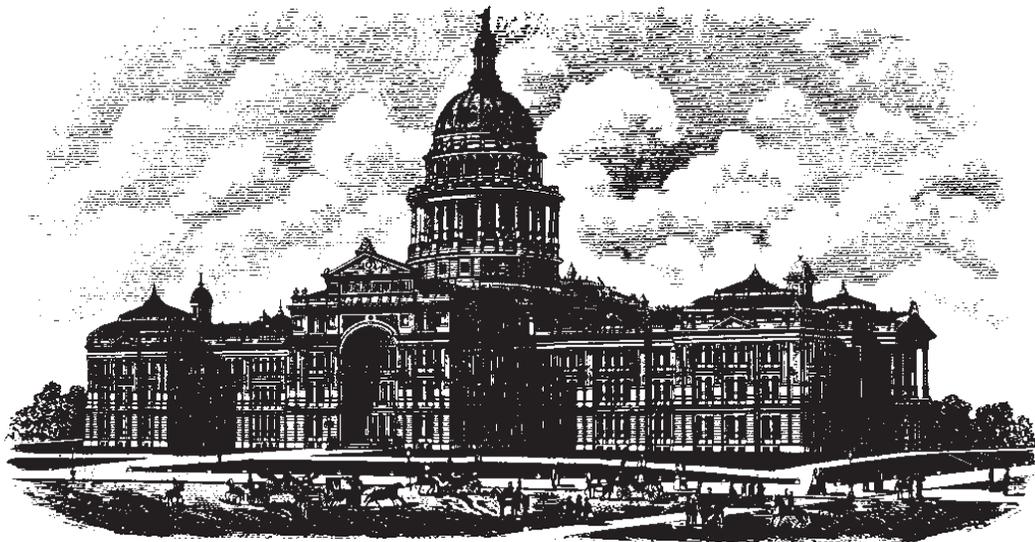


# Sunset Advisory Commission



TEXAS STATE CAPITOL BUILDING

*E.E. Davis architect*

## Texas Commission on Human Rights



Staff Report

1998

## **SUNSET ADVISORY COMMISSION**

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS COMMISSION ON HUMAN RIGHTS**

**SUNSET STAFF REPORT**

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# **EXECUTIVE SUMMARY**

# Executive Summary

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The Texas Commission on Human Rights is responsible for enforcing state equal employment opportunity and fair housing laws that prohibit discrimination on the basis of such factors as race, sex, age, religion, national origin, and disability status. The Commission accomplishes its mission primarily by investigating and resolving employment and housing discrimination complaints as an alternative to litigation. The Commission also provides comprehensive training and technical assistance to state agencies and private businesses on the federal and state anti-discrimination laws.

To carry out its responsibilities, the agency had 46 employees and spent \$2.6 million in fiscal year 1997. The agency is governed by a six-member Commission, appointed by the Governor, composed of one representative each from industry and labor, and four public members.

The Sunset review focused on the Commission's ability to carry out its functions to reduce discrimination in the State of Texas. The issues in this report address improving the Commission's complaint resolution process, and strengthening its training and technical assistance efforts. Finally, staff focused on ensuring that the public has equal access to the agency's procedures and to legal remedies under the Texas Commission on Human Rights Act.

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## 1. Enhance the Commission's Public Outreach and Investigator Training Efforts.

- Complaint resolution is the Commission's main activity to resolve citizens' employment and housing discrimination complaints as an alternative to litigation. An effective complaint resolution process requires that participants and investigators are knowledgeable about the process.
- The Commission does not have a toll-free telephone number or provide easy-to-understand information in a readily-accessible format. This lack of outreach may cause confusion for the public and participants in the complaint resolution process.

- The agency does not provide a formally structured training program or a cohesive training manual to its investigators who perform a critical role in the complaint resolution process.

### Recommendation

- **Require the Commission to make information more accessible to the public by establishing a toll-free telephone service and developing plain-language material about its complaint resolution process.**
- **Require all newly-hired investigators to complete a formal training curriculum before conducting investigations and to complete an annual training update.**

- **Require the Commission to develop an investigation procedural manual to be updated biennially.**

## **2. Strengthen the Commission's Ability to Collect and Analyze Workforce Information and Its Technical Assistance and Training Responsibilities.**

- The Commission relies heavily upon the authority of rider language in the General Appropriations Act to conduct its equal employment opportunity training and technical assistance activities. These activities include compiling statistics on the State's minority workforce composition and reviewing state agencies' personnel policy and procedural systems.
- Providing for Commission functions and policies in riders, rather than statute, may not serve the State's needs. Important training and technical provisions may not be considered independently through the legislative process, and unclear legal authority hinders the Commission's ability to provide guidance to state agencies and institutions of higher education. In addition, the Legislature has expressed an interest in placing riders into general law.

### **Recommendation**

- **Require the Commission to conduct annual workforce analyses of state agencies and public institutions of higher education.**
- **Require the Commission to establish a technical assistance program on equal employment opportunity laws for state agencies and public institutions of higher education.**
- **Require the Commission to provide comprehensive equal employment opportunity training to all state agencies and public institutions of higher education.**

- **Require the Commission to collect and report statewide data on discriminatory activity in the state.**

## **3. Ensure Adequate Compensatory Relief for All Public Employees Who Suffer Employment Discrimination.**

- The Texas Commission on Human Rights Act provides protection from employment discrimination to employees of all governmental entities, but does not provide all employees with equal access to compensatory relief. Employees of small governmental entities who cannot receive compensatory damages cannot be returned to the position they would have occupied had the discrimination not occurred.
- No rationale exists to prevent employees of a governmental entity from being able to seek compensation. Governmental employers receiving public funds paid by all citizens have an obligation not to discriminate against any citizen and should be subject to the same remedies as other public employers.

### **Recommendation**

- **Specify that compensatory damages, already allowed under the Texas Commission on Human Rights Act, apply to all governmental entities, regardless of size.**

## **4. Continue the Texas Commission on Human Rights for 12 Years.**

- Despite the enactment of anti-discrimination laws, employment and housing discrimination remains a problem in Texas. The Commission provides an alternative to litigation through its complaint resolution process, and provides training and technical assistance to prevent discrimination before it occurs.

- In fiscal year 1997, the agency resolved 1,258 employment complaints and 233 fair housing complaints. The Commission estimates that its complaint resolution process saved employers over \$1 million by averting litigation and resulted in more than \$1 million in benefits for individuals who filed complaints.
- Employers and housing providers who have used the agency's training and technical assistance have experienced a 5 percent reduction in discrimination complaints filed.
- Maintaining the Commission allows the State to administer anti-discrimination laws in Texas to be more responsive to state and local needs.

**Recommendation**

- **Continue the Texas Commission on Human Rights for 12 years.**

## **Fiscal Impact Summary**

These recommendations, especially those regarding outreach, training, and codifying existing requirements, are intended to enable the Commission to better serve its functions within existing resources. Some recommendations, such as establishing and maintaining a toll-free telephone number may have a slight fiscal impact. The recommendation to apply compensatory damages to all governmental entities may have a fiscal impact to the State, but the exact amount cannot be estimated. Finally, if the Legislature continues the Commission, as currently structured, the Commission's annual appropriation of approximately \$2.6 million would continue to be required for operation of the agency.



## **APPROACH AND RESULTS**

# Approach and Results

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## Approach

In the 1980s the Legislature passed a series of anti-discrimination laws designed to eliminate unfair employment and housing practices in Texas. The new state laws prohibited employers and housing providers from discriminating against individuals on the basis of factors such as race, color, sex, religion, age, and disability status. The passage of state law also allowed the State to assume the primary role in determining how equal employment and fair housing laws are enforced and administered in Texas. The Texas Commission on Human Rights is responsible for enforcing state anti-discrimination law, while the federal Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD) are responsible for enforcing federal law.

The Commission's main goal is to reduce and prevent discrimination in employment and housing in Texas. The agency accomplishes its goal primarily by investigating and resolving complaints before a person may go to court. While the Commission is the primary state agency responsible for investigating and resolving discrimination complaints filed in Texas, limited resources and a large volume of complaints impair its ability to do the job alone. As a result, complaints that are not investigated by the Commission are processed, through worksharing agreements, with EEOC, HUD, and local commissions operating out of four Texas cities. In fiscal year 1997, the Commission processed 1,500 of the 15,000 total discrimination complaints filed in Texas, while the federal government and local commissions processed the remainder.

