STAFF EVALUATION

Texas Commission on Human Rights

A Staff Report
to the
Sunset Advisory Commission

1988

TEXAS COMMISSION ON HUMAN RIGHTS

June 1988

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Summary of Recommendations

The Texas Commission on Human Rights (TCHR) was created in 1983 to administer state law prohibiting employment discrimination before complaints result in legal action. The commission investigates and seeks to resolve complaints of employment discrimination and provides training and technical assistance regarding fair employment law. The commission is composed of six members, appointed by the governor for six-year terms. The commission has 25 full-time employees, and, in 1987, had a budget of $573,915. Much of the commission's funding comes from the federal government. The U.S. Equal Employment Opportunity Commission (EEOC) pays TCHR $400 for each resolved complaint which EEOC accepts. In 1987, federal funds accounted for 60 percent of the agency's total funding.

The state commission operates as part of a three-tiered approach in which the federal and local governments also work to eliminate job discrimination. The state's anti-discrimination efforts roughly parallel federal efforts which are administered by EEOC. Generally, the commission enforces the state Act through an administrative process which seeks to resolve complaints voluntarily or through conciliation. If these efforts fail, the commission or the person bringing the complaint, may take legal action to enforce the Act.

The sunset review of the commission's structure, administration, and programs concluded that the state should be involved in eliminating employment discrimination. The review indicated that the commission has fulfilled the purposes for which it was created and should be continued for a 12-year period. The sunset review also determined that if the commission is continued, a number of changes should be made to improve the efficiency or effectiveness of its operations. These changes are outlined on the following pages.

RECOMMENDATIONS

THE AGENCY SHOULD BE CONTINUED FOR A 12-YEAR PERIOD WITH THE FOLLOWING CHANGES:

Policy-making Structure

Representation on Commission

1. **The statute should specify that membership on the commission should represent a diverse background with respect to all classes of individuals who are protected under the Texas Commission on Human Rights Act. In addition to the areas of background already specified in the Act, the governor should strive to achieve representation with respect to handicap, religion, and age.** (Statutory) (p. 36)

The state Act directs the governor to strive to achieve representation on the Texas Commission on Human Rights with respect to economic status, sex, race, and ethnicity. This provision does not mention individuals protected from discrimination because of handicap, religion, and age. Including these groups with other groups that are already listed in the statute will make it clear that the interests of all individuals protected under the Act are of equal concern in making appointments to the commission.

Overall Administration

The review of the agency's overall administration indicated that it was generally effective and that no changes are needed.

Evaluation of Programs

Definition of Employer

2. **The definition of "employer" in the Texas Commission on Human Rights Act should be expanded to include all state agencies and political subdivisions regardless of the number of employees they have.** (Statutory) (p.44)

State and federal fair employment laws prohibit job discrimination by public and private employers with 15 or more employees. Employers with fewer than 15 employees are not covered. Changing the definition of employer to apply the state Act to all public employers would satisfy two public policy objectives. First, this change would help assure that public funds, collected from all citizens, would not be used in a way that discriminates against any citizen. Second, by making this change, the government would set an example to private sector employers for eliminating employment discrimination.

Employment Discrimination in Apprenticeship Programs

3. **The statute should prohibit discrimination because of handicap and age in apprenticeship and job training programs.** (Statutory) (p.47)

The state Act prohibits employment discrimination on the basis of race, color, religion, sex, national origin, age, or handicap. It generally applies to employers, employment agencies, labor organizations, and apprenticeship and job training programs. However, the Act omits discrimination on the basis of handicap or age from the section dealing with apprenticeship programs. By prohibiting discrimination because of handicap and age in apprenticeship programs, all individuals protected from discrimination under the Act would receive the same level of coverage.

Definition of Handicap

4. **The definition of handicap in the Texas Commission on Human Rights Act should be changed to continue the broad interpretation under which the commission has operated. The definition should be generally patterned after the language used by the federal government in the Federal Rehabilitation Act of 1973.** (Statutory) (p. 49)

Since the passage of the Texas Commission on Human Rights Act, the definition of "handicap" has been interpreted broadly to include many mental and physical conditions without regard to severity. Recently, the Texas Supreme Court has adopted a much narrower interpretation, which limits the protection given to individuals based on handicap to those with severe impairments. The ruling raises concerns that employment protection will be limited to just those individuals with severe impairments who would probably not be qualified anyway for most jobs. By using the definition of handicap in the Federal Rehabilitation Act, the state Act would continue the same level of protection given to individuals on the basis of handicap that existed before the Supreme Court ruling.

Protection from Age Discrimination

5. **The statute should be amended to protect individuals over the age of 70 from employment discrimination based on age.** (Statutory) (p. 51)

The state Act currently protects individuals between the ages of 40 and 70 from age discrimination. Federal law, however, has recently been amended to protect all individuals over 40 from job discrimination. By eliminating the upper age range in the state Act, Texans over 70 would have basically the same protection under state law as they already have under federal law.

Enforcement of the State Act

6. **The commission should have the authority to initiate complaints involving violations of the Act.** (Statutory) (p. 52)

The Texas Commission on Human Rights cannot investigate or seek to resolve allegedly unlawful employment practices without a complaint from an individual, even when it is aware of their occurrence. Having the authority to initiate complaints would enable the commission to use its expertise more actively and enable it to enforce the provisions of state law more effectively.

7. **The statute should authorize the commission to conduct studies regarding discrimination in state employment and to report its findings to the governor, the legislature, and the agency affected.** (Statutory) (p. 53)

The Texas Commission on Human Rights is not specifically authorized to conduct studies on employment discrimination in state government. The state commission has the expertise to study and report impartially on incidents of employment

discrimination. By using this expertise, possible patterns in employment discrimination in state government can be identified and solved at an earlier point.

Notice of Right-to-Sue

8. **The statute should be changed to allow complainants to request notice giving them the right-to-sue in state court 180 days after filing the complaint with TCHR. The commission should be required to issue notices of right-to-sue 300 days after the filing of the complaint with TCHR.** (Statutory) (p.55)

The statute currently requires the commission to issue notice giving individuals the right-to-sue when the commission dismisses a complaint or if the commission has not resolved or taken legal action on a complaint within 180 days of the filing date. In practice, the commission needs more time to process many complaints, particularly complaints in which it believes a violation has occurred. The statute should be changed to require TCHR to issue the notice of right-to-sue within 300 days after the filing date, rather than 180 days. However, the statute should also allow individuals to receive notice of right-to-sue after 180 days if they request it. The changes would bring the statute in line with the current practices of the agency.

9. **The statute should clearly require complainants to exhaust their administrative remedies before they file suit in state court.** (Statutory) (p. 57)

The state Act does not explicitly state that complainants must go through the administrative processes of the state commission, EEOC, or a local commission, before taking legal action on an employment discrimination complaint. Requiring the exhaustion of administrative remedies before filing civil action would assure that complainants would not be able to circumvent the administrative process that the act was clearly intended to provide.

Remedies Under the Act

10. **The statute should be amended to authorize courts to require the payment of attorney's fees by the state and political subdivisions.** (Statutory) (p. 58)

In complaints requiring legal action, the court may award attorney's fees to the prevailing party to cover court costs. However, the Act exempts the state and political subdivisions from this requirement. Requiring the state and political

subdivisions to pay attorney's fees would make public employers liable for costs to the same extent as private employers.

Other Changes Needed in Agency's Statute

11. **Minor clean-up changes should be made in the agency's statute.** (Statutory) (p. 65)

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modification of Agency's Statute" section of the report.

12. **The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.** (Statutory) (p. 69)

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Commission on Human Rights are found in the "Across-the Board Recommendations" section of the report.

AGENCY EVALUATION

Background

Creation and Powers

The Texas Commission on Human Rights was created in the First Called Session of the 68th Legislature in 1983. With the creation of the commission, the legislature also adopted the Texas Commission on Human Rights Act consolidating and expanding state law prohibiting employment discrimination. The Act prohibits discrimination in the work place on the basis of race, color, handicap, religion, sex, national origin, or age. Also, for the first time, the state anti-discrimination law applied to private as well as public employers with 15 or more employees. Employers, public or private, with fewer than 15 employees are not covered.

In addition, the Act established an administrative process for resolving complaints arising under the law before resorting to the courts. The Texas Commission on Human Rights (TCHR) is responsible for implementing the administrative processes under the Act. This process involves investigating and seeking to resolve complaints through the voluntary agreement of both parties. If voluntary means fail, the commission may take an employer to court to achieve compliance, but it has no authority to order corrective action. Under the Act, complainants have a separate right to take private action in court if the complaint has not been settled after processing or if the commission has not taken legal action. However, administrative remedies must be exhausted before a complainant may take legal action.

With the creation of TCHR, the state became involved in prohibiting employment discrimination under state law. The state law roughly parallels federal anti-discrimination law in the work place, but it does not supersede federal law. Federal laws prohibiting discrimination in employment are enforced primarily by the U.S. Equal Employment Opportunity Commission (EEOC). Cities may also address employment discrimination through municipal ordinances.

This three-tiered approach to dealing with job discrimination results from federal policy encouraging the creation of state and local fair employment agencies. Under this arrangement, the federal government retains responsibility for enforcing federal law. However, it requires employment complaints to be processed under state or local laws that are similar to federal law. State or local agencies that have been approved by EEOC actually process the complaints.

When state or local agencies meet federal requirements, federal law requires complaints to be "deferred" from EEOC to these state or local agencies for processing. The details of this deferral process are specified in federal regulations

and in worksharing agreements between EEOC and the state and local agencies. These agreements basically divide complaint processing between the state and local agencies and EEOC. The final disposition of all complaints must still be approved by EEOC. For each closed complaint which it accepts, EEOC pays these approved state and local agencies $400. The exact terms of this reimbursement are worked out in a contract between EEOC and these agencies. Currently, the state commission has deferral status with EEOC, as do local commissions in Austin, Corpus Christi, Fort Worth, and Wichita Falls.

The state Act also establishes a framework for a partnership between TCHR and local commissions that is similar to the deferral relationship established in federal law. Local commissions may seek "certification" from the state commission enabling them to share cases with TCHR and to have access to powers in the state Act, such as the power to issue subpoenas and to file civil action in state court. Also, citizens in cities with certified commissions would be able to sue in state court. While the state agency is authorized to pay a local commission for processing cases, no funds have been appropriated for this purpose.

To date, commissions in Austin, Corpus Christi, and Wichita Falls have entered this partnership with TCHR by becoming certified commissions. The Fort Worth Human Relations Commission has not chosen to seek certification with TCHR. As a result, the Fort Worth commission processes cases only as a deferral agency with EEOC and only under the authority of its local ordinance. It does not exercise any of the powers under state law.

