, before contracting with a nonprofit corporation to serve as a tenant legal services office, to solicit proposals for the office. The bill requires a local government to require a written plan from a nonprofit corporation proposing to serve as a tenant legal services office. The plan must include certain information relating to budget, personnel

positions, attorney caseload, personnel training, overhead costs, and conflict of interest policy. The bill requires a local government, after considering each proposal submitted by a nonprofit corporation to the local government, to select a proposal that reasonably demonstrates that the proposed office will provide adequate quality representation for tenants in applicable disputes. The bill prohibits the total cost of a proposal from being the sole consideration in selecting the proposal.

C.S.H.B. 4771 requires a tenant legal services office to be directed by a director of legal services who is a member of the State Bar of Texas, has practiced law for at least three years, and has substantial experience in the practice of landlord-tenant law. The bill entitles an office to receive funds for personnel costs and expenses incurred in operating the office in amounts determined by the local government and paid out of the appropriate local fund. The bill expressly does not authorize a local government to disburse, administer, or otherwise allocate funds received by the local government from the basic civil legal services account to create or operate a tenant legal services office.

C.S.H.B. 4771 authorizes a tenant legal services office to employ attorneys and other personnel necessary to perform the duties of the office as specified by the local government. The bill requires the director of an office to designate at least one employee of the office to assist tenants with disabilities in obtaining compliance with laws that apply to housing for tenants with disabilities. The bill authorizes an office to investigate the financial condition of a tenant who requests representation by the office and prohibits an office from representing a tenant if any of the following circumstances apply:

- a conflict of interest exists that has not been waived by the client;
- the office has insufficient resources to provide adequate representation for the tenant;
- the office is incapable of providing representation for the tenant in accordance with the rules of professional conduct; or
- the office shows other good cause for not accepting the request for representation by the tenant.

C.S.H.B. 4771 requires the director of a tenant legal services office to hold an annual public hearing to receive recommendations about the office. The bill requires the director, not later than the 30th day before the date of the hearing, to do the following:

- provide notice of the hearing to each interested party and official;
- publish notice of the hearing in a newspaper of general circulation in the local government;
- provide a copy of the notice to an appropriate officer or employee of the local government, who must post the notice as follows:
 - in each department or office of the local government responsible for providing social services for the residents of the local government; and
 - if the local government maintains a website, on that website and, if applicable, on each webpage of the website dedicated to such a department or office; and
- provide a copy of the notice to an appropriate officer or employee of each local court that has original jurisdiction over eviction cases or cases regarding violations of disability discrimination provisions of the Texas Fair Housing Act, who must post the notice in an appropriate place at the court on the director's behalf.

The bill requires the director to produce a transcript of the hearing and post the transcript on the local government's website not later than the 30th day after the date of the hearing.

C.S.H.B. 4771 requires the director of a tenant legal services office, not later than September 1 of each even-numbered year, to submit a report to the governing body of the local government and post the report on the local government's website that contains the following information that relates to the office for the preceding two years:

- the estimated number of tenants in the office's jurisdiction that are eligible for legal services;
- the number of tenants that received legal services, disaggregated by the following

characteristics of the tenants, if voluntarily disclosed by the tenant:

- household size;
 - estimated length of tenancy;
 - approximate household income;
 - disability; and
 - types of reasonable accommodations or modifications needed;
- the types of legal services provided;
- the outcomes immediately following the provision of full legal representation, as applicable and available, including the number of:
 - case dispositions in which:
 - tenants remained in their residences;
 - tenants were evicted from their residences;
 - tenants with disabilities remained in their residences; and
 - tenants with disabilities were displaced from their residences;
 - case dispositions regarding reasonable accommodations or modifications for tenants with disabilities that were approved or were disapproved, including the types of accommodations or modifications that were approved or disapproved, as applicable; and
 - cases in which the attorney was discharged or withdrew;
- the expenditures for the office; and
- any other information required by the local government.

C.S.H.B. 4771 includes the following definitions:

- "brief legal assistance" means individualized legal assistance provided in a single consultation by a tenant legal services office to a tenant;
- "disability" has the meaning assigned under the Texas Fair Housing Act;
- "full legal representation" means ongoing legal services provided by a tenant legal services office to a tenant, including court filings and appearances and other legal advice, advocacy, or assistance associated with a tenant's case;
- "indigent" means having earnings that are not more than 200 percent of the income standard established by applicable federal poverty guidelines;
- "low-income" means having earnings that are not more than 400 percent of the income standard established by applicable federal poverty guidelines;
- "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a tenant with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces; and
- "reasonable modification" means a reasonable structural change made to existing premises that may be necessary for a tenant with disabilities to have full enjoyment of a dwelling, including public and common use spaces.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4771 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision absent from the introduced establishing that the bill's provisions do not authorize a local government to disburse, administer, or otherwise allocate funds received by the local government from the basic civil legal services account to create or operate a tenant legal services office.

The introduced and the substitute differ with regard to the details for the distribution of the notice of a tenant legal services office's annual public hearing. While the introduced required notice to be posted in a local newspaper or on the local government's website, the substitute requires notice to be posted on the local government's website if one exists and requires newspaper notice regardless of whether notice is posted on that website. Additionally, the substitute clarifies the process for certain of the required postings to provide for posting by an appropriate officer or employee instead of by the office's director as provided in the introduced.

The substitute changes the frequency with which a tenant legal services office must submit and post the required report from annually, as in the introduced, to biennially. With regard to information in the report regarding the number of tenants that received legal services that is disaggregated by specified characteristics of the tenants:

- the substitute includes a provision absent from the introduced that conditions the disaggregation on the characteristics being voluntarily disclosed by the tenant; and
- the substitute omits the following characteristics that were included in the introduced:
 - zip code of residence;
 - age of head of household;
 - ongoing public assistance received at the time the legal services were initiated;
 - rent-regulated housing; and
 - public housing.