Investigating complaints is the largest activity the Commission performs regarding discrimination; however, in recent years, the Legislature has directed the Commission to focus more of its resources and efforts on reducing discrimination on the front end before discrimination occurs. Through riders in the General Appropriations Act, the Legislature has required the Commission to provide comprehensive training and technical assistance to familiarize employers with equal employment opportunity (EEO) laws so that they may avoid illegal, discriminatory actions. The Legislature's interest in strengthening the Commission's role in this area was evident again last

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In recent years, the Legislature has directed the Commission to focus more of its efforts on reducing discrimination on the front end, before it occurs.

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session, when the Senate and House passed a bill that would have moved the agency's technical assistance and training activities from rider to general law, but failed to resolve other differences in the bill before the session ended.

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Sunset staff examined the balance between the Commission's enforcement and EEO training and technical assistance activities.

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In developing its approach to the review, the Sunset staff examined the balance between the Commission's enforcement of fair employment and housing laws to protect individuals and its technical assistance and training efforts to prevent discrimination. To this end, the Sunset staff review focused on the Commission's complaint resolution process to determine how well its investigations provided fair and impartial relief for all parties involved in discrimination disputes. In examining the basic effectiveness of the complaint resolution process, Sunset staff examined the training and preparedness of key Commission staff responsible for investigating these complaints.

The Sunset review also focused on the Commission's public outreach efforts to inform persons about their rights to relief if they have experienced discrimination in employment and housing opportunities. In addition, the review examined the Commission's ability to provide training and technical assistance to public and private employers to help them avoid engaging in discriminatory practices. Sunset staff looked at the various legislative efforts to move the EEO provisions from rider to general law. Finally, the staff examined the remedies available under state law to ensure that all public employees were entitled to equal compensatory relief.

## **Review Activities**

In conducting the review of the Commission, the Sunset staff:

- worked with agency staff at the Commission;
- attended public meetings of the Commission;
- met with staff of EEOC's Dallas District Office, HUD's Fort Worth District Office, and the Austin Human Rights Commission;
- conducted telephone interviews with EEOC's Headquarters in Washington, D.C., EEOC's Houston District Office, and the Corpus Christi Human Relations Commission;
- met with state agency employee associations;
- met with various interest groups such as the National Association for the Advancement of Colored People, Texas Apartment Association, and the Texas Association of Business and Chambers of Commerce;

- worked with the staff of the Legislative Budget Board, Senate Finance Committee, House Appropriations Committee, Comptroller's Office, and the Office of the Attorney General;
- reviewed state statutes, legislative committee reports, previous legislation, reports by the State Auditor's Office, State Comptroller, and the Legislative Budget Board;
- reviewed agency documents and reports; and
- examined the structure of human rights agencies in other states.

## Results

The Sunset review of the Texas Commission on Human Rights started with an evaluation of whether functions performed by the agency continue to be needed. As long as discriminatory practices continue to deny citizens equal access to employment and housing opportunities because of factors such as race, sex, age, religion and disability status, the State has an interest in ensuring that all Texans receive equal and fair treatment. Having a state agency perform this function ensures greater responsiveness to local and regional needs. In addition, the State has an interest in preventing and resolving discriminatory activity before it results in costly litigation. For these reasons, the staff found that the Commission's functions should be continued.

Once the determination was made to recommend continuing the Commission's functions, the review focused on:

- enhancing its public outreach and investigator training efforts;
- maintaining its ability to provide effective training and technical assistance to state agencies and universities;
- requiring a comprehensive analyses of the State's workforce; and
- providing equal access to compensatory relief for all public employees.

***Enhancing Public Outreach and Investigator Training Efforts*** — The Sunset staff focused on how the Commission could improve its ability to effectively process employment and housing discrimination complaints. Sunset staff evaluated the Commission's outreach and training efforts for informing the public about EEO and fair housing rights. The first part of **Issue 1** discusses ways in which the Commission can improve its public outreach efforts. In addition, staff examined the important role that investigators play in processing discrimination complaints. The second part

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The State has an interest in preventing and resolving discriminatory activity before it results in costly litigation.

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The Commission's EEO responsibilities would be better served by being placed into general law.

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of the issue examined whether investigators are sufficiently trained to conduct complex employment and housing discrimination investigations.

***Strengthening EEO Training, Technical Assistance, and Data Analysis Efforts*** — The Sunset review looked at the Commission's ability to assist state agencies and public universities in avoiding the occurrence of discriminatory employment practices. Staff examined the General Appropriations Act provisions that lay out the Commission's training, equal employment data collection, and technical assistance activities to determine whether this authority should be specified by rider or in general law. **Issue 2** recommends that appropriate EEO responsibilities would be better served by being placed into general law. In addition to codifying EEO riders, the recommendation would expand the rider language by requiring the Commission to provide detailed analyses and studies of the State's workforce. The Commission would also be required to collect and report statewide data on discriminatory activity in the State.

***Ensuring Equal Access to Compensatory Relief for Public Employees*** — The Sunset staff evaluated the ability of public employees to recover compensatory damages to help return them to a condition they would have enjoyed if the discrimination had not occurred. **Issue 3** ensures that all public employees have the same opportunity to obtain compensatory relief as stated under the law.

## **Recommendations**

1. Enhance the Commission's Public Outreach and Investigator Training Efforts.
2. Strengthen the Commission's Ability to Collect and Analyze Workforce Information and Its Technical Assistance and Training Responsibilities.
3. Ensure Adequate Compensatory Relief for All Public Employees Who Suffer Employment Discrimination.
4. Continue the Texas Commission on Human Rights for 12 Years.

## **Fiscal Impact**

The recommendation to enhance the public outreach and investigator training efforts would not result in a direct fiscal impact to the State. However, establishing and maintaining a toll-free telephone number may cause a small fiscal impact.

The recommendation to codify existing requirements for compiling and reporting EEO data would not have an additional fiscal impact to the State. The Commission already has a technical assistance and training program in place, and already compiles agency and university workforce information. The additional requirements to analyze this information and to report statewide information on employment discrimination complaints can be performed without additional fiscal impact.

The recommendation to ensure adequate compensatory relief for all public employees who suffer employment discrimination may have a fiscal impact to the State, but the exact amount cannot be estimated. Upon a finding of discrimination, a court could subject a small number of state agencies to compensatory damages of up to \$50,000. If the award is larger than 10 percent of an agency's budget, the agency would pay the amount up to 10 percent of its budget, and the Comptroller would pay the remaining amount.

The recommendation to continue the Commission would require continuation of its annual appropriation of approximately \$2.6 million.



# ISSUES

# Issue 1

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## Enhance the Commission's Public Outreach and Investigator Training Efforts.



### Background

Recognizing a need to provide equivalent protections to its citizens, the Legislature, in 1983, created the Texas Commission on Human Rights. The Commission's primary aim is to reduce employment and housing discrimination in the public and private sectors. The Commission accomplishes this goal mainly by investigating and resolving complaints as an alternative to litigation. Employees must try to settle their cases through Commission procedures, such as mediation, before they may go to court. However, individuals with housing discrimination complaints may file private lawsuits in state court without completing the Commission's process.

The complaint resolution process begins when a complainant alleges a discriminatory practice. An agency investigator reviews the complaint to ensure that it is within the Commission's authority and contains the basic elements of a discrimination complaint. If mediation or initial settlement efforts fail, the Commission begins the full-scale investigation stage to determine whether reasonable cause exists to believe an employer or housing provider, referred to as a respondent, has discriminated. The agency generally conducts in-house investigations of employment complaints, and on-site investigations of fair housing complaints. The agency's 15 employment investigators and four housing investigators collect most information by telephone or by sending information requests. The Commission dismisses a complaint if the investigation reveals that no reasonable cause exists to believe discrimination occurred.

Investigating complaints accounts for the Commission's largest expenditure, 69 percent of spending in fiscal year 1997. The agency resolved 1,258 employment complaints in fiscal year 1997, with an average processing time of 121 calendar days.<sup>1</sup> The Commission also resolved 233 fair housing complaints, with an average processing time of 118 calendar days.

In assessing the agency's investigation activities, Sunset staff sought to determine if the agency had the tools necessary to effectively identify and resolve discrimination claims. The review examined the Commission's efforts

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Investigating complaints is the Commission's largest activity to deal with the effects of discrimination.

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to inform the public and participants on how the complaint resolution process works and focused on whether Commission investigators are sufficiently trained to perform their duties.