Policy-making Structure

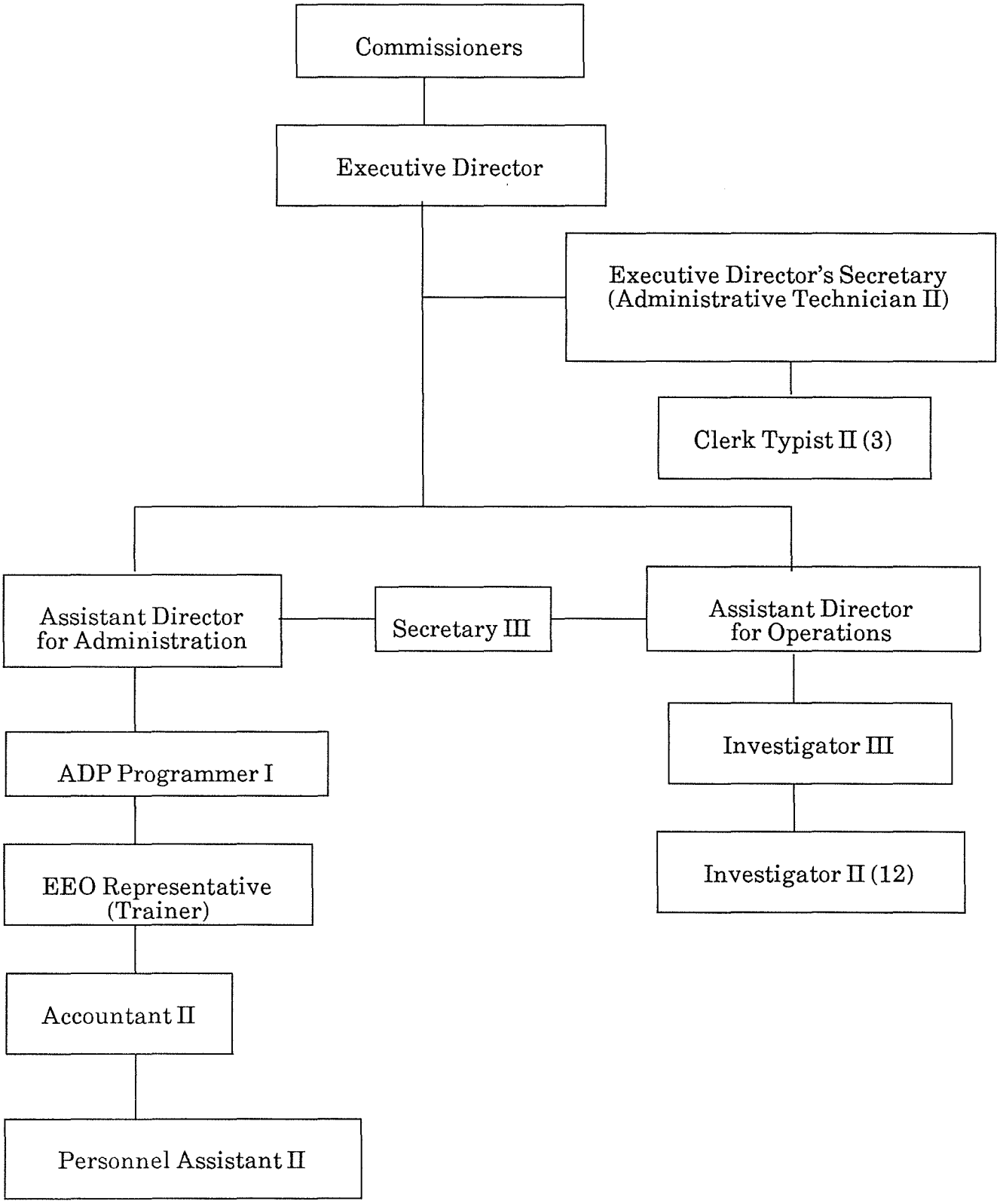
The Texas Commission on Human Rights is composed of six members, appointed by the governor. The governor designates one of the commissioners as chair. The statute specifies that one member must represent industry, one member represents labor, and four are public members. The statute also specifies that the governor should strive to achieve diverse representation with respect to economic status, sex, race, and ethnicity.

Funding and Organization

The Texas Commission on Human Rights has one office which is located in Austin. The agency employs 25 full-time employees and has one additional employee on loan from the Texas Employment Commission. Exhibit 1 illustrates the organizational structure of the state commission. The agency had an operating

Exhibit 1

Texas Commission on Human Rights
Organizational Chart



budget of $573,915 in fiscal year 1987 and the projected budget for fiscal year 1988 is $669,054.

Exhibit 2 shows that most of the state commission's budget comes from federal funds. Since its creation, TCHR has received federal funds to offset much of its costs of processing employment discrimination complaints. The amount of federal funds the state commission receives each year depends on the number of employment discrimination complaints it processes under a charge resolution contract with EEOC. In this contract, the state commission and EEOC determine the number of complaints that EEOC will pay TCHR for processing. In fiscal year 1987, the state commission processed 878 complaints under its contract and has agreed to process 1,041 complaints under its fiscal year 1988 contract. Generally, EEOC reimburses the state commission $400 for each case resolved that is accepted by EEOC. However, the state commission's cost for processing a complaint in the last fiscal year was approximately $550.

General revenue is the commission's second largest source of funding. In fiscal year 1988, TCHR received its first appropriation from general revenue to help compensate for the loss of earned federal funds as a source of revenue. General revenue funding helps cover administrative costs and supports the agency's efforts to process employment discrimination cases based on handicap. In 1987, the commission processed 130 handicap complaints. The federal government does not reimburse the state commission for processing handicap complaints as it does other job discrimination complaints.

In addition to federal reimbursements and general revenue funding, the state commission earns revenue through interagency contracts for providing EEO training to other state agencies. The commission provides this training to state agencies and recovers the cost through interagency contracts.

In the past, the commission has also had to rely on emergency appropriations from the governor's office. The commission has used emergency funds to pay investigators' salaries while waiting to receive contract money from EEOC.

Exhibit 3 illustrates the commission's projected expenditures for fiscal year 1988. The investigation of complaints is the largest expenditure accounting for 57 percent of the agency's outlays. Technical assistance and training is the next largest expense. The commission's administrative costs require 15 percent of the fiscal year 1988 budget.

Exhibit 2

Source of Revenues
FY 1988

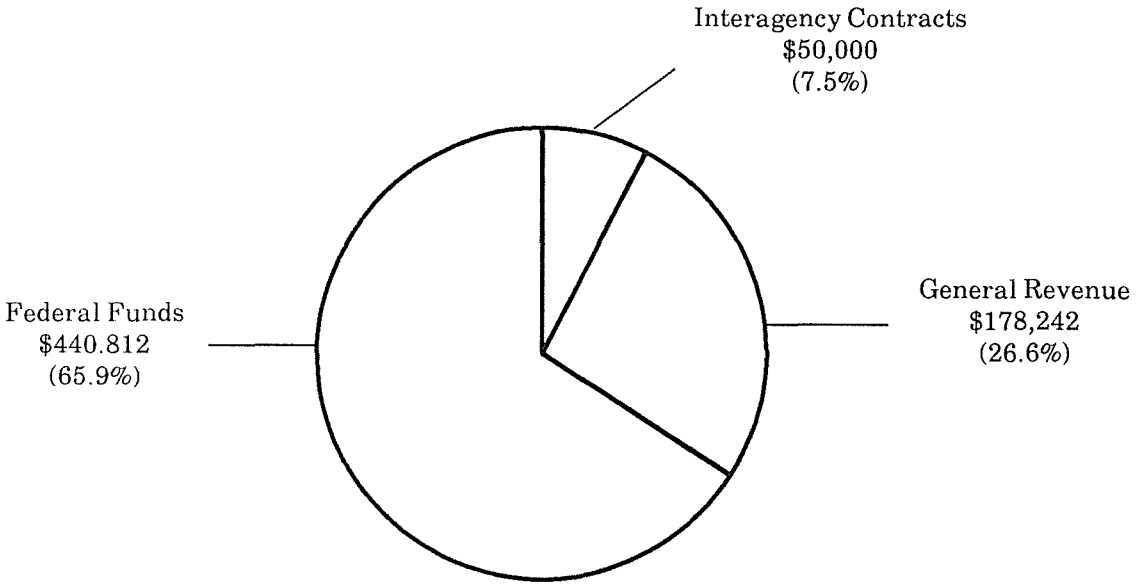
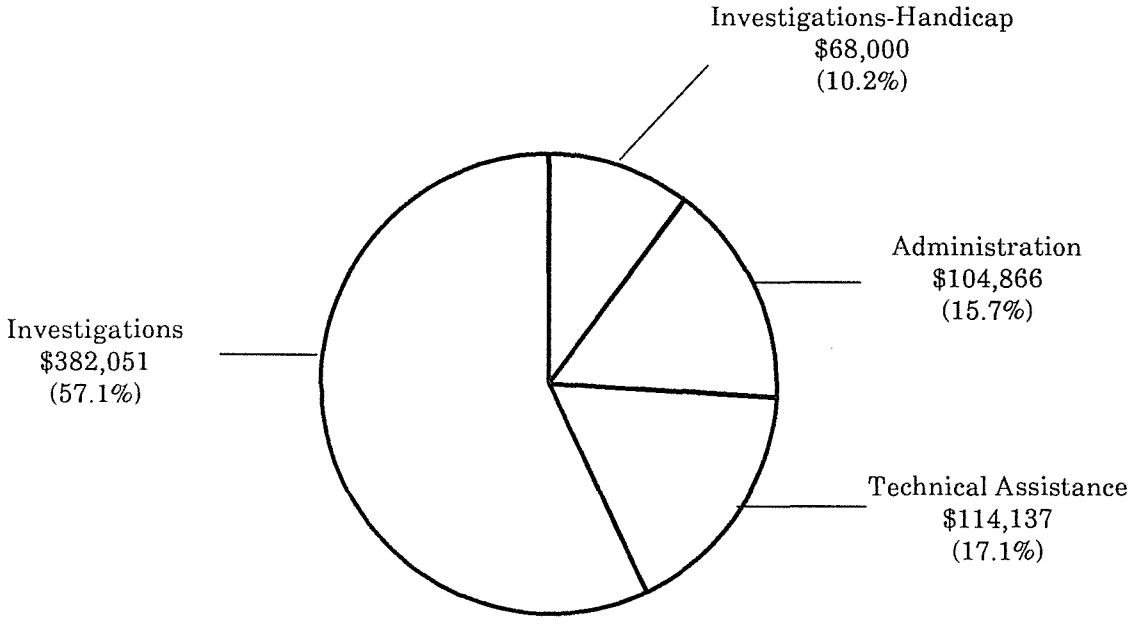


Exhibit 3

Projected Expenditures
FY 1988



Programs and Functions

The sunset evaluation focused on the two major program areas administered by the Texas Commission on Human Rights. A description of the administrative review process and the technical assistance and training program is provided below.

