

BILL ANALYSIS

Senate Research Center

C.S.S.B. 757
By: Duncan
State Affairs
3/24/1999
Committee Report (Substituted)

DIGEST

Currently, the State Office of Administrative Hearings (office) conducts administrative hearings in certain contested cases. This bill would refine and clarify the purpose, function, duties, powers, and responsibilities of the office.

PURPOSE

As proposed, C.S.S.B. 757 sets forth guidelines for the administration and operation of the State Office of Administrative Hearings.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the chief administrative law judge in SECTION 5 (Section 2003.0412(b), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2003.021, Government Code, by amending Subsections (a) and (b) and adding Subsection (e), to provide that the State Office of Administrative Hearings (office) is created to serve as an independent forum for the conduct of the adjudicative hearings in the executive branch of state government. Provides that the purpose of the office is to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch relating to hearings the office is authorized to conduct. Requires the office to conduct administrative hearings and alternative dispute resolution procedures required under other law. Authorizes the office to conduct hearings or resolution procedures voluntarily referred to the office by a governmental entity, for a fee and under contract. Authorizes the office to adopt a seal for authentication purposes.

SECTION 2. Amends Section 2003.022, Government Code, by amending Subsections (a) and adding Subsections (c) and (d), to provide that the chief administrative law judge is eligible for reappointment. Prohibits the chief administrative law judge from engaging in the practice of law while serving in office. Provides the chief administrative law judge serves a full-time position. Requires the chief administrative law judge to supervise the office, ensure the decisional independence of each administrative law judge, adopt a code of conduct for administrative law judges, and monitor the quality of hearings conducted by the office.

SECTION 3. Amends Chapter 2003B, Government Code, by adding Section 2003.024, as follows:

Sec. 2003.024. INTERAGENCY CONTRACTS. Requires the office and a state agency that refers matters to the office, to enter into an interagency contract for the biennium under which the referring agency pays the office the costs of conducting a hearing or procedure, if the costs to the office of conducting hearings and alternative dispute resolution procedures for an agency are not otherwise paid by appropriations. Requires the costs paid under the contract to be based on an hourly rate set by the office in time for the rate to be reviewed by the legislature during the review of the office's legislative appropriations request for the biennium. Requires the office that conducts hearings and alternative dispute resolution procedures and a state agency that refers matters to the office that are not paid by certain appropriations, to enter into an interagency contract for each state fiscal year under which the referring agency pays the office the costs for the number of hours spent by the office conducting hearings or alternate dispute resolution procedures that exceed by 10 percent or more the number of hours spent by the office during the state fiscal year that ended August 31, 1998. Requires the office to file an estimate of its hourly costs in

conducting each type of hearing or dispute resolution procedure, based on the average cost per hour during the preceding state fiscal year of certain costs incurred in conducting hearings or dispute resolutions. Provides that this section does not apply to certain hearings. Makes conforming changes.

SECTION 4. Amends Section 2003.041, Government Code, by adding Subsection (c), to provide that. Provides an administrative law judge employed by the office is not responsible to any person or agency other than the chief administrative law judge or senior or master administrative law judge designated by the chief administrative law judge.

SECTION 5. Amends Chapter 2003C, Government Code, by adding Sections 2003.0411 and 2003.0412, as follows:

Sec. 2003.0411. SENIOR AND MASTER ADMINISTRATIVE LAW JUDGES. Authorizes the chief administrative law judge to appoint a senior or master administrative law judge who must have certain experience and meet other requirements as prescribed by the chief administrative law judge. Requires a master administrative law judge to have a certain level of experience.

Sec. 2003.0412. EX PARTE CONSULTATIONS. Provides that the provisions of Section 2001.061 apply in relation to a matter before the office regardless of the status of the case under Chapter 2001. Provides that the provisions of Section 2001.061 do not apply to a matter before the office to the extent that the office is conducting an alternative dispute resolution procedure in relation to the matter. Requires the chief administrative law judge to adopt rules regarding the use of ex parte consultations in alternative dispute resolutions. Requires the chief administrative law judge to model rules that prohibit ex parte consultations in alternative dispute resolution procedures after Section 2001.061.

SECTION 6. Amends Section 2003.045, Government Code, as follows:

Sec. 2003.045. New heading: OVERSIGHT OF ADMINISTRATIVE LAW JUDGES. Authorizes the chief administrative law judge to designate senior or master administrative law judges to oversee certain issues regarding administrative law judges, rather than an administrative division in the office overseeing all administrative law judges.

SECTION 7. Amends Section 2003.0451(a), Government Code, to authorize the office to provide training through the Texas Center for the Judiciary.

SECTION 8. Amends Section 2003.046, Government Code, to provide that a central hearings panel is composed of administrative law judges and senior or master administrative law judges assigned to the panel by the chief administrative law judge, rather than six senior or administrative law judges appointed by the chief administrative law judge. Authorizes the chief administrative law judge to create teams or divisions within the central panel, including an administrative license revocation division. Deletes a provision regarding the coordination and supervision of the operation of hearings conducted by the office under the direction of the chief administrative law judge.

SECTION 9. Amends Section 2003.048, Government Code, as follows:

Sec. 2003.048. NATURAL RESOURCE CONSERVATION COMMISSION HEARINGS FEE. Prohibits a fee charged to the Texas Natural Resource Conservation Commission (commission) for certain services from being less than the amount appropriated to the commission in the General Appropriations Act for payments to the natural resource conservation division to conduct commission hearings. Requires the fee to be based on costs incurred to conduct such hearings.

SECTION 10. Amends Section 2003.049(1), to make a conforming change.

SECTION 11. Amends Chapter 2003C, Government Code, by adding Section 2003.051, as follows:

Sec. 2003.051. ROLE OF REFERRING AGENCY. Prohibits a state agency that refers a matter to the office for a hearing from taking any adjudicative action relating to the matter until the office has issued a proposal for a decision. Authorizes a state agency to exercise its advocacy rights in the matter before the office in the same manner as any other party.

SECTION 12. Effective date: September 1, 1999, except as provided by Subsection (b) of this section. Effective date for Section 2003.024, Government Code, as added by this Act, and the changes in law made by this Act to Sections 2003.048 and 2003.049, Government Code: September 1, 2000.

SECTION 13. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 3.

Amends Chapter 2003B, Government Code, by adding Section 2003.024, regarding interagency contracts.

SECTION 5.

Amends Section 2003.0411, Government Code, to authorize the chief administrative law judge to appoint a master administrative law judge to perform certain duties.

Amends Section 2003.0412, Government Code, to require the chief administrative law judge to adopt rules regarding the use of ex parte consultations in alternative dispute resolution procedures.

SECTION 9.

Amends heading of Section 2003.048, Government Code.

Amends Section 2003.048, Government Code, to set forth guidelines for assessing fees on the commission. Reinstates text regarding required negotiations between the State Office of Administrative Hearings and the commission.

SECTION 10.

Amends Section 2003.049(1), Government Code, to make conforming changes.

SECTION 12.

Amends the effective date of this Act to September 1, 1999, except certain sections of this Act take effect September 1, 2000.