## Findings

### OUTREACH AND INFORMATION

▼ **The Commission does not make information about its complaint resolution process easily accessible to the public.**

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The Commission's outreach efforts are limited to distributing information at its training sessions and conferences.

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▶ Even though the Commission is required to provide educational outreach to the public, the Commission's outreach efforts are limited to distributing information at its training sessions and conferences. This information is generally technical in nature and is not geared to mass consumption by the general public.

▶ The Commission does not provide easy-to-understand information in a readily-accessible format. In addition, the agency does not have a toll-free number to provide citizens throughout the State with easy access to information about its complaint resolution process. The Commission's web site contains basic facts about the agency, but does not convey any information about its complaint process. In addition, the Commission's web site is not accessible through the State of Texas' web site which generally provides links to all state agency web sites.

▼ **Limited access to information may cause confusion in the complaint resolution process.**

▶ Because the Commission does not clearly and simply explain its process to the participants in writing, it does not dispel the misconceptions and unrealistic expectations they may have. Further, most complainants do not have lawyers and are unaware of the type of information investigators use to examine complaints.<sup>2</sup>

▶ Without information about the types of cases accepted by the Commission, individuals may incorrectly file discrimination

complaints with the wrong agency.<sup>3</sup> This may cause them to miss important time requirements, such as deadlines for filing complaints or taking action in court. In addition, investigators must also spend time referring complaints about issues, other than discrimination, to agencies such as the Texas Workers' Compensation Commission and the Texas Workforce Commission.<sup>4</sup>

▼ **Other state agencies use toll-free telephone numbers, Internet web sites, and plain-language material to educate and assist citizens in understanding their rights and agency procedures.**

- ▶ Toll-free telephone lines provide people throughout the nation with free access to valuable information about the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD). In addition, the Texas Workers' Compensation Commission (TWCC) has two toll-free telephone services and the Texas Workforce Commission has six toll-free numbers to serve Texans.
- ▶ Human rights agencies such as EEOC, HUD, and the Austin Human Rights Commission have brochures and documents in their lobbies about discrimination and their complaint processes. EEOC and HUD also use Internet web sites to publish important information.
- ▶ Other agencies have also recognized the importance of providing plain-language material to make complicated agency functions and processes understood. The Texas Department of Insurance (TDI) produces numerous information brochures in simple and clear terms so that the insurance industry is more easily understood by policy holders. The Insurance Code also requires TDI to develop standard insurance policy forms in plain language.

In addition, the Legislature, in 1995, required TWCC to provide plain-language information packets to injured workers who enter the workers' compensation system process. Such packets help ensure that injured workers understand their rights in a very complicated system.

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Federal and local human rights commissions provide easy-to-understand brochures and toll-free access to information for all citizens.

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▼ **Improving outreach and information would benefit all participants involved in the complaint resolution process.**

- ▶ With easily accessible and easily understood information about the agency's process, people would be better able to understand the legitimacy of their discrimination complaints. Making information available to the public could reduce the number of claims filed without a legal basis. Individuals would also know which kinds of claims to file with the Commission, and would not need to seek information from sources other than the agency.
- ▶ The availability of adequate information would ensure that individuals participate more meaningfully in the complaint resolution process and provide the Commission with the information necessary to make important case decisions. This would also expedite the process, as investigators could focus their efforts on resolving cases rather than explaining the process to participants or seeking additional information necessary for case resolution.

## TRAINING

▼ **Investigators perform a crucial role in the complaint resolution process.**

- ▶ Discrimination investigations deal with many difficult legal and technical issues with significant potential impact on individuals' civil rights, including admissibility of evidence, confidentiality, and witness statements. Investigators recommend whether to pursue investigations of inquiries received. Additionally, Commission members rely heavily on the information compiled by investigators when making cause decisions.
- ▶ The ability to conduct effective and efficient investigations is critical to the Commission's goal to process cases and provide an alternative to litigation. Investigators rely solely on training and experience when making decisions. Failure to appropriately address issues raised in complaints can lead to wrongful case dismissal or costly court litigation.

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Commission members rely heavily on investigators' work when making decisions in discrimination cases.

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▼ **The agency does not provide formal training to its investigators.**

- ▶ The agency does not have a procedural manual or a formally structured training program for its investigators. Rather, investigators receive materials including discrimination laws, agency directives, and EEOC and HUD compliance manuals. Nothing ties this information together into a cohesive package to guide investigators in how to approach complaints.
- ▶ In a 1997 report, the State Auditor's Office (SAO) recommended that the Commission develop a process for assessing and prioritizing employee training needs. SAO stated that without a formal process, the agency faced a risk that employees would not receive the training needed to increase job productivity.<sup>5</sup> The Commission has begun implementing this recommendation by including an element in employee performance reviews for employees to identify their individual training needs. This change to the employee evaluation process would help the Commission assess training needs, as SAO recommended. However, it falls short of the establishment of a formal training process that would provide comprehensive, ongoing instruction on conducting investigations.

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The Commission does not have a formally structured training program for investigators.

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▼ **Other agencies provide their investigators with formal training manuals.**

- ▶ EEOC and HUD publish various training and compliance manuals for their investigators. These manuals guide investigators through the complaint resolution process with information such as how to assess complaints, how to interview witnesses, and relevant legal precedents.
- ▶ Investigators with the Texas Workers' Compensation Commission (TWCC) conduct investigations dealing with administrative and criminal fraud. TWCC provides them with a manual that describes the investigation process, including flowcharts and examples of forms to complete.

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Fair and competently run investigations reduce expenses and help avoid costly judicial proceedings.

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▼ **Establishing a formally structured training process would benefit all participants in the complaint resolution process.**

- ▶ Establishing a formally structured training process and procedural manual for investigators would ensure that investigators uniformly understand and apply policies and procedures. Investigators should be trained to understand the many important legal aspects of discrimination complaints.
- ▶ A fair and competently run investigation process reduces both investigative expenses and costly judicial proceedings. Properly trained investigators can provide greater assurances that the Commission efficiently and effectively processes discrimination complaints to protect the participants' rights and to avoid litigation.

## **Conclusion**

Complaint resolution is the agency's main activity. An effective investigation process is vital to protect the State's citizens from employment and housing discrimination and to provide an alternative to litigation.

Information about the complaint resolution process is not easily accessible or easily understood by complainants and respondents. The Commission does not have a formally structured training process for its investigators. Improved outreach efforts would allow participants and the public to make more informed decisions about the Commission's complaint resolution process. Better training of agency investigators would improve the effective investigation of employment and housing complaints, thus avoiding costly judicial proceedings.

## **Recommendation**

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### **Change in Statute**

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#### **OUTREACH AND INFORMATION**

- **Require the Commission to make information more accessible to the public by establishing a toll-free telephone service and using other outreach methods to publicize its complaint process.**

■ **Require the Commission to develop plain-language material about its complaint resolution process.**

This recommendation would require the agency to provide more information about its complaint process to the public. A toll-free telephone number and a more informative Internet web site would allow individuals from across the state to obtain important information about the Commission before the complaint process begins. The Commission should ensure that an employee knowledgeable about the agency's functions is available to answer the toll-free telephone line during normal business hours.

The agency would also be required to develop written information in a form that helps people easily understand requirements for filing and defending complaints. A full discussion of the Commission's expectations, information needs, and time frames would allow participants to develop realistic expectations of the process, and allow investigators to better prepare case files used by Commission members to make decisions. The Commission should distribute materials describing the investigation process and the types of claims handled by the Commission not only to participants involved in the process, but should also make the information available on its Internet web site.

Plain-language materials and web site information should include:

- descriptions of the types of complaints appropriate under the Act;
- a basic time line explaining the steps in the investigation process, from filing a complaint to bringing a suit in court;
- a description of the role of each participant in the investigation process including, but not limited to the Commission, EEOC or HUD, local commissions, complainants, and respondents; and
- a list of the basic information and documentation needed by the Commission.

## **TRAINING**

- **Require all newly-hired investigators to complete a formal training curriculum before conducting investigations.**
- **Require all investigators to complete an annual training update.**
- **Require the Commission to develop an investigation procedural manual to be updated biennially.**

These recommendations would raise the priority of providing adequate training and sufficient support to investigators. Requiring all new hires to receive formal training before assuming investigative duties, and requiring current investigators to undergo periodic re-training, would supplement the Commission's current training efforts.