Administrative Review

The investigation and resolution of employment discrimination complaints is the major activity of the Texas Commission on Human Rights (TCHR). In fiscal year 1987, the commission processed 1,008 complaints of employment discrimination under the Texas Commission on Human Rights Act. This activity accounted for about 65 percent of the commission's fiscal year 1987 budget.

As Exhibit 4 shows, the Act applies to employers as well as employment agencies, labor organizations, and apprenticeship and job training programs .Under the Act, an employer is a person who has 15 or more employees. This definition includes private employers as well as state agencies, political subdivisions, and public institutions of higher education. Employers with fewer than 15 employees are not covered under the Act.

Exhibit 4
Unlawful Employment Practices
Under the Texas Commission on Human Rights Act

Coverage	Unlawful Employment Practices	Basis of Discrimination
Employer	Failure or refusal to hire or improper discharge Discrimination with respect to compensation and terms, conditions, and privileges or employment; Limiting, segregating,or classifying employees in a way that adversely affects employment opportunities.	Race, color, religion, sex, national origin, age or handicap.
Employment Agency	Failure or refusal to refer for employment or other wise discriminating against an individual.	Race, color, religion, sex, national origin, age, or handicap.
Labor Organization	Exclusion or expulsion from membership or otherwise discriminating against an individual; Limiting, segregating, or classifying members or failing or refusing to refer an individual for employment in a way that adversely affects a person's employment opportunities or causes the employer to violate the Act;	Race, color, religion, sex, nationa origin, age, or handicap.
Job Training Program	Discrimination against an individual in admission to or participation in apprenticeship, on-the-job, or other training programs.	Race, color, religion, sex, or national origin.

Most complaints processed by TCHR are against private employers. Exhibit 5 shows the number of complaints filed against different types of respondents received by the commission last year. The total number of complaints does not include complaints filed on the basis of handicap.

Exhibit 5
Complaints Against Respondents
FY 1987

Type of Respondent	Number of Complaints Against Respondents
Private Employers	724
State Agencies or Political Subdivisions	189
Public Schools	19
Public Colleges	15
Employment Agencies	5
TOTAL	952

Generally, the Act prohibits discrimination in the work place on the basis of race, color, handicap, religion, sex, national origin, or age. As Exhibit 6 shows, the largest number of complaints filed with TCHR in 1987 were on the basis of race. The total number of complaints includes some complaints that were filed on more than one basis, such as a complaint based on both race and sex.

Exhibit 6
Complaints Filed by Basis
FY 1987

Basis of Complaint	Number of Complaints	Percent
Race	363	28.9 %
Color	6	0.5 %
Handicap	171	13.6 %
Religion	5	0.4 %
Sex	271	21.6 %
National Origin	193	15.4 %
Age	196	15.6%
Retaliation	52	4.1%
TOTAL	1,257	100.0%

Discrimination is prohibited basically for the same reasons found in the provisions in federal law and in the fair employment law in other states. However, the Texas Act does go further than federal law in prohibiting discrimination on the basis of handicap. Protection for individuals based on handicap in federal law applies only to the federal government, federal contractors, and recipients of federal funds. Texas law includes handicap in its general coverage for prohibiting employment discrimination.

As mentioned, the state commission operates with the U.S. Equal Employment Opportunity Commission (EEOC) and local human relations commissions as part of a three-tiered approach to eliminating employment discrimination. Because of this approach, mechanisms were developed to define the responsibilities at each level of government. For example, federal law requires that most employment complaints which fall under federal law be deferred to TCHR or to the appropriate local commission for 60 days after they are filed for processing. However, to avoid confusion regarding who would be responsible after 60 days, EEOC develops worksharing agreements with TCHR and with each of the local commissions. These agreements establish guidelines for dividing complaints among the commissions for processing. The state commission has a deferral relationship with local commissions which it certifies, but on a much smaller basis.

Exhibits 7 and 8 show this division of responsibility between EEOC, the state commission, and the four local commissions in the state. The local commissions generally process complaints against private employers within their city limits, but do not process complaints against state agencies or political subdivisions. Also, except for the Austin commission, these local commissions do not process complaints on the basis of age or handicap. In 1987, these commissions processed 590 complaints.

The state commission generally processes all complaints originally filed with it and up to 90 complaints each month sent from EEOC. The state commission processes most complaints against other state agencies and political subdivisions, and it processes complaints based on handicap against most employers in the state. In 1987, the commission received 1,123 complaints for processing. Of these, 587 were originally filed with the commission, and 536 were sent from EEOC for processing.

Exhibit 7

Jurisdiction for Charges of Employment Discrimination in Texas

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Charges of employment discrimination under Title VII of the Civil Rights Act of 1964 on the basis or race, color, religion, sex, or national origin, except those sent to TCHR or local commissions for processing;

Charges under the Age Discrimination in Employment Act, except those sent to TCHR for processing;

Charges under the Equal Pay Act;

Charges of discrimination on the basis of handicap involving the federal government;

Title VII charges received between 180 days and 300 days if originally filed with TCHR or local commission;

Charges initiated by an EEOC Commissioner;

Charges stemming from EEOC outreach programs;

Charges against recalcitrant employers;

Charges in which TCHR or a local commission has a conflict of interest;

Charges against TCHR or a local commisison.

TEXAS COMMISSION ON HUMAN RIGHTS

Charges originally filed, except for charges within the jurisdiction of EEOC;

Up to 75 Title VII charges and 15 age charges per month from EEOC;

Most charges filed against state agencies and political subdivisions;

Charges of discrimination on the basis of handicap.

LOCAL COMMISSION

Charges originally filed with the city limits, involving private employers, except for charges within the jurisdiction of EEOC. The bases covered by the ordinances of the four local commissions are given below:

Austin:	race, color, religion, sexual orientation, national origin, age, physical handicap.
Corpus Christi:	race, color religion, sex, national origin.
Ft. Worth:	race, color, creed, sex, national origin.
Wichita Falls:	race, color, religion, sex, national origin.

Exhibit 8

Distribution of Employment Discrimination Complaints in Texas
FY 1987

	Federal	State	Local			
	EEOC	TCHR	Austin	Corpus Christi	Ft. Worth	Wichita* Falls
Beginning Inventory	7,423	588	379	66	75	N/A
Complaints Originally Received	9,143	587	416	213	293	N/A
Complaints Sent From:						
EEOC	---	536	5	2	6	N/A
TCHR	511	---	0	0	8	N/A
TOTAL	9,654	1,123	421	215	307	N/A
Cases Processed	7,391	1,008	240	120	230	N/A
Cases Waived to:						
EEOC	---	26	40	89	32	N/A
TCHR	0	---	0	0	0	N/A

* The Wichita Falls commission was not fully operational in 1987.

The EEOC processes the remainder of the employment complaints in Texas, comprising most of the complaints arising in the state. The EEOC processes complaints waived by the state or local commissions and also has exclusive jurisdiction for many complaints, such as violations of the federal Equal Pay Act and charges against recalcitrant employers. In 1987, EEOC processed 7,391 complaints, or about 82 percent of the employment complaints processed in Texas.

The Texas Commission on Human Rights Act established two distinct procedures for dealing with employment discrimination. First, it details a process for parties to resolve employment complaints administratively, without resorting to legal action. Complainants must try to settle their cases through these administrative procedures before they may go to court. If administrative efforts to settle fail, however, the Act also assures that individuals have the ability to take legal action.

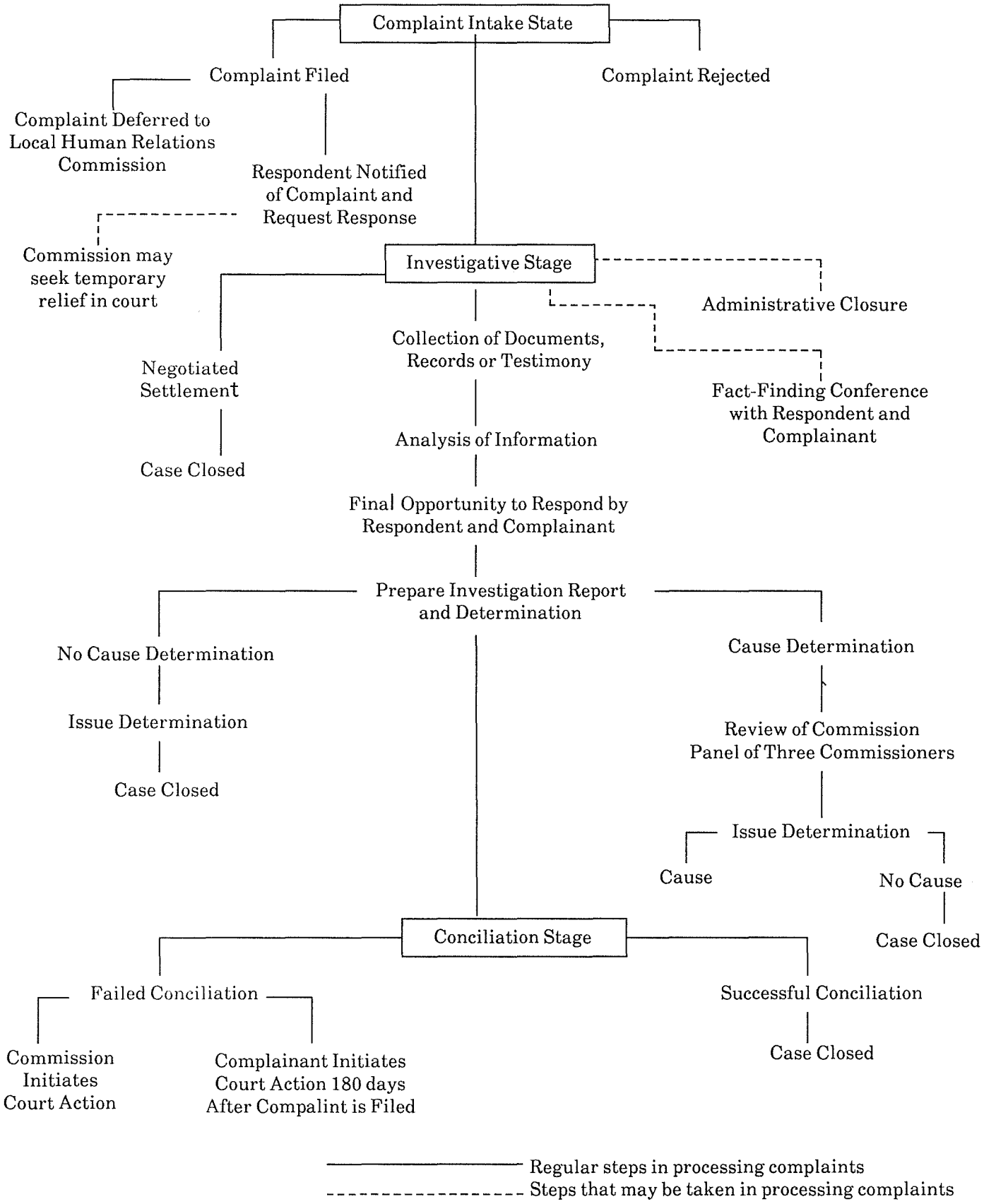
The administrative review procedures of the state commission are shown in Exhibit 9. The process begins with the filing of the complaint with the commission. Complaints must be filed within 180 days of the alleged unlawful employment practice. Under the statute, the commission has 180 days after this filing date to process complaints before it must give notice to the complainants informing them of their right to take action in state court. After receiving this notice, complainants have 60 days in which to take legal action, but may not take action after one year from the original filing date with TCHR.