Creating an investigation procedural manual would guide investigators through the investigation process in a clear and detailed manner and provide them with the tools to make standardized decisions that are consistent with agency policy and the law. The Commission should synthesize materials it currently gives to employees into a cohesive package, including EEOC and HUD material. The Commission should also ensure that the manual includes information about how to proceed with investigations. Biennially updating this procedural manual would provide for the inclusion of any legislative changes or recent case developments.

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## Fiscal Impact

This recommendation would not have a direct fiscal impact to the State. Establishing and maintaining a toll-free telephone number may cause a small fiscal impact.

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<sup>1</sup> Texas Commission on Human Rights, Annual Report, fiscal year 1997. This total reflects the average time the Commission took to process complaints filed and closed in fiscal year 1997. According to EEOC, the average time required to process all complaints closed in 1997 was 605 days.

<sup>2</sup> The Commission estimates that 90 percent of complainants do not have lawyers. Telephone interview with William Hale, Executive Director, Austin, Texas, September 29, 1998.

<sup>3</sup> Interviews with Texas Commission on Human Rights investigators, Austin, Texas, September 11, 1998.

<sup>4</sup> Ibid.

<sup>5</sup> Office of the State Auditor, *1997 Small Agency Management Control Audit*, August 1997, pp 93-94.

## Issue 2

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### Strengthen the Commission's Ability to Collect and Analyze Workforce Information and Its Technical Assistance and Training Responsibilities.



#### Background

The Commission on Human Rights provides training and technical assistance to familiarize employers with equal employment opportunity (EEO) laws to prevent discrimination from occurring. Training and technical assistance activities range from reviewing agencies' personnel policy and procedural systems to compiling statistics on the State's minority workforce composition. While any employer, private or public, can take advantage of the Commission's services, the primary recipients of Commission training and technical assistance activities are state agencies and public institutions of higher education.

Under the authority of a rider to the General Appropriations Act, the Commission provides training on compliance with anti-discrimination requirements such as sexual harassment, and reasonable accommodation for persons with disabilities. Payment for government agency training is governed by interagency contracts. As specified in the Appropriations Act, state agencies or universities with three or more complaints of employment discrimination per year, other than complaints determined to be without merit, must receive comprehensive EEO training from the Commission or an entity approved by the Commission. In fiscal year 1997, state agencies and institutions of higher education that received training showed an 8 percent reduction in employment discrimination complaints filed with the Commission.<sup>1</sup>

The Commission also reviews state agencies' and universities' employment personnel policies and procedural systems for adherence to equal employment opportunity law, recommends necessary changes, and certifies those in compliance with the law. Each agency or public university is subject to review every six years, according to a schedule established in the Appropriations Act. In fiscal year 1997, the Commission reviewed 51 personnel policy and procedural systems and 30 affirmative action plans of state agencies and institutions of higher learning.

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State agencies and public universities are the primary recipients of the Commission's EEO training and technical assistance.

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State agencies and institutions of higher education must also provide EEO information to the Commission each year. The agency compiles this information into a state minority and women hiring practices report, which it submits to the Legislature every two years.

In its review of the Commission's programs, the staff focused on the ability of the agency to maintain and provide effective training and technical assistance to state agencies and universities. The staff examined the provisions in the appropriations bill regarding the Commission's training and technical assistance to address whether this authority should be specified by rider or in general law. The staff also evaluated the adequacy of these provisions in promoting equal employment opportunity efforts in State government.

## Findings

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The Commission receives authority for its EEO training and technical assistance through appropriations rider, not by statute.

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▼ **Providing important equal employment opportunity responsibilities in appropriations rider is not adequate to serve the State's needs.**

- ▶ The statute allows the Commission to require state agencies and public universities to develop and implement personnel policies that promote equal employment opportunity, including selection procedures that incorporate a workforce diversity program. The statute also requires the Commission to develop an inventory of EEO policies adopted by state agencies. However, the statute is largely silent on the Commission's EEO responsibilities with regard to state agencies and universities. The statute does not contain provisions for collecting and analyzing workforce information from state agencies and universities or for reviewing their EEO and affirmative action plans. The statute also does not include language regarding EEO training for state agencies.

Instead, the Commission relies heavily upon the authority of rider language in the General Appropriations Act to conduct its equal employment training and technical assistance activities. This includes compiling statistics on the State's minority workforce composition, reviewing state agencies' personnel policies and procedural systems, and reviewing affirmative action plans. These riders also contain provisions for the Commission to receive reimbursement from agencies and universities for the costs of conducting these activities.

- ▶ The General Appropriations Act is supposed to distribute state funds with instructions for their use, but increasingly, it includes provisions that do not appropriate or otherwise instruct agencies in the use of these funds. This practice buries important provisions like EEO training and technical assistance deep in the 900-page appropriations bill, instead of allowing them to be considered independently through the legislative process. It also prevents the focused consideration of these provisions by the standing committees of the House and Senate, which are specifically charged with considering these matters.
- ▶ The Legislature has expressed an interest in placing appropriate riders into general law. For example, the Senate Finance Committee has recommended that a broad range of riders, including some EEO provisions, be removed from rider and placed into general law. The Legislature also appointed a Special Committee on Hopwood and State Contract Employment Practices to examine whether guidelines related to fair and equal access to state employment are more appropriately placed in general law than in the appropriations bill.

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The Legislature has expressed an interest in placing EEO riders into general law.

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In addition, last session, the Senate and House passed different versions of a bill that would have put much of the EEO rider language into general law, but the bill died at the end of the session because of the failure to resolve differences on unrelated issues.<sup>2</sup>

▼ **Unclear legal authority hinders the Commission’s ability to provide guidance in several key EEO policy areas.**

- ▶ Because the Legislature’s requirements on EEO training and technical assistance are specified in the appropriations bill, the Commission does not receive clear, continuing direction to guide its actions in this area. The Commission does not have the authority to develop rules that outline the various EEO law requirements that state agencies and public institutions of higher education should follow. As a result, these entities do not have clear expectations or guidance in developing workforce diversity plans that meet the State’s diversity needs.

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The Commission does not collect and report complete statewide data on discriminatory activity in Texas.

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- ▶ Because neither the statute nor the rider requires it, the Commission does not conduct comprehensive analyses of the State's work force. Instead, the Commission produces a biennial Minority Hiring Report that provides no analysis regarding the use or underuse of minorities in the State work force or a comparative analysis of current and past trends. This information could be used by state agencies, the Legislature, and the general public in assessing how well the State employs minorities and women, according to their percentage in the civilian labor force. In addition, the Commission has limited its reports primarily to minority and gender hiring data and does not produce information on other protected groups, such as persons with disabilities.
  
- ▶ The Commission has no clear statutory authority to ensure compliance by agencies that fail to meet specific reporting requirements. Under the rider, the Commission may fine state agencies and universities for failure to report required information. However, the provisions for ensuring compliance with its reporting requirements more appropriately belong in general law.
  
- ▶ The statute does not require the Commission to collect and report complete statewide data on discriminatory activity in the State. The Commission produces an annual report that provides information on employment complaints, such as job action, the basis of the complaint, and the outcome of the complaint. However, the Commission reports only information about complaints that it processes, and does not include information on complaints processed by the EEOC or local commissions. Since the Commission only processes about 9 percent of all employment discrimination complaints, its activities do not provide a complete statewide picture of employment discrimination in Texas. As a result, the Commission does not provide comparative information to policymakers regarding its activities dealing with discrimination complaints.

▼ **The Legislature has recognized the role of equal opportunity training and technical assistance in reducing discriminatory employment practices.**

- ▶ The Legislature has enacted several equal opportunity provisions through the General Appropriations Act that require agencies to enlist the assistance of the Commission when developing and implementing personnel policies and procedural systems. The provisions require the Commission to review agencies' personnel policies and procedural systems and workforce diversity plans, and provide comprehensive EEO training.
- ▶ The Sunset Commission, in its review of state agencies, applies a standard across-the-board recommendation that requires each agency to have a written, comprehensive personnel plan that complies with all state and federal EEO laws and guidelines. The policy is designed to ensure that agencies have plans for achieving a balanced workforce if they determine that they have not met State and federal EEO requirements. These plans also help agencies avoid lawsuits that might arise from non-compliance with EEO laws in hiring, recruiting, selection, and promotion actions. The plan must be updated annually and reviewed by the Commission and filed with the Governor's office.

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The Legislature has expressed an interest in ensuring that agencies have EEO plans to help achieve a balanced work force and avoid lawsuits.

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## Conclusion

The Legislature has an interest in ensuring that all Texans, who are qualified for a job, have equal access to compete for employment with the State. The Commission's training, equal employment opportunity data collection, and technical assistance activities help ensure that the State is meeting this goal. However, providing for these important State policies in rider, and not by statute, may hinder the Commission's ability in providing continued guidance to government employers in key EEO policy areas such as providing comprehensive workforce analyses that would assist the State in ensuring fair access to employment for all its citizens.

## Recommendation

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### Change in Statute

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- **Require the Commission to conduct annual workforce analyses of state agencies and public institutions of higher education.**

This recommendation would place in statute the provisions from the appropriations bill rider that require the Commission to compile workforce information from state agencies

and public universities. It would also expand on this rider language to require the Commission to provide detailed analyses and studies of the State's work force.

Provisions from the appropriations bill that would be placed in statute include:

- a requirement for agencies and universities to report data to the Commission in a form provided by the Commission;
- specific reporting requirements for agencies and universities to follow, including total number of employees and total hired each month broken down by racial and ethnic group and gender;
- a requirement that agencies and universities report the total number of employees hired each month according to sex, race, and ethnic group listed by job classification; and
- authority for the Commission to fine state agencies and universities that fail to comply with reporting requirements an amount up to \$2000.

In addition to the provisions from the appropriations rider, the recommendation would include the following provisions:

- a requirement for state agencies and public universities to report the same employment data as specified above for persons with disabilities; and
- a requirement for the Commission to analyze the workforce information received and report the results of its analysis, in layman's terms, to the Legislature at the beginning of each session.

The analyses and studies would help employers, the Legislature, and the general public in examining the extent of underuse in the work force of all persons for whom federal and state policies encourage a more equitable balance. This report would also provide the basis for agencies' development and implementation of EEO policies and procedures, and workforce diversity plans, which are discussed in the following material.

- **Require the Commission to establish a technical assistance program on equal employment opportunity laws for state agencies and public institutions of higher education that includes reviewing and revising agencies' personnel policies and procedural systems and workforce diversity plans.**

Like the recommendation above, this recommendation would place provisions currently in riders to the appropriations bill in the Commission's statute. This change would ensure that the Commission continues a comprehensive technical assistance program to assist agencies in decreasing the likelihood of employment discrimination.

Specific provisions from the appropriations rider that would be placed in statute include:

- a requirement for each state agency and university to develop and implement hiring policies and procedures —incorporating workforce diversity programs— as determined by the Commission to recruit capable and qualified applicants, mindful of the diversity in the state;
- a requirement for the Commission to monitor state agencies and universities to determine compliance;
- a provision for agencies and universities to reimburse the Commission through interagency contract for costs to provide technical assistance and review of personnel policies and procedural systems to ensure compliance;
- a provision for agencies and universities that fail to comply with these requirements to pay a penalty to the Commission of up to \$5000;
- a process for the Commission to review agencies' and universities' affirmative action plans on a six-year cycle, based on categories of agencies in the appropriations bill; and
- a requirement for the Commission to report to the Governor, Lieutenant Governor, Speaker of the House, and the Legislative Budget Board on the compliance with these entities' affirmative action plans.

This recommendation would continue many of the activities that Commission already performs such as reviewing and monitoring state agencies' and universities' personnel procedures relating to employee recruitment, selection, evaluation, promotion, and workforce diversity.

■ **Require the Commission to provide comprehensive equal employment opportunity training to all state agencies and public institutions of higher education.**

This recommendation would also place language currently in appropriations rider in the Commission's statute. Specific changes to the statute include:

- require agencies and public universities that have received three or more discrimination complaints with merit during each year of the biennium to receive training from the Commission or an entity approved by the Commission; and

- a requirement for agencies to pay training costs or reimburse the Commission for its costs through interagency contracts, as determined and approved by the Commission.

This recommendation would ensure that the Commission continues to provide comprehensive training to familiarize all state agencies and public institutions of higher education with EEO laws and to prevent employment discrimination from occurring.

■ **Require the Commission to collect and report statewide data on discriminatory activity in the state.**

This recommendation would require the Commission to collect and report detailed information on employment and housing discrimination complaints from state, federal, and local commissions. Specifically, this information would include:

- analysis of complaints filed by basis, such as race, sex, age, religion, disability, and national origin;
- analysis of complaints filed by job issue, such as terms and conditions, discharge, and sexual harrasment;
- analysis of complaints filed by housing issue, such as terms and conditions, refusal to rent or sell, and discriminatory advertising;
- analysis of type of cases closed including information on cause and no cause findings; and
- average processing time for all complaints resolved within each fiscal year.

This recommendation would provide for this statewide information on employment and housing discrimination complaints to be included in the Commission's annual report. Including statewide information on housing discrimination would serve much the same interests as reporting statewide employment discrimination information. Together, these reports would ensure that the Legislature and the general public receive comprehensive information on what is being done by state, federal, and local commissions to resolve discrimination in the State.

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## **Fiscal Impact**

Because this recommendation would codify existing requirements for compiling and reporting EEO data, it would not have an additional fiscal impact to the State. The Commission already has a technical assistance and training program in place, and already compiles agency and university workforce information. The additional requirements to analyze this information and to report statewide information on employment discrimination complaints can be performed without additional fiscal impact.

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<sup>1</sup> Texas Commission on Human Rights, Operating Budget, fiscal year 1998.

<sup>2</sup> Telephone interview with Eric Wright, Senate Finance Committee, September 25, 1998.



## Issue 3

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### Ensure Adequate Compensatory Relief for All Public Employees Who Suffer Employment Discrimination.



#### Background

In 1991, the United States Congress adopted changes to federal employment discrimination laws that included adding significant new remedies for persons who feel they have been subject to discrimination in the workplace. These remedies included allowing federal courts to award compensatory damages to government employees who suffer discrimination.

To receive payment from the United States Equal Employment Opportunity Commission (EEOC) for the resolution of employment discrimination complaints, the State's employment laws must be substantially similar to those of the federal government. Thus, a 1992 Texas Commission on Human Rights task force composed of representatives of employers, employees, attorneys, and civil rights organizations worked to reach consensus on amendments to make state employment discrimination law consistent with the new federal law. As a result, the Legislature passed a number of amendments to the Texas Commission on Human Rights Act in 1993, including a provision allowing courts to order compensatory damages for employees who have suffered discrimination.

Employees must try to settle their cases through the Commission's administrative procedures before they may go to court. After an investigation and a finding of reasonable cause to believe that discrimination occurred, the Commission may bring a civil action against a respondent if conciliation efforts fail. Individuals also have the ability to take legal action if settlement efforts fail.

Upon a finding that a public employer engaged in an unlawful employment practice, a court may order a respondent to pay equitable relief including back pay, court costs, attorney's fees, and compensatory damages. Under the Act, compensatory damages may include:

- future pecuniary losses,
- emotional pain,
- suffering,

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In 1993, the Legislature adopted provisions allowing courts to award compensatory damages for employees who have experienced discrimination.

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- inconvenience,
- mental anguish,
- loss of enjoyment of life, and
- other nonpecuniary losses.

The statute limits the amount of damages a court may award to a complainant, based on the number of people employed by the respondent. The text box,

*Compensatory Damages*, shows the amount of damages available under the Act.

### Compensatory Damages

Damages may not exceed:

- \$50,000 for an employer with 15 to 100 employees;
- \$100,000 for an employer with 101 to 200 employees;
- \$200,000 for an employer with 201 to 500 employees; or
- \$300,000 for an employer with more than 500 employees.
- In determining the number of employees of an employer, a person must have been employed for each of 20 or more weeks in the current or preceding calendar year.

In its review of the damages provisions under the Act, the Sunset staff focused on the ability of public employees to recover damages to return them to a condition they would have enjoyed if the discrimination had not occurred. The review further sought to ensure all public employees have the same opportunity to secure remedies under the law.

## Findings

### ▼ **Inconsistency in State law may deny employees of small governmental entities full protection from employment discrimination.**

- ▶ Current law provides protection from employment discrimination to employees of all governmental entities, regardless of how many employees they have. It does not, however, provide equal access to compensatory relief. By reflecting federal law, the language in state law providing for compensatory damages in employment discrimination cases does not extend these remedies to employees of governmental entities with fewer than 15 employees. This gap in coverage resulted because federal employment discrimination laws do not cover governmental employers with fewer than 15 employees, while state law covers all governmental entities regardless of size.
- ▶ Because employees of small governmental entities cannot receive compensatory damages, they do not have access to an important tool for making them whole from the effects of discrimination. Further, without the potential to seek

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Current law does not provide equal access to compensatory relief for employees of small governmental entities.