Complaints may be filed with the commission either in person, by phone, or by mail. When the commission receives a complaint, it screens it to assure that it comes under the authority of the Act. The commission estimates that 40 percent of the complaints received last year were screened out of this process during the intake stage. Once a complaint becomes a legal charge, the commission seeks a response from the employer and begins it investigation to determine if reasonable cause exists to believe that an unlawful employment practice has occurred. Investigations are generally conducted in the commission's office. Investigators collect most information about the employment practice and the employer's work force by telephone or from questionnaires sent to employers. The commission estimates that it conducts fewer than ten percent of its investigations on-site.

Throughout this process, the commission tries to reach an agreed settlement between the parties involved in the complaint. In fact, many complaints are settled just before the commission prepares to issue a finding against an employer. Once settled, the commission closes the case. Also, complaints may be closed for administrative reasons, such as the inability to locate the complainant or the

Exhibit 9

Overview of Complaint Processing System by Texas Commission on Human Rights



complainant's refusal to accept an offer of full relief from the effects of the employment practice.

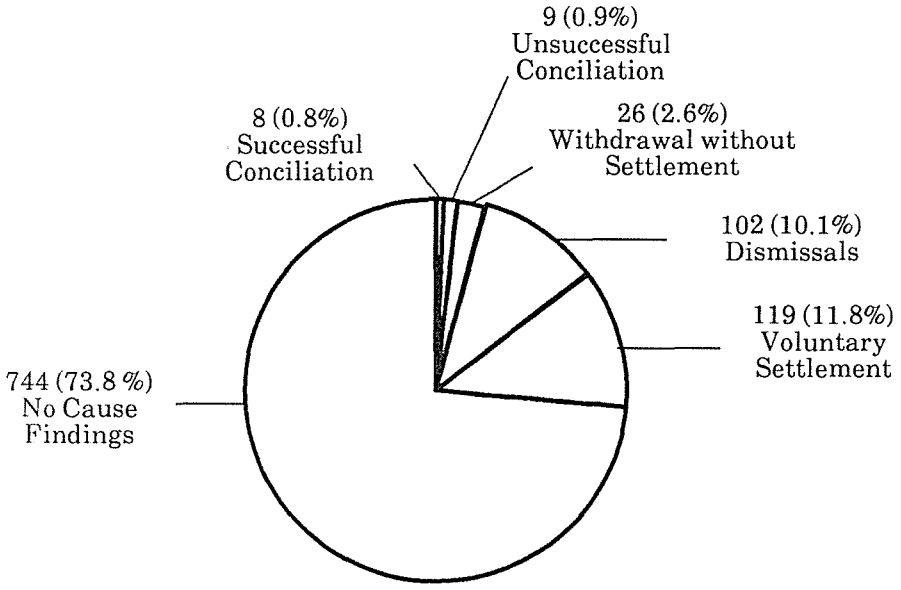
If efforts to resolve the case voluntarily are unsuccessful or if the case is not dismissed, the investigator analyzes the testimony, documents, and records collected and makes a preliminary determination of whether there is cause to support the complaint. In cases receiving a no cause finding, the commission notifies the complainant, giving him or her the right to bring legal action, and closes the case. Where there is cause to believe that an unlawful action did occur, the case undergoes a staff review and is presented to a panel of three commissioners for a final cause determination. If two of three panel members agree with the staff recommendation, the commission issues a reasonable cause finding. The executive director then sends the complainant and respondent a written determination citing the evidence in support of the finding and an invitation for them to participate in the conciliation process.

The director seeks to achieve conciliation between the parties to the complaint. The director develops an agreement containing provisions eliminating the alleged unlawful employment practice and providing appropriate relief for the complainant. If conciliation is acceptable to the parties involved, the commission closes the case, but if conciliation fails, either the commission, the complainant, or both may initiate civil action.

Exhibit 10 shows how the complaints processed by the commission in 1987 were closed. Most complaints were closed because of a no cause finding. Approximately 12 percent of the cases were closed after the parties agreed to voluntary settlements, and 10 percent were closed for administrative reasons. Seventeen complaints went through conciliation, with eight of these resulting in successful conciliation, while nine failed conciliation. In three of the complaints that failed conciliation, the commission had filed suit against the employer by the end of the fiscal year. In addition the commission had filed amicus briefs in two other complaints.

Exhibit 10

Disposition of Cases Processed by TCHR
FY 1987



Once TCHR closes a case, the entire case file is submitted to the appropriate EEOC district office for its review and approval. The EEOC has district offices in Dallas, Houston, and San Antonio. If EEOC agrees with the action taken by the state commission, it also closes the case. The EEOC issues its notice of right-to-sue in federal court to individuals whose complaints have not been settled. Complainants, thus, may choose whether to pursue legal action in either state or federal court, but not in both. If EEOC finds a flaw either in the work or in the decision rendered, it may send the case back to TCHR for further investigation. In fiscal year 1987, EEOC accepted 99 percent of the state commission's cases.

Because the state commission has been in operation for four years, it may not have to continue sending cases for a full file review by EEOC. The state commission may qualify for limited review status, thus substantially reducing TCHR's work load in the EEOC review process. To qualify for the minimum review status, the commission must be evaluated for 12 months and must achieve a 95 percent acceptance rate for cases reviewed during that period. After TCHR qualifies, it would be subject to a full review of only a small number of charges. Also, EEOC

would still review a case upon the request of a party aggrieved by a decision of the state commission.

The second procedure established in the Texas Commission on Human Rights Act is a process for taking action in court if the administrative process fails to resolve the complaint. These procedures are important because TCHR does not have authority under the Act to order an employer to take corrective action. The commission can require compliance with the Act only through the courts. These procedures also guarantee the legal rights of individuals who are dissatisfied with the outcome of administrative processing. Even during the administrative process, the ability to take judicial action or the threat to litigate may be important in helping individuals settle their complaints. Typically, complainants give up their right-to-sue when they agree to settle with an employer. Without access to courts, however, complainants have no leverage to help their bargaining position.

Under the Act, the commission may take an employer to court after a cause finding and after efforts to conciliate have failed. The commission can only bring legal action in state court, though it may also participate in private actions brought by individuals. Individuals have a separate right to take an employer to court if the commission dismisses the case or if the commission has not achieved a settlement or filed civil action within 180 days of the original filing date of the complaint. As mentioned earlier, after they have exhausted their administrative remedies, individuals have a choice whether to bring civil action in state or federal court. They may not bring action in both forums.

Since its creation, the commission has filed suite 14 times against the employers listed below:

- Texas Department of Mental Health and Mental Retardation (one case filed in 1985; two cases filed in 1986)
- Limestone County (four cases filed in 1985)
- State Board of Private Investigators and Private Security Agencies (three cases filed in 1988)
- Austin Community College (one case filed in 1988)
- private employers (three cases filed)

In addition, the commission has filed amicus briefs in six cases brought by individuals. However, the commission has no way of knowing how many civil actions were filed by individuals. Conceivably, 85 percent of the complainants going through TCHR would have the right to bring civil action in either state or federal court.

In cases brought under the state Act, the court may order appropriate relief for the complainant, including:

- hiring reinstatement, or upgrading the applicant or employee, with or without backpay;
- admission or restoration of union membership;
- reporting on the manner of compliance; and
- payment of court costs.

The court may allow the prevailing party, other than the commission, to receive attorney's fees as part of costs. However, state agencies and political subdivisions are not liable for attorney's fees.

Technical Assistance and Training

The Texas Commission on Human Rights provides technical assistance and training to familiarize employers with equal employment opportunity law and prevent employment discrimination from occurring. The program has two related activities. First, technical assistance involves responding to questions about what is and is not allowed under EEO law. The commission's staff provides this assistance generally over the telephone, as questions arise.

The second activity, training, involves a more formal approach to informing people about EEO law. The commission offers training seminars to employers as a way of eliminating employment discrimination that occurs because an employer does not know the law. The commission delivers approximately 90 percent of its training efforts to state agencies requesting it, while the remaining 10 percent is delivered to private employers. The training program emphasizes the practical application of fair employment practices and is often tailored to the needs of the group being trained. Training sessions generally include a review of: the major laws prohibiting employment discrimination, personnel transactions covered under EEO law, case examples of employment discrimination, defenses available to employers, the state commission's procedure for processing complaints, and the employer's personnel policies and their compliance with EEO law. The agency's training program is supported entirely by payments of participants. The commission offers on-site training at a rate of $800 for an eight hour session and $400 for a four hour session for a group of 30 to 40 people. In fiscal year 1987, TCHR collected $44,707 in payments for training services and spent $32,687 to provide the training sessions. In that same year, the agency provided 314 hours of training to a total of 2,223 participants in attendance. Exhibit 11 shows the recipients of EEO training from TCHR in fiscal year 1987.

The commission anticipates that its training efforts will increase in fiscal year 1988. The agency is also expanding the areas in which it provides training. The commission has recently negotiated a contract with the Dallas-Fort Worth Airport for specialized EEO training and monitoring and a contract with the Texas Rehabilitation Commission for a complaint processing system for clients.