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compensatory damages in court, they also lose considerable leverage to encourage their employers to participate in the Commission's efforts to resolve complaints without resorting to legal action in the courts.

▼ **Other statutes allow employees of small governmental entities to recover compensatory damages.**

- ▶ The Texas Whistleblower Act provides for awarding compensatory damages to public employees for losses suffered in retaliation from reporting wrongdoing by a governmental entity. In contrast to the Texas Commission on Human Rights Act, the Whistleblower statute allows all public employees to recover compensatory damages. Specifically, employees may receive up to \$50,000 from employers with fewer than 101 employees under the Whistleblower Act.
- ▶ The Texas Tort Act, which governs workers' compensation cases, does not limit the amount of damages based on agency size. Instead, courts may award damages based on the number of people injured or the amount of property destroyed.
- ▶ The Equal Employment Opportunity Commission has interpreted the federal law to allow employees of all labor organizations and employment agencies to receive compensatory damages. While federal law prohibits discrimination by all labor organizations and employment agencies regardless of size, it does not provide a range of compensatory damages for employers with fewer than 15 employees. EEOC concluded, though, that employees could recover compensatory damages from all labor organizations and employment agencies regardless of the number of their employees.

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The Texas  
Whistleblower Act  
and the Texas Tort Act  
do not limit damages  
based on the size of  
the agency.

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▼ **Removing inconsistency in the Act would ensure that all public employees have access to the same type of remedy.**

- ▶ By allowing employees to file charges against public entities of any size, the Act aims to protect all public employees from discrimination. The availability of compensatory damages for all public employees would extend this protection, ensuring that all public employees receive equal treatment under the Act.

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Regardless of their size, governmental entities should be subject to the same damages for discriminatory actions.

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- No rationale exists to prevent employees of a governmental entity from being able to seek compensation. The Act excludes private employers with fewer than 15 employees from any liability to avoid placing undue hardship on small businesses. However, this reasoning does not apply to governmental entities, which have an obligation to ensure that public funds, paid by all citizens, are not used to discriminate against any citizen, including public employees. The same damages should apply to all governmental entities, regardless of their size.

## Conclusion

Because the current compensatory damages provisions in the Texas Commission on Human Rights Act are inconsistent with other provisions of the Act, employees may file discrimination charges against small public employers, but cannot recover compensatory damages. Other Texas statutes permit employees to recover damages from all governmental entities, regardless of size. In addition, EEOC has interpreted an identical federal statute to allow people to recover compensatory damages from employment agencies and labor organizations with fewer than 15 employees. All public employees should be able to seek compensation for discrimination.

## Recommendation

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### Change in Statute

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- Specify that compensatory damages, already allowed under the Texas Commission on Human Rights Act, apply to all governmental entities, regardless of size.**

This recommendation would grant equal access to remedies for all public employees who have suffered discrimination by employers covered under the Act. Specifically, this change would extend the awarding of compensatory damages by the courts to include aggrieved employees of governmental entities with fewer than 15 employees. These compensatory damages would be capped at \$50,000, the limit already in state law for other employers with up to 100 employees. This change would be consistent with legislative intent behind allowing all public employees to file discrimination charges, regardless of the employer's size. This change would make the Act consistent with other employment laws, which do not exclude small agencies from liability for compensatory damage, and with the interpretation of the federal employment discrimination statute.

This recommendation should not have an adverse effect on small agencies. A court has discretion whether to order compensatory damages, and the statute places a limit on the amount of damages a court may award. In addition, the General Appropriations Act provides safeguards to prevent damage payments from harming budgets of small state agencies.

Finally, this recommendation would not affect private employers. The damages provisions only apply to employers covered under the Act, and private employers with fewer than 15 employees are exempt from the Act.

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## **Fiscal Impact**

This recommendation may have a direct fiscal impact to the State, but the exact amount cannot be estimated. Upon a finding of discrimination, a court could subject a small number of state agencies to compensatory damages of up to \$50,000. If the award is larger than 10 percent of an agency's budget, the General Appropriations Act states that the agency would pay the amount up to 10 percent of its budget, and the Comptroller would pay the remaining amount.



# Issue 4

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## Continue the Texas Commission on Human Rights for 12 Years.



### Background

In 1983, the Legislature created the Texas Commission on Human Rights to administer state law prohibiting employment discrimination on the basis of race, color, national origin, sex, religion, age, and disability status. In addition to enforcing fair employment law, in 1989, the Legislature passed the Texas Fair Housing Act, and charged the Commission with enforcing its provisions. Fair housing law prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, familial status, and mental or physical disability.

The Commission operates as part of a three-tiered approach in which the federal, state, and local governments work together to eliminate employment and housing discrimination in Texas. To accomplish this goal, the federal government defers jurisdiction and contracts with the Commission and local commissions in Austin, Fort Worth, Corpus Christi, and Dallas to investigate and resolve complaints as an alternative to litigation. Complaints that are not investigated by the State or local commissions, are processed, through work sharing agreements, by the Equal Employment Opportunity Commission (EEOC) and Department of Housing and Urban Development (HUD). The final disposition of all housing complaints must be approved by HUD, while EEOC must approve a certain percentage of the employment complaints.

In addition to investigating and resolving complaints, the Commission also provides training and technical support on federal and state anti-discrimination laws to public and private agencies and businesses. The assistance familiarizes employers with applicable equal employment laws to prevent discrimination from occurring.

The Commission is composed of six members, appointed by the Governor for six-year terms. In fiscal year 1997, the agency had 46 full-time employees and a budget of \$2.6 million. Much of the Commission's funding comes from EEOC and HUD.

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The Commission operates as part of a three-tiered approach with the federal and local governments to eliminate employment and housing discrimination.

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The State has an interest in ensuring that all individuals have the same access to employment and housing opportunities.

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In a Sunset review, continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First, a current and continuing need should exist for the State to provide the functions or services. In addition, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to another agency. The evaluation of the need to continue the Commission and its current functions led to several findings that are discussed in the following material.

## Findings

- ▼ **Texas has a continuing interest in protecting its citizens from employment and housing discriminatory practices.**
  - ▶ Despite the passage of federal and state anti-discrimination laws, discrimination is a continuing problem in Texas. In 1997, approximately 15,000 employment discrimination complaints and 389 housing discrimination complaints were processed in Texas.<sup>1</sup> Of that total, the Commission processed 9 percent of the employment discrimination complaints and 54 percent of the housing discrimination complaints.<sup>2</sup>
  - ▶ The central mission of the Commission is to enhance the quality of life and economic well-being of Texans by reducing discrimination in employment and housing. The State has an interest in ensuring that all qualified individuals have the same opportunity to compete for employment and that they have the same access to housing. The State also has an interest in preventing and resolving discriminatory activity before it results in costly litigation. Costly litigation, as a result of discriminatory practices, negatively affects the productivity of individuals and businesses.
- ▼ **Despite some overlap of state and federal jurisdiction, the Texas Commission on Human Rights should continue to enforce state equal employment opportunity and fair housing laws.**
  - ▶ The Commission on Human Rights is a vital part of the State's effort to effectively resolve employment and housing discrimination cases. Without many of the Commission's investigatory and alternative dispute resolution efforts such

as mediation and settlement negotiations, individuals and businesses would not have a viable and impartial way to settle complex disputes without going to court. The Commission's complaint resolution process also ensures that all Texans, regardless of their ability to pay for private legal counsel, are provided the opportunity to seek relief if they experience discrimination.

- ▶ Maintaining a Commission allows the State to control how anti-discrimination laws should be administered in Texas. Having a state agency in Austin, subject to the oversight of the Legislature, provides access to the people of Texas that they do not enjoy with EEOC or HUD. As a result, the Commission is more responsive to needs of the State and local communities.
- ▶ By maintaining the Commission on Human Rights, the State can investigate and resolve discrimination complaints for very little investment of state revenue. In fiscal year 1997, EEOC and HUD funded 73 percent of the Commission's \$2.6 million budget.
- ▶ The Commission also plays an important role in helping prevent and reduce the likelihood of discriminatory practices by employers and housing providers. The Commission accomplishes this by providing comprehensive training and technical assistance to governmental agencies and private businesses on the federal and state anti-discrimination laws.

▼ **Other states use statewide agencies to enforce equal employment opportunity and fair housing laws.**

- ▶ The federal government requires states that have equivalent anti-discrimination laws to that of federal law to maintain a state or local entity that have similar enforcement powers as EEOC or HUD.
- ▶ Most states have assumed the responsibility for enforcing anti-discrimination laws in both employment and housing. Only three states, Alabama, Arkansas, and Mississippi, do not have human rights agencies.

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The Commission's  
 complaint resolution  
 process provides  
 individuals and  
 businesses a fair and  
 impartial way to  
 settle disputes  
 without going to  
 court.

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The Commission  
 provides  
 comprehensive EEO  
 training and technical  
 assistance to  
 governmental entities  
 and private  
 businesses to help  
 them avoid costly  
 lawsuits.

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▼ **The Commission on Human Rights has been generally effective in doing its job.**

- ▶ The Commission resolved 1,258 employment discrimination complaints in fiscal year 1997.<sup>2</sup> EEOC reviews approximately 10 percent of the cases processed by the agency to ensure effective resolution of complaints. In fiscal year 1997, EEOC approved 97 percent of the complaints processed by the Commission.<sup>3</sup>
- ▶ The Commission resolved 233 housing discrimination complaints in fiscal year 1997.<sup>4</sup> Unlike employment cases, HUD must review and approve all complaints processed by the agency to ensure effective resolution of complaints. In fiscal year 1997, HUD approved 100 percent of the complaints processed by the Commission.<sup>5</sup>
- ▶ Employers and housing providers who have used the agency's training and technical assistance have experienced a 5 percent reduction in discrimination complaints filed.<sup>6</sup> The Commission also estimates that its complaint resolution process saved employers over \$1 million dollars by averting litigation and resulted in more than \$1 million in benefits for individuals who filed complaints.<sup>7</sup>
- ▶ The Commission had a 5 percent voluntary settlement rate in employment discrimination complaints exclusive of settlements through the alternative dispute resolution process and a 40 percent voluntary settlement rate in fair housing complaints.<sup>8</sup>

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Even though the federal government processes most discrimination complaints in Texas, the State still has an interest in enforcing its own anti-discrimination laws.

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## **Conclusion**

While the State has made strides in reducing the likelihood of discriminatory practices in employment and housing, discrimination still remains a problem in Texas. Even though the federal government processes the majority of the discrimination complaints in Texas, maintaining a State law and a separate state agency is vital in ensuring that the State has a say in how anti-discrimination laws are administered in Texas.

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## Recommendation

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### Change in Statute

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■ **Continue the Texas Commission on Human Rights for 12 years.**

This recommendation would continue the Commission for the usual 12 years with a new Sunset date of September 1, 2011.

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## Fiscal Impact

If the Legislature continues the current functions of the Commission, using the existing organizational structure, the Commission's annual appropriation of approximately \$2.6 million in fiscal year would continue to be required for operation of the agency. Of this amount, the State provides \$691,167, or 27 percent of the agency's total appropriation.

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<sup>1</sup> Information obtained from EEOC, Dallas District Office, and HUD District Office, October 1998.

<sup>2</sup> Texas Commission on Human Rights, Annual Report, fiscal year 1997.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.



**ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Commission on Human Rights</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL*</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Not Applicable	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Already in Statute	11. Require development of an equal employment opportunity policy.

\* Only the general across-the-board provisions apply to the Texas Commission on Human Rights. Because this agency does not have a licensing function, the across-the-board provisions relating to licensing do not apply.



# **BACKGROUND**

# Background

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## AGENCY HISTORY

Ensuring equal access to employment and housing opportunities to all Texans, regardless of their race, religion, gender, and whether they are disabled has been a recent priority for state government. Since the late 1960s, federal laws have been enacted and enforced to protect citizens against discrimination in places of employment and in housing. However, before 1983, Texas had no state laws and no state agency that provided the same protection as the federal statutes or agencies.

Recognizing a need to provide equivalent protections to its citizens, in 1983, the Legislature adopted human rights law and established the Texas Commission on Human Rights. The Texas Commission on Human Rights Act prohibits discrimination in the workplace on the basis of race, color, disability status, religion, sex, national origin, age, or genetic information, and designates the Commission as the primary agency responsible for administering the provisions of the Act. Adding to this responsibility, in 1989 the Legislature charged the Commission with enforcing the provisions of the Texas Fair Housing Act. This Act prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, familial status, and mental or physical disability.

The Commission accomplishes its mission primarily by investigating and resolving employment and housing discrimination complaints as an alternative to litigation. The Commission also provides comprehensive training and technical assistance to state agencies and private businesses on the federal and state anti-discrimination laws.

Since state law substantially parallels federal anti-discrimination laws, the federal law requires complaints to be deferred from the respective federal authorities, the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD), to the Commission for processing. The details of this deferral process are specified in federal regulations and in worksharing agreements between the Commission and these federal agencies. These agreements divide complaint processing between the Commission and the federal government. The final disposition of all housing complaints must still be approved by HUD, while EEOC must approve only a small portion of employment complaints.

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Ensuring equal access  
to employment and  
housing opportunity  
is a State priority.

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The Texas Commission on Human Rights Act and the Texas Fair Housing Act also establish a framework for a partnership between the Commission and local commissions similar to the deferral relationship established in federal law. Local commissions may seek certification from the Commission enabling them to share cases with the Commission and to have access to the powers in the Acts, such as the power to issue subpoenas and to file civil action in state court.

## POLICYMAKING BODY

The Texas Commission on Human Rights is governed by a six-member Commission, appointed by the Governor to serve staggered, six-year terms. The Commission must be composed of one representative each from industry and labor, while the other four are public members. In addition, appointments to the Commission must provide for representation with respect to disability, religion, age, economic status, sex, race, and ethnicity. The Governor designates the Chair of the Commission. The Commission met nine times in fiscal year 1997.

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Almost three-quarters of the Commission's funding comes from the federal government.

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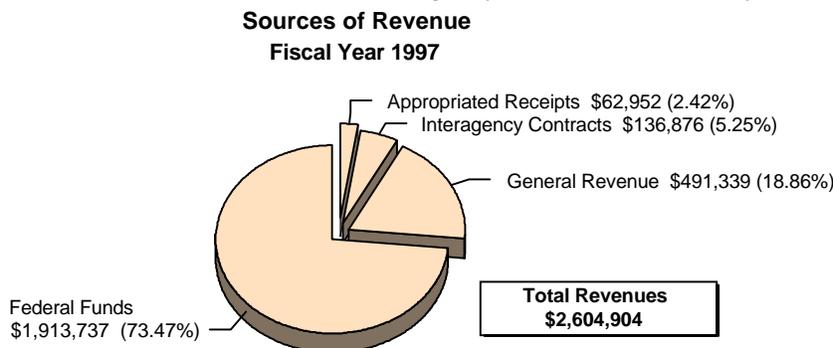
The Commission sets policy for agency operations, hires the Executive Director, and adopts rules governing the administration of the agency's programs. The Commissioners also meet in panels of three to make cause determinations in employment discrimination cases, and as a whole to decide whether to pursue these cases in court. With respect to housing discrimination cases, the Commission as a whole may order appropriate relief.

## FUNDING

### Revenues

The Commission is funded through general revenue, federal funds, and interagency contracts. In fiscal year 1997, the Commission received \$2.6 million. Of this amount, 73 percent came from federal

contracts, and 27 percent came from general revenue and interagency contracts. The chart, *Sources of Revenue — Fiscal Year 1997*, shows the funding information in more detail.

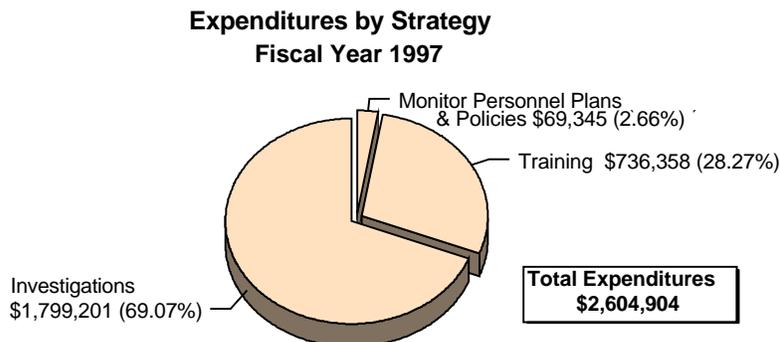


The amount of federal funds the Commission receives each year depends on the number of employment and housing discrimination complaints it processes under a contract with EEOC and HUD, respectively. In its contract with EEOC, the Commission and EEOC determine the number of employment complaints that the federal government will pay the State for processing. EEOC pays the agency a fixed fee of \$500 per complaint resolved. The contract with EEOC also includes a small amount of funding for line items such as training. With housing complaints, the Commission and HUD determine the number of housing complaints that the federal government will pay the State for processing. HUD pays the agency a fixed fee of \$1,700 per case resolved. Interagency contracts between the Commission and state agencies and institutions of higher education provide for training, technical assistance, and monitoring personnel policy systems funds.