Exhibit 11

Recipients of EEO Training from TCHR
FY 1987

Texas Recruiters Network
Texas Education Agency
Texas Department of Community Affairs
Texas Department of Mental Health and Mental Retardation
Texas Department of Corrections
Houston Community College
Travis County
Board of Pardons and Paroles
Texas Rehabilitation Commission
Department of Labor and Standards
Lower Colorado River Authority
City of Austin
State Board of Insurance

Review of Operations

Focus of Review

The review of the Texas Commission on Human Rights included all aspects of the commission's activities. The review focused on the role the state should play in eliminating job discrimination and the ability of the commission to achieve this goal. A number of activities were undertaken by the staff to gain a better understanding of the commission. These activities include:

- discussions with commission staff;
- discussions with the staff of the U.S. Equal Employment Opportunity Commission (EEOC) in two district offices in Texas;
- telephone discussions with EEOC staff in Washington headquarters;
- discussions with staff of local human relations commissions in four cities;
- survey of statutes and rules and regulations of 46 states with human rights agencies;
- telephone survey of 12 states' human rights agencies;
- survey of attorneys dealing regularly with the state commission.

From these activities, a number of issues were identified which generally fell into three areas. First, the review analyzed the state's approach to eliminating employment discrimination to determine the need for a state commission and to evaluate the appropriateness of the existing structure. Second, the review examined the state's human rights law to determine its adequacy in helping to eliminate job discrimination. Finally, the staff assessed the quality of the commission's procedures in implementing the state law.

Regarding the first area of investigation, the review addressed the need for a state commission operating along side of EEOC and four local commissions. After examining the existing framework for eliminating job discrimination in Texas and in other states, the review concluded that there is a need for the state commission in assuring fair employment practices.

One measure of need for the state commission is the number of employment discrimination complaints filed in Texas. Employment discrimination is a continuing problem in Texas as it is throughout the country. In 1987, over 11,700 total complaints alleging employment discrimination were filed in Texas.

Another perspective of the need for a commission may be seen in how other states deal with this problem. The review found that almost every state has recognized the need to deal with employment discrimination. When TCHR was created in 1983, Texas became the 45th state to establish a fair employment practices agency. In 1987, Virginia became the 46th state to create an agency of this

type. Only four states, Alabama, Arkansas, Louisiana, and Mississippi, do not have fair employment agencies. One advantage of having a state commission is that the state can become involved in eliminating job discrimination for very little investment. Federal law encourages state and local governments to take action in this area on their own. The EEOC pays state and local agencies for most of the complaints they process. In 1987, EEOC provided 59.6 percent of the state commission's total funding. In addition, EEOC prefers to deal with a single state commission rather than multiple local commissions. Once a state commission like TCHR is established, EEOC policy makes it difficult to fund newly-created local commissions.

Another advantage of having a state commission is local control. The state is not bound to follow all aspects of federal law, and may expand beyond federal law as Texas has in creating broader job protection for individuals on the basis of handicap than is found in federal law. The state also determines what procedures it will use to implement the state law. For example, the state guarantees the quick disposition of employment complaints by requiring that civil action be taken within one year of filing with an administrative agency. The EEOC has no statute of limitations for filing legal action for most employment discrimination cases it processes.

Finally, having a state commission has meant benefits to employers, complainants, and the state. The state commission processes complaints more quickly than EEOC and the local commissions. The state commission processes contract complaints in an average of 118 days, while EEOC's average processing time is over twice this rate. The processing time for local commissions ranges from a low of 180 days per complaint in Fort Worth to a high of 207 days in Corpus Christi. The faster processing time by the state commission means that relief gets to complainants more quickly while it also reduces the period of time for which employers are liable if they should lose the case. The commission estimates that it secured $627,592 in benefits to complainants through its administrative efforts in 1987.

Tangible benefits also result from the training program conducted by the agency. As a result of EEO training provided to state agencies, the commission estimates that it has saved the state approximately $73,000 because of a reduction in the number of employment complaints filed after they receive training.

In addition to evaluating the need for the function performed by the agency, the review concluded that performing the function through a separate agency was appropriate. Several alternatives that had been considered in the past, such as

placing the commission within the Texas Employment Commission or the Department of Labor and Standards, were examined. While these locations have merit, the review found that the commission's existing structure is also appropriate. Of the 46 states with fair employment agencies, 34 have independent agencies.

In the second area of investigation, the review identified several issues relating to adequacy of employment discrimination law in Texas. The review examined the law to assure that the interests of employees and employers are being considered equally. Essentially, the review focused on determining where the rights of individuals to be protected from employment discrimination end and where the rights of employers to control their operations begin. The issues identified relating to the human rights law are discussed in the Evaluation of Programs section of the report.

Finally, in the third area of investigation, the review identified issues concerning the commission's procedural efforts to implement the Act. In this area, the review evaluated the commission's ability to enforce the law and the adequacy of its investigative procedures. This activity is the largest part of the commission's operations. A major consideration in evaluating the commission's enforcement apparatus is the lack of resources available to the commission. The lack of resources affects the type and number of employment complaints that the commission can process and it affects the commission's ability to order corrective action. The recommendations contained in the material which follows addresses these concerns.

Policy-making Structure

The statute creating the Texas Commission on Human Rights should satisfy six requirements regarding its policy-making structure. First, the commission should be structured in a way that provides adequate legislative and executive oversight of the agency's activities. Second, the commission should be of sufficient size to handle its workload and conduct its business efficiently. Third, the statute should contain effective means of selecting and removing members. Fourth, the commission should be given clear direction regarding policy-making responsibilities. Fifth, the statute should specify qualifications for membership that are relevant to the commission's functions, but free of conflict of interest. Finally, the commission should represent a proper balance of interests within its membership.

The review indicated that most of these elements regarding the policy-making structure are already being met. The current method of appointment of the commission by the governor with senate confirmation assures adequate oversight of the agency's activities. This accountability is enhanced by the governor's authority to designate one member of the commission as chair. Also, the commission is of sufficient size for it to function efficiently. An examination of the commission's operations indicated that no problems exist regarding the division of policy-making responsibilities. In addition, the statutory requirement for one member to represent industry, one to represent labor, and four public members is appropriate and relevant to the commission's functions. The review found, however, that the statute could provide for a better balance of interests within the membership of the commission.

Commission Representation Referenced in the Statute Should be Broadened

The statute currently specifies that the governor should strive to make appointments to the commission that represent a diverse background with respect to economic status, sex, race, and ethnicity. These areas of background represent the interests of only some of the individuals who are protected under the Act. Other classes of individuals who are protected under the Act were omitted.

The statute should specify that membership on the commission should represent a diverse background with respect to all classes of individuals who are protected under the Texas Commission on Human Rights Act. In addition to the areas of background already specified in the Act, the governor should strive to achieve representation with respect to handicap, religion, and age.

The Texas Commission on Human Rights Act prohibits job discrimination on the basis of race, color, handicap, religion, sex, national origin, or age. In comparison, the Act directs the governor to strive to achieve diversity on the commission with respect to economic status, sex, race, and ethnicity. This language encourages the representation of only those individuals who are protected under the Act on the basis of sex, race, and ethnicity. The Act does not specify that the governor give the same kind of consideration to individuals protected from discrimination because of handicap, religion, and age.

By including handicap, religion, and age along with the other areas which the governor should strive to represent on the commission, the statute will make it clear that the interests of all individuals protected under the Act are of equal concern in making appointments. As with the other protected classes, the statute would not require representation in these three areas. Decisions regarding the actual representation on the commission would be left to the discretion of the governor as part of the appointments process.

Overall Administration

The review of the commission's administration was designed to determine if management policies and procedures were consistent with generally accepted practices for the internal management of time, personnel, and funds. The review examined the commission's budget process and its methods for measuring program performance and it assessed the commission's administrative review process to determine if it could be improved. The commission's annual financial reports and the state auditor's management letter were examined. A survey of other state fair employment practices agencies was conducted to determine what performance measures they use to evaluate program effectiveness. Also, a survey of attorneys who regularly deal with the commission was conducted to gain insight into the quality of investigations.

Regarding the budget process, the review focused on whether the state commission could reduce operating costs to the level of federal funding, thereby eliminating the need for general revenue funding. The review concluded that this is not possible. As mentioned earlier, EEOC pays the state commission $400 for each complaint it processes. However, the average cost to the state commission for processing each complaint is $552. This case cost was by far the lowest cost for an administrative agency identified in the review. Furthermore, EEOC never intended to cover the entire cost of investigations, but only to encourage the participation of state and local governments in fair employment matters. In fact, EEOC policy requires the financial commitment of state and local commissions as a condition of federal funding. A reduction in state funding in anticipation of EEOC contract funds may constitute a violation of the contract. A survey conducted by the State Auditor for fiscal year 1985, shows that Texas already provides the lowest percentage of state funding of the 25 states responding. As Exhibit 12 shows, TCHR receives only 20.2 percent in state funding, while the average of the states responding received 80.6 percent.

A consequence of TCHR's heavy reliance on federal funds, is a cash flow problem which the commission experiences as it awaits its federal contract money. In the past, the commission relied on emergency appropriations from the governor's office to ease this problem. Last session, the legislature added a rider to the appropriations bill in effect allowing the commission to borrow money from general revenue as needed until the federal funds arrive. The State Auditor's Office is

Exhibit 12

Sources of Funding for State Human Rights Agencies FY 1985

State	Funding		Percent State Funding
	State	Federal	
Alaska	$1,228,000	$81,700	93.8%
Connecticut	$3,117,036	$2,500	99.9%
Idaho	$194,900	$89,000	68.7%
Illinois	$2,866,900	$974,500	74.6%
Indiana	$435,000	$185,132	71.1%
Iowa	$766,780	$210,200	78.5%
Maine	$230,758	$124,200	65.0%
Maryland	$2,307,252	$321,086	87.8%
Massachusetts	$1,315,630	$476,822	73.4%
Missouri	$803,071	$173,031	82.3%
Nebraska	$741,473	$190,315	79.6%
Nevada	$323,366	$282,560	53.4%
New Mexico	$414,800	$147,400	73.8%
North Carolina	$514,733	$33,000	94.0%
North Dakota	$231,245	$40,000	85.3%
Oklahoma	$477,241	$142,963	76.9%
Oregon	$2,408,362	$313,151	88.5%
Pennsylvania	$5,041,000	$1,505,000	82.8%
Tennessee	$500,600	$325,700	60.6%
Texas	$91,000	$359,550	20.2%
Utah	$83,600	$157,700	34.6%
Vermont	$21,100	$45,250	31.8%
Washington	$1,477,000	$506,000	74.5%
Wisconsin	$2,287,446	$473,373	82.9%
Wyoming	$96,000	$46,200	67.5%
AVERAGE	$1,118,969	$270,053	80.6%

currently examining this situation and other financial matters as part of its biennial audit of the commission.

In the second area of review of the commission's overall administration, the review focused on the commission's ability to develop and use information to help it evaluate the effectiveness of its programs. The review concluded that TCHR has the ability to produce many performance measures, although it has not been vigorous in developing them. The commission relies on the average time and cost required to process each complaints as its principal program measures. The state commission also uses EEOC's acceptance rate of complaints it processes to judge the effectiveness of its investigations. In four years, this acceptance rate has never been below 95 percent and in 1987 was 99 percent. The review also considered other program measures used by agencies in other states, but it found that no standard performance measures exist to guide the commission in its own evaluation of program effectiveness.

The review found that one measure that could help the commission evaluate its programs is not available. The commission does not know how many of the cases it closes end up in court. This information and the outcomes of these civil actions could help the commission better judge the quality of its investigations. However, the review could not identify a mechanism for reporting this information without adding to the expense and work loads of the state courts.

The third area of review of TCHR's administration involved an examination of investigations to determine if complaint processing was achieving proper results. The review found the quality of investigations generally adequate, though the agency's lack of resources prevents it from conducting on-site and follow-up investigations which would improve its operations. Recommendations regarding investigative procedures are contained in the Evaluation of Programs section of this report.

Evaluation of Programs

The Texas Commission on Human Rights has two programs. The training and technical assistance program seeks to prevent job discrimination by conducting sessions in EEO law for public and private employers. This program also provides information to the public and answers inquiries about fair employment practices. The administrative review program seeks to eliminate job discrimination by processing and resolving complaints as they occur.

Training and Technical Assistance

The review of the training and technical assistance program focused on whether the commission's training efforts could be expanded to reach a larger number of employers in the state. The review also examined whether the content of the training programs responded to the needs of workshop participants. In addition, the review covered the commission's ability to balance the costs of providing training with the money brought in from training contracts.

The review found that the commission's training and technical assistance program has expanded since the first training session was conducted in 1985. Although the review did not identify a formal plan for expanding these efforts, it did find that the commission has been successful in promoting its training program through informal networking. The commission has also been successful in expanding the areas in which it provides training or technical assistance to include such areas as EEO monitoring and client complaint processing. The commission tailors its training sessions to its audiences by inspecting the personnel practices of these trainees and applying these procedures to actual fair employment issues. The review also found that the commission has been successful in covering the costs of its training and technical assistance program. As a result of these findings, it was concluded that no changes needed to be made in this program.

Administrative Review

The evaluation of the administrative review program did identify several problems in the law regarding the commission's ability to eliminate job discrimination through its administrative review process. These problems primarily concern questions of who should be protected under the Act. The review identified other problems regarding the commission's authority to enforce the Act and the procedures and remedies contained in the Act. Recommendations to address these problems are set out below.

The Texas Commission on Human Rights Act specifies what employment practices are unlawful and which classes of individuals are protected from these unlawful practices. The Act also details an administrative review process by which the commission investigates and seeks to resolve complaints alleging violations of the Act.

The state Act roughly parallels federal law regarding the types of employment practices prohibited and the procedures for dealing with complaints. The federal government pays the state commission for processing complaints that fall under the purview of federal law. State law does not have to mirror federal law in extending protection from job discrimination to its citizens. The state may determine this level of protection for itself. However, EEOC does not reimburse state commissions for complaints arising outside the areas of federal law. The state law also does not have to track federal law regarding the procedures used to resolve complaints, though state procedures must be compatible with EEOC's methods. Federal law specifies only that the state commission have the authority to grant or seek relief from an unlawful practice or to begin criminal proceedings against the alleged violator.

The analysis of TCHR's administrative review program focused on three major areas. First, the review focused on what the scope of the commission's authority should be. The commission's existing authority and workload were compared with the statutory authority and workload of agencies in other states. The protection given to individuals under the Act was examined to assure the fairness and the effectiveness of the law in achieving its purpose of eliminating employment discrimination in Texas. The second area of focus was on the commission's ability to enforce the Act and to meet the needs of parties involved in complaints. The review compared the way the commission enforces the Act with enforcement strategies from other Texas agencies and fair employment agencies in other states. The review looked at the procedures in the Act to assure that complaints are processed in a timely fashion. Also, the remedies in the Act were examined to assess their adequacy in restoring individuals aggrieved by job discrimination.

Regarding the scope of the commission, the review found that by dealing just with employment, the Texas Commission on Human Rights Act focuses on the area where the most good can result from the state's efforts. The state's resources are put to best use in trying to eliminate discrimination in the work place. Employment complaints comprise over 90 percent of all complaints of discrimination in housing, public accommodation, and employment. Additionally, TCHR currently processes only about 10 percent of all employment complaints arising in Texas. The state

commission should process a higher proportion of employment complaints before it undertakes additional responsibilities.

The review also found that procedures under which the commission conducts administrative reviews are basically sound. The commission appears to be successfully enforcing the provisions of the Act through its policy of taking the most serious violators to state court. Additional resources would be needed to implement an administrative hearings function within the commission. Until these resources become available, the commission should continue to enforce the Act through the courts, as it currently does.

The analysis also found that the remedies specified in the Act are generally adequate to restore individuals aggrieved by a discriminatory practice to the position they would have enjoyed had the practice not occurred. The provisions regarding hiring, upgrading, and reinstating individuals to their jobs with or without backpay are in line with remedies provided under federal law and in other states. No clear standard could be identified to provide additional remedies such as tort damages. Additionally, the review found that provisions for frivolous claims by complainants are unnecessary. The commission currently has a procedure in place enabling it to dismiss frivolous complaints. Further, the statutory provision allowing the court to award payment of court costs to the prevailing party should discourage the filing of frivolous claims in state court.

Other findings of the review, however, identified ways to improve the commission's ability to eliminate employment discrimination. First, the Act should clarify which individuals in Texas are protected from job discrimination. Also, the commission's enforcement authority should be improved by allowing the commission to initiate complaints. In addition, the statute should be changed to clarify the time frames for processing complaints and to make the remedies for complainants more equitable for all individuals. Recommendations to address these findings are described in the following material.

The Employers Covered Under the Act Should be Expanded

The Texas Commission on Human Rights Act makes it unlawful for certain employers to engage in discriminatory employment practices. The Act defines an employer as a person engaging in an industry affecting commerce who has 15 or more employees for 20 or more weeks in the current or preceding year. This definition includes state agencies and political subdivisions. Employees and job

applicants with any employer, either public or private, having fewer than 15 employees are not protected under the Act.

The definition of "employer" in the Texas Commission on Human Rights Act should be expanded to include all state agencies and political subdivisions regardless of the number of employees they have.

The definition of employer in the Texas Commission on Human Rights Act is basically the same as the definition contained in Title VII of the 1964 Civil Rights Act. Because both state and federal laws apply to employers with 15 or more employees, those employers with fewer than 15 employees are not covered under either law. The result is that a number of people are not protected from employment discrimination.

As Exhibit 13 shows, while 84 percent of the state's employees are covered by the state Act, 84.4 percent of the state's employers are not. One reason for limiting the application of the law was to exempt smaller employers, such as family-owned businesses. Also, the state was inclined to reflect the definition of employer in federal law so that the commission could be paid for employment complaints it processed. The federal government does not pay state or local commissions for processing complaints against employers with fewer than 15 employees because such complaints are not covered under federal law.

Exhibit 13

Employers Covered under the Texas Commission on Human Rights Act

Type of Employer	Number of Employers	Percent	Number of Employees	Percent
Employers with 15 or more employees	48,620	15.6%	5,217,635	84%
Employers with fewer than 15 employees	262,493	84.4%	991,776	16%
TOTAL	311,113	100.0%	6,209,411	100%

The review found no evidence to suggest that discriminatory employment practices are less prevalent among employers with fewer than 15 employees than among larger employers. Similarly, the review could find no reason for exempting

certain employers from anti-discrimination laws simply because they have fewer than 15 employees. The reasons for exempting some employers from the anti-discrimination provisions in the Act should be related to the characteristics of their operations. For example, bona fide religious organizations regardless of their size should be able to give preference to persons based on religion.

The review examined the laws of the 46 states with fair employment practices agencies to determine how they define "employer" for job discrimination purposes. As Exhibit 14 shows, of the 46 states with fair employment agencies, 29 have laws covering all state agencies and political subdivisions, regardless of the number of employees they have. In fact, 17 states have laws that cover all public employers, while private employers must have a higher number of employees before they are covered. Additionally, federal job discrimination law typically applies to all federal employers regardless of the number of employees they have. Private employers generally are not covered under federal law unless they have 15 employees.

Changing the definition of employer to apply the state Act to all public employers would accomplish two public policy objectives. First, the government has a public policy interest in assuring that public funds, collected from all citizens, should not be used in a way that discriminates against any citizen. Second, by increasing its obligation to eliminating job discrimination, the government intends to set an example to private sector employers.

Even in Texas law, precedent exists for applying the provisions of the human rights act to all public employers without regard to the number of employees they have. Provisions in Article 6252-16, which were enacted in 1967, prohibited employment discrimination by all state agencies and political subdivisions, regardless of the number of employees they had. These provisions were repealed with the passage of the state Act.

Expanding the definition of employer to include all state agencies and political subdivisions would involve a fiscal impact on the commission. Because EEOC would not pay for complaints processed against these smaller employers, TCHR would have to absorb the costs of any additional complaints that would result. The review indicated, however, that the number of additional complaints would probably be very small. As Exhibit 15 shows, by including all state agencies and political subdivisions, 1,718 additional employers with 9,142 employees would be brought under the Act. This change would increase the total number of employees protected from employment discrimination in Texas by just 0.2 percent.

Exhibit 14

Number of Employees an Employer Must Have to be Covered Under State Fair Employment

State	Number of Employees	
	Private Sector	Public Sector
Alaska	1	1
Arizona	15	15
California	5	1
Colorado	1	1
Connecticut	3	1
Delaware	4	1
Florida	15	15
Georgia	15	15
Hawaii	1	1
Idaho	10	1
Illinois	15	1
Indiana	6	6
Iowa	4	1
Kansas	4	1
Kentucky	8	8
Maine	1	1
Maryland	15	15
Massachusetts	6	1
Michigan	1	1
Minnesota	1	1
Missouri	6	1
Montana	1	1
Nebraska	15	1
Nevada	15	15
New Hampshire	6	1
New Jersey	1	1
New Mexico	4	4
New York	4	4
North Carolina	15	15
North Dakota	10	10
Ohio	4	1
Oklahoma	15	15
Oregon	1	1
Pennsylvania	4	1
Rhode Island	4	1
South Carolina	15	15
South Dakota	1	1
Tennessee	8	1
Texas	15	15
Utah	15	15
Vermont	1	1
Virginia	15	15
Washington	8	8
West Virginia	12	1
Wisconsin	1	1
Wyoming	2	1

Exhibit 15

State Agencies and Political Subdivisions Covered under the Texas Commission on Human Rights Act

Size of Employer	Number of Employers	Percent	Number of Employees	Percent
State Agencies & Political Subdivisions with 15 or more employees	2,551	59.8%	918,700	99.1%
State Agencies & Political Subdivisions with fewer than 15 employees	1,718	40.2%	9,142	0.9%
TOTAL	4,269	100.0%	990,842	100.0%

Additional Classes of Individuals Should be Protected from Discrimination in Apprenticeship Programs

The Texas Commission on Human Rights Act prohibits discrimination in employment matters because of race, color, religion, sex, national origin, age, or handicap. The Act generally applies these prohibitions to employers, employment agencies, labor organizations, and apprenticeship and job training programs. However, the section of the Act prohibiting discrimination in apprenticeship and job training programs does not include discrimination because of handicap or age.

The statute should prohibit discrimination because of handicap and age in apprenticeship and job training programs.

The protection given to individuals in apprenticeship and job training programs in the state Act is modeled after the language in Title VII of the Civil Rights Act. This federal law, however, deals only with discrimination because of race, color, religion, sex, or national origin. Other federal laws deal with discrimination based on age and handicap, but do not contain similar provisions prohibiting discrimination in apprenticeship and job training.

Apprenticeship and job training may take many forms, making it difficult to estimate precisely the number of such programs. Typically, these programs are offered through joint labor-management efforts, where apprentices work during the day and receive related study at night. The largest of these efforts is in the building trades. According to the U.S. Department of Labor, there are 640 federally-registered apprenticeship programs in Texas, involving just under 9,000

apprentices. This number is down substantially from a high of approximately 19,000 apprentices in the early 1980s. Many of non-labor programs for management exist as well.

Evidence suggests that the state Act intended to include age and handicap in the section dealing with apprenticeship programs. The statute contains three provisions regarding apprenticeship programs which refer to handicap and age. First, the Act allows apprenticeship programs to admit individuals on the basis of handicap or age if handicap or age is a bona fide occupational qualification. Second, the Act prohibits apprenticeship programs from printing advertisements indicating a preference or limitation based on age or handicap. Finally, the Act specifies that apprenticeship programs do not give preferential treatment to individuals because of age or handicap in order to correct any imbalance in their numbers in the work force.

Prohibiting discrimination in apprenticeship programs based on age and handicap would likely have a very small fiscal impact on the commission. Because EEOC does not deal with discrimination in apprenticeship programs based on handicap and age, the commission would have to absorb all of the cost of processing any additional complaints. However, the number of additional complaints would probably be very small. The commission estimates that total complaints against apprenticeship programs account for only about one percent of the commission's caseload.

The Term "Handicap" Should be Broadly Defined in State Law

Texas law prohibits job discrimination on the basis of handicap. Since the passage of the Texas Commission on Human Rights Act, the term "handicap" in the work place has been interpreted broadly to include many mental and physical conditions without regard to the severity of the impairment. However, the Texas Supreme Court, in a recent ruling concerning this definition, has adopted a much narrower interpretation, which limits the protection given to individuals in the work place based on handicap. The result has been confusion regarding the legislature's intent in protecting individuals from employment discrimination on the basis of handicap.

The definition of handicap in the Texas Commission on Human Rights Act should be changed to continue the broad interpretation under which the commission has operated. The definition should be generally patterned after the language used by the federal government in the Federal Rehabilitation Act of 1973.

The Texas Commission on Human Rights, based on an attorney general's opinion, has interpreted the state Act broadly in the protection it gives to individuals because of handicap. The interpretation has several important elements. First, the fundamental concept involved is what constitutes improper discrimination. An employer cannot discriminate against a person because of a handicap if the handicap would not impair job performance. However, if job performance would be impaired, the employer could, for example, refuse to hire a person on the basis of handicap.

The next element to be considered is what constitutes a handicap. With the help of the attorney general, the commission has interpreted the Act generally as not limiting protection to a specific set of handicapping conditions. Virtually any mental or physical condition would be protected from discrimination, regardless of severity. Furthermore, the handicap would not even have to be "real"; protection would exist in cases where an employer incorrectly believed that some handicap existed. One specific limitation exists to the broad definition of handicap. Persons having either past or continuing problems with alcohol or drug abuse would not be considered as handicapped and would therefore not be protected under the Act.

In December, 1987, the Texas Supreme Court adopted a much narrower interpretation of handicap in Chevron v. Redmon. The court did not change the basic idea that discrimination would be prohibited in cases where a handicap does not impair job performance. The kinds of handicaps protected, however, were greatly changed. The court ruled that this definition was limited to individuals with severe impairments and not the broad mental and physical conditions, as contained in the attorney general's opinion. Furthermore, the court ruled that a person must prove that he or she is actually handicapped in order to be protected under state law. In the view of the court, the Act did not cover persons who were discriminated against because they were falsely perceived as being handicapped. In summary, the court interpreted the Act as prohibiting discrimination on the basis of a mental or physical condition which must be real and must be severe.

The case originated under the definition of handicap in the Human Resources Code. This definition was moved to the Human Rights Act when it passed in 1983, and the court examined the language in the new Act in making its ruling. In doing so, the court ruled that no new protection was intended under the new Act than was intended previously under the Human Resources Code. The court based part of the ruling on the observation that the legislature, in passing the Human Rights Act, did not adopt the broader federal definition of handicap and did not even refer to the Federal Rehabilitation Act.

Though it is too early to see what the effect of this ruling will be, the commission and the attorney general's office have raised concerns that it will severely limit the protection from employment discrimination that has previously been given to individuals based on handicap. The attorney general has submitted a brief to the court seeking a rehearing of the case. Basically, the attorney general raises concerns that the ruling will limit employment protection to just those individuals with severe impairments who would probably not be qualified anyway for most jobs. Other individuals with handicaps that do not impair their ability to perform jobs would not be protected. The result would be to deny the application of the Act to the very people it was designed to protect.

To resolve this problem, the state Act should be clarified to assure that the same individuals who have been protected from employment discrimination continue to be protected. To do this, the definition of handicap in the state law should be based on the definition in the Federal Rehabilitation Act.

Under this definition, a person would be protected from job discrimination by satisfying one of the following conditions. First, a handicapped individual would be a person who has a physical or mental impairment, substantially limiting one or more major life activities. Examples of major life activities include caring for oneself, walking, seeing, hearing, speaking, learning, and working. Second, a handicapped person would be a person who has a record of such an impairment. Third, a handicapped person would be a person whom an employer regards as having such an impairment. This condition would reflect the interpretation contained in the attorney general's opinion, which was discussed earlier. Employers could not discriminate against someone merely because they think that person is handicapped, when the controlling factor should be the person's ability to perform the job. Finally, along with these three conditions, the definition would continue to exclude individuals who have a condition of addiction to drugs or alcohol, just as they are currently excluded under the state Act.

In addition to tracking the federal definition, the Act would also need to contain a reference in its purpose clause to clarify the legislature's intent to promote the protection of individuals on the basis of handicap. The purpose clause already expresses the intent to prohibit discrimination because of race, color, religion, sex, national origin, and age.

By taking this approach, the statute would clearly address the concerns of the Supreme Court in Redmon regarding the legislature's decision not to use the Federal Rehabilitation Act in extending protection to individuals on the basis of handicap. The state would continue to offer the same level of employment protection based on handicap as it has since the passage of the state Act. In addition, the state would bring employers subject to the state Act under the same standard regarding handicap as employers subject to the Federal Rehabilitation Act. The review of other state fair employment laws found that 19 states currently use the federal definition of handicap in their fair employment laws.

This provision would have minimal impact to employers and the state commission. The more restrictive definition of handicap adopted by the Texas Supreme Court in Redmon has only recently been developed and its full effects have not been seen. Because the state has been operating under a broad definition of handicap until this ruling was handed down, adopting the federal definition would simply continue existing practice.

Protection from Discrimination Based on Age Should be Expanded

The Texas Commission on Human Rights Act identified the people to be protected from age discrimination under state law as the same people who were originally protected under federal law. The federal government expanded the number of people it protects from age discrimination, and the state should too.

The statute should be amended to protect individuals over the age of 70 from employment discrimination based on age.

The Texas Commission on Human Rights Act prohibits discrimination based on age against individuals between the ages of 40 and 70. In identifying this range of ages to be protected, the state Act reflects the level of protection that existed in the federal Age Discrimination in Employment Act when it passed in 1967. In 1986, however, Congress eliminated the age ceiling in the federal Act, thus protecting all individuals over the age of 40 from age discrimination. The change was made in

federal law in response to evidence suggesting that Americans are living longer and staying active longer.

The review found that it is unnecessary for the state law to differ from federal law regarding protection from discrimination because of age. Texans over 70 should have the same protection under state law as they already have under federal law. This protection can be achieved by simply eliminating the age ceiling in the state Act.

By making this change, approximately 200,000 additional people would come under the protection of the state Act, based on 1980 Census information. Further, the change would bring most employers under the same federal standard regarding age discrimination they must already meet, and the impact on them would be minimal. Also, EEOC would pay the state for almost all complaints that would result from this change, so the impact on the state commission would be slight.

The Commission Should Have More Authority to Enforce the Act

The authority of the commission to enforce the provisions of the Texas Commission on Human Rights Act is limited to just the issues involved in complaints it receives. The commission cannot investigate or seek to resolve allegedly unlawful employment practices without a complaint from an individual, even when it is aware of their occurrence. In addition, the statute does not clearly give the commission the authority to conduct studies of employment discrimination to reduce the effects of discrimination before a complaint is filed.

The commission should have the authority to initiate complaints involving violations of the Act.

Under current procedures, the commission must receive complaints from individuals or their agents alleging an unlawful employment practice before it may become involved. The commission cannot investigate incidences of employment discrimination on its own initiative. This limitation in the commission's authority has affected its ability to enforce the state anti-discrimination law in two ways. First, the commission cannot move to correct an unlawful practice that it has uncovered in the course of an investigation if the practice is not related to the original complaint. In this case, the commission must receive a separate complaint before it may take action. Second, the commission cannot take action to correct a pattern of discrimination that it sees over time. Through its expertise in

employment discrimination matters, the commission can identify employers that show a continuing pattern of disregard for fair employment practices. Even if the commission were to receive a complaint, it could only address the specific issue in that complaint, and could not address the broader pattern of discrimination which it has seen.

Having the authority to initiate complaints would enable the commission to use its expertise more actively and enable it to enforce the provisions of state law more effectively. The commission would initiate complaints based on the decision of a majority of commissioners. The review of other states found that 38 of the 46 states with fair employment practices agencies have given those agencies the authority to initiate complaints. In addition, EEOC allows its commissioners to initiate complaints.

A telephone survey of six states which allow their agencies to initiate complaints and EEOC revealed that, generally, few complaints have been filed this way. For example, in fiscal year 1987, EEOC had just seven formal commissioner's charges nationwide. The actual number of these complaints depends on the resources available to the agency. Complaints that have been initiated by these agencies generally involve patterns or systemic incidences of discrimination. Also complaints could be initiated when the denial of rights raises issues of general public importance or when the agency is trying to achieve a broad impact.

The commission would have to carefully plan how it would use the authority to initiate complaints. Because it is limited in the number of complaints it may process by its contract with EEOC and by its own budgetary constraints imposed by the legislature, the commission would have to use this authority sparingly. The overall impact of this provision on employers and on the commission would be minimal.

The statute should authorize the commission to conduct studies regarding discrimination in state employment and to report its findings to the governor, the legislature, and the agency affected.

The commission has the authority to process and, if necessary, to litigate employment discrimination complaints against state agencies. It is also responsible for providing technical assistance and training to state agencies regarding equal employment opportunity law. However, the commission does not have the explicit

authority to study and report on the incidence of employment discrimination in state employment. A review of other states found that 34 states authorize their fair employment agencies either to conduct studies or to establish advisory bodies to conduct studies. Also, EEOC has the authority to conduct studies.

Because the authority to conduct studies is unclear, the commission's ability to enforce the Act is impaired in three ways. First, it is not a clear priority for the commission to share its expertise in employment matters with the state's policy makers and agencies. Second, the commission is forced to identify problem areas when they arise in the media or as an employment complaint. The commission thus does not have the opportunity to deal with problem areas before they become confrontational. Finally, the commission is unable to broaden its impact beyond the narrow scope of the specific complaints it processes.

Even at the state level, no method exists for analyzing employment practices in a comprehensive fashion. The governor's office is responsible for compiling the Employer Information Report for state government, known as the EEO-4 Report, which is sent to EEOC. However, the governor's office does not generally monitor these reports to suggest corrective action when appropriate.

Recent events have underlined the need for the commission to be able to conduct studies. In one instance, the Department of Public Safety has been threatened with a lawsuit regarding the employment and promotion of minorities. The Public Safety Commission responded by conducting a study of the department's employment policies and practices. In another instance, the Texas Railroad Commission decided to study its employment practices after allegations of discrimination surfaced during a campaign. These incidents point to a need for an independent state agency to identify possible problems at an earlier state so that agency management can take final action to resolve employment discrimination problems.

The state commission has the expertise in fair employment practices to enable it to study and report impartially on incidents of employment discrimination. The commission could conduct studies on its own, or it could be available to conduct studies at the direction of the legislature or governor. Study results should be reported to the governor, the legislature, and the agency affected by the study. By having this authority, the commission would provide an ongoing effort to examine employment discrimination, eliminating the need for new groups to study problems of discrimination as they arise. Reports resulting from such studies could be used by policy makers to target efforts of minority hiring and recruitment. These reports

could also be used by state agencies to avoid problems before they appear as discrimination complaints or costly court cases.

The fiscal impact that would result from having the authority to conduct studies would depend on the number of studies the commission would actually conduct. This impact could be mitigated somewhat by directing the commission to use information that is already available in the EEO-4 Report compiled by the governor's office. In addition, the state commission could use information that is prepared by the Texas Employment Commission, EEOC, and other sources.

The Procedures for Issuing Notices of Right-to-Sue in State Court Should be Changed

The Texas Commission on Human Rights Act involves two interests. First, it details a process for resolving employment complaints administratively by the commission, without resorting to legal action. Second, the Act assures that individuals have the ability to take legal action if administrative efforts to settle fail. In addition, the Act must guarantee that neither of these interests interferes with the other. In other words, the efforts of the commission to settle complaints informally must not adversely affect a person's right to achieve relief in court. Conversely, protecting the legal rights of individuals must not impede the commission's efforts. However, the statute does not provide the commission enough time to try to achieve a negotiated settlement before it must give individuals the right to take legal action. In addition, the statute does not clearly require individuals to exhaust their administrative remedies before they may take legal action in state court.

The statute should be changed to allow complainants to request notice giving them the right-to-sue in state court 180 days after filing the complaint with TCHR. The commission should be required to issue notices of right-to-sue 300 days after the filing of the complaint with TCHR.

The Texas Commission on Human Rights contains several time frames which must be met in the processing of complaints. First, a person who is aggrieved by an allegedly unlawful employment practice must file the complaint with the commission within 180 days of the practice. The commission must give the complainant a notice giving him or her the right-to-sue in state court when it dismisses the complaint or within 180 days of the filing date if the commission has not achieved a negotiated settlement or has not filed civil action on the complaint.

Once the complainant receives this notice, he or she has 60 days in which to bring civil action in state court. However, the Act specifies that no action may be brought more than one year after the original filing date with TCHR.

The notice of right-to-sue is important for two reasons. First, this notice informs the complainant of his or her right to bring civil action in state court. It also signifies to the court that the administrative remedies established in the Act have been exhausted.

The review found that the commission does not issue this notice of right-to-sue within 180 days of the original filing date unless such notice is requested by the complainant. Typically, the notice is issued within 300 days in order to give the complainant the full 60 days in which to take legal action before the one year statute of limitations expires. The reason for this practice is that the more complex complaints and almost all complaints in which the commission believes a discriminatory practice has occurred generally take more than 180 days to process. In the last fiscal year, for example, 232 or about 25 percent of the complaints processed by the commission took longer than 180 days.

When the commission receives a request for a notice of right-to-sue after 180 days, it issues the notice and closes the case. The commission cannot continue trying to resolve the case informally if the complainant is showing signs of taking the case to court. For the commission to issue this notice on every case within 180 days would greatly affect its ability to find cause in employment complaints and would greatly disrupt its administrative review process.

The statute should be changed to allow the commission to continue its current practice regarding the issuance of the notice of right-to-sue in state court. This change would continue to give fast access to state courts to those individuals who request it, while still giving TCHR time to try to achieve an out-of-court settlement. In addition, TCHR would be able to continue processing complaints without the concern that the complainant will take legal action before its work is finished. Requiring the issuance of the notice of right-to-sue within 300 days would enable the commission to conclude its processing while still allowing the complainant 60 days to file suit before the one year time limit for such action expires. Finally, because this provision embodies current practice by the commission, no impact is anticipated.

The statute should clearly require complainants to exhaust their administrative remedies before they file suit in state court.

The state Act implies, but does not explicitly state, that complainants must go through the administrative processes of the state commission, EEOC, or one of the local commissions in the state before they may take legal action on employment discrimination complaints. Because the requirement to exhaust administrative remedies is not clearly stated in the statute, at least one complainant has filed suit in state court without first going through administrative processing. In that case, the complainant challenged the requirement that administrative remedies must be exhausted. The court dismissed the complaint, upholding the requirement that administrative remedies must first be exhausted. However, because of the vagueness of the law, similar challenges could arise in the future, jeopardizing the commission's role in seeking to resolve employment discrimination complaints before they go to court.

The need for complainants to exhaust their administrative remedies is central to the need for the state commission. If complainants did not have to go through the commission's process, they could go directly to state court without ever attempting to settle their complaints through less expensive administrative means. By requiring complaints to exhaust their administrative remedies before they may file civil action, the statute would assure that every complainant would at least try to settle his or her complaint through negotiation or conciliation. At the same time, the interests of complainants and respondents would be preserved by minimizing the need for costly litigation.

The Remedies Available Under the Act Should Be Expanded

The Texas Commission on Human Rights Act provides for individuals who feel they are victims of employment discrimination to seek remedies in the courts. The courts decide basically what remedies are needed to restore individuals to where they would have been had the unlawful practice not occurred. As part of its order, the court may award attorney's fees to the prevailing party to cover court costs. However, the Act exempts the state and political subdivisions from having to pay attorney's fees.

The statute should be amended to authorize courts to require the payment of attorney's fees by the state and political subdivisions.

The remedies which state courts may order under the Texas Commission on Human Rights Act are meant to put the victim of discrimination in the same position they were in before the unlawful practice occurred. Generally, these remedies require action by the employer such as hiring, reinstating, or upgrading the individual with backpay if appropriate. The remedy may also involve the payment of court costs by the employer. Additionally, the court may award attorney's fees to the prevailing party, either the complainant or the respondent, as part of court costs. The Act specifies that the state and the political subdivisions are liable for court costs; however, it specifically exempts them from liability for attorney's fees.

The effect of this exemption has been to discourage employees of the state and political subdivisions from taking complaints to state court because their attorneys could not receive a fee under the court's order. Last year, 223 complaints processed by TCHR and a smaller number processed by EEOC were against state or political subdivisions. While it is not known how many of these complaints would have actually been pursued in state court, it is fair to assume that the complainants would have been discouraged from doing so, even if they had legitimate complaints.

The review found that the state and political subdivisions should be liable for all costs to the same extent as a private person. No reason could be found for treating public employers differently from private employers regarding the payment of attorney's fees. In addition, the review found that previous law prohibiting discrimination by public employers made the state and political subdivisions' liability for attorney's fees the same as that of a private employer. In fact, the state and political subdivisions are already liable for attorney's fees in several statutes, including the Whistleblower's statute, the statute authorizing small businesses to sue regulatory agencies, and the provision for suits by a party aggrieved by a discriminatory governmental action. The review also identified 29 states that allow for the payment of attorney's fees in their human rights laws without an exemption for the state or political subdivisions. Finally, federal law specifies that EEOC and the United States are liable for attorney's fees the same as a private person.

The actual impact of this provision would depend on the number of cases that would result in civil action that are not now being filed. This number would

probably be small because individuals may already receive attorney's fees from the state and political subdivisions in civil actions brought in federal court.

OTHER CHANGES

Minor Modifications of Agency's Statute

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

Minor Modifications to the Texas Commisison on Human Rights

(Article 5221k, V.T.C.S.)

Change	Reason	Location in Statute
Remove language prohibiting the commission from meeting and exercising power in a political subdivision having a local commission.	To enable the commission to continue meeting in Austin.	Sec. 3.02, Subsection (2)
Delete appropriation provision for 1984-85 biennium.	To remove language that expired in 1985.	Sec. 10.04

Across-the-Board Recommendations

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

Texas Commission on Human Rights			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
	X		1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
X			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
X			6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
	X		10. Provide for notification and information to the public concerning board activities.
		*	11. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
		*	12. Require files to be maintained on complaints.
X			13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			15. Require development of an E.E.O. policy.
X			16. Require the agency to provide information on standards of conduct to board members and employees.
	X		17. Provide for public testimony at agency meetings.
X			18. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			19. Require development of accessibility plan.

*Already in statute or required.

Texas Commission on Human Rights (cont.)			
Applied	**Modified**	**Not Applied**	**Across-the-Board Recommendations**
		X	**B. LICENSING**
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.