In fiscal year 1997, the Commission received a one-time grant of \$600,000 to co-sponsor a national policy conference with HUD. Of the \$600,000, the Commission retained \$200,000 to cover its costs of co-sponsoring the conference.

## Expenditures

The agency spent \$2.6 million in fiscal year 1997 for its three major strategies — investigations, training, and monitoring personnel policy systems. The chart, *Expenditures by Strategy — Fiscal Year 1997*, illustrates this. The investigation of complaints is the largest expenditure, accounting for 69 percent of the agency's spending.



## HUB Expenditures

The Legislature has encouraged agencies to increase their use of Historically Underutilized Businesses (HUBs) in purchasing goods and services. The Legislature also requires the Sunset Commission to consider agencies'

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Investigating  
complaints is the  
Commission's largest  
activity in terms of  
expenditures.

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<b>Purchases From HUBs Fiscal Year 1997</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	N/A	N/A	N/A	26.1%
Special Trade	N/A	N/A	N/A	57.2%
Professional Services	\$3,500	0	0	20.0%
Other Services	\$87,436	\$40,308	46%	33.0%
Commodities	\$21,426	\$4,953	23%	12.6%
<b>Total</b>	<b>\$112,362</b>	<b>\$45,261</b>	<b>40%</b>	

compliance with laws and rules regarding HUB use in its reviews. In 1997, the Commission purchased 40 percent of goods and services from HUBs. The chart, *Purchases from HUBs — Fiscal Year 1997*, provides detail on HUB spending by type of contract and compares these purchases with statewide goals for each spending category. The chart shows

that the Commission exceeded state goals in the other services and commodities categories, but fell short in the professional services category.

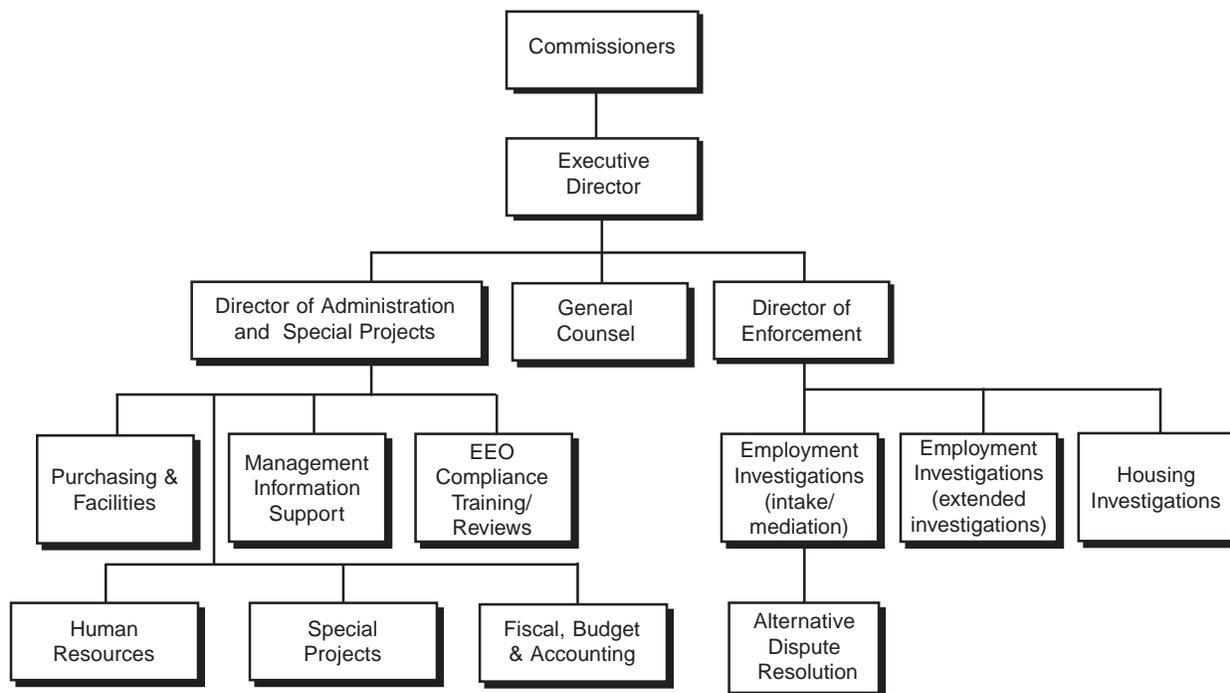
## ORGANIZATION

The Commission employed 46 full-time equivalent employees in fiscal year 1997. The agency is located in Austin and has no regional offices. The organizational structure of the agency is illustrated in the chart, *Texas Commission on Human Rights Organizational Chart*. Almost half of the agency's employees work in the enforcement section, and the majority of those employees perform employment discrimination investigations. A comparison of the agency's workforce composition to the minority civilian labor force is shown in the chart, *Texas Commission on Human Rights Equal*

*Employment Opportunity Statistics — Fiscal Year 1997*. The agency has generally met or exceeded civilian labor force levels for most job categories.

<b>Texas Commission on Human Rights Equal Employment Opportunity Statistics Fiscal Year 1997</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
Officials/Administration	4	25%	5%	25%	8%	25%	26%
Professional	40	33%	7%	18%	7%	38%	44%
Technical	N/A	0%	13%	0%	14%	0%	41%
Protective Services	N/A	0%	13%	0%	18%	0%	15%
Para-Professionals	1	0%	25%	0%	30%	100%	55%
Administrative Support	4	0%	16%	50%	17%	100%	84%
Skilled Craft	N/A	0%	11%	0%	20%	0%	8%
Service/Maintenance	N/A	0%	19%	0%	32%	0%	27%

## Texas Commission on Human Rights Organizational Chart



### AGENCY OPERATIONS

The Commission's primary aim is to reduce employment and housing discrimination in the public and private sectors. The Commission accomplishes this goal by investigating and resolving complaints as an alternative to litigation, and by providing technical assistance and training to employers and housing providers. The following sections describe the agency's functions in more detail.

#### Investigation of Employment Discrimination

The Commission reviews and investigates complaints of discrimination brought against private employers, state agencies, and other governmental entities. In fiscal year 1997, the agency received 1,215 employment complaints, and resolved 1,258.<sup>1</sup> The text box, *Illegal Employment Discrimination*, lists the types of illegal employment discrimination and the basic elements of a discrimination claim.

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In 1997, the  
Commission resolved  
1,258 employment  
discrimination  
complaints brought  
against private and  
public employers.

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### Illegal Employment Discrimination

The Texas Commission on Human Rights Act (the Act) prohibits employers, employment agencies, and labor unions from denying equal employment opportunities based on race, color, religion, sex, age, national origin, genetic information, or disability in:

- hiring
- fringe benefits
- discharge
- promotion
- training
- membership
- pay
- other aspects of employment

Under the Act, a person bringing a complaint must be an employee or prospective employee of:

- a private employer with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, or
- a local political subdivision or state agency, regardless of the number of employees.

A complainant's allegations must meet all jurisdictional prerequisites, such as filing a complaint within 180 days of the last discriminatory act. A complaint must also establish the basic elements of an employment discrimination case according to the type of alleged discrimination. For example, a complainant alleging discrimination based on failure to hire must show:

- the complainant belonged to a protected class;
- the complainant applied for and was qualified for the posted position;
- the complainant was rejected despite his or her qualifications; and
- the posted job remained vacant after the complainant was rejected, or was filled by a less qualified applicant.

In response to a complaint, an employer may assert any of the following defenses:

- the employer is not covered under the Act;
- the decision was based on a bona fide occupational qualification that reasonably relates to job performance and is reasonably necessary to the normal operation of the business;
- the decision was justified by a business necessity;
- a workplace accommodation of a disability constitutes undue hardship;
- the employer had a nondiscriminatory basis for the decision; or
- the employer has implemented a non-discriminatory or remedial workforce diversity program.

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State law encourages parties to informally resolve their complaints before going to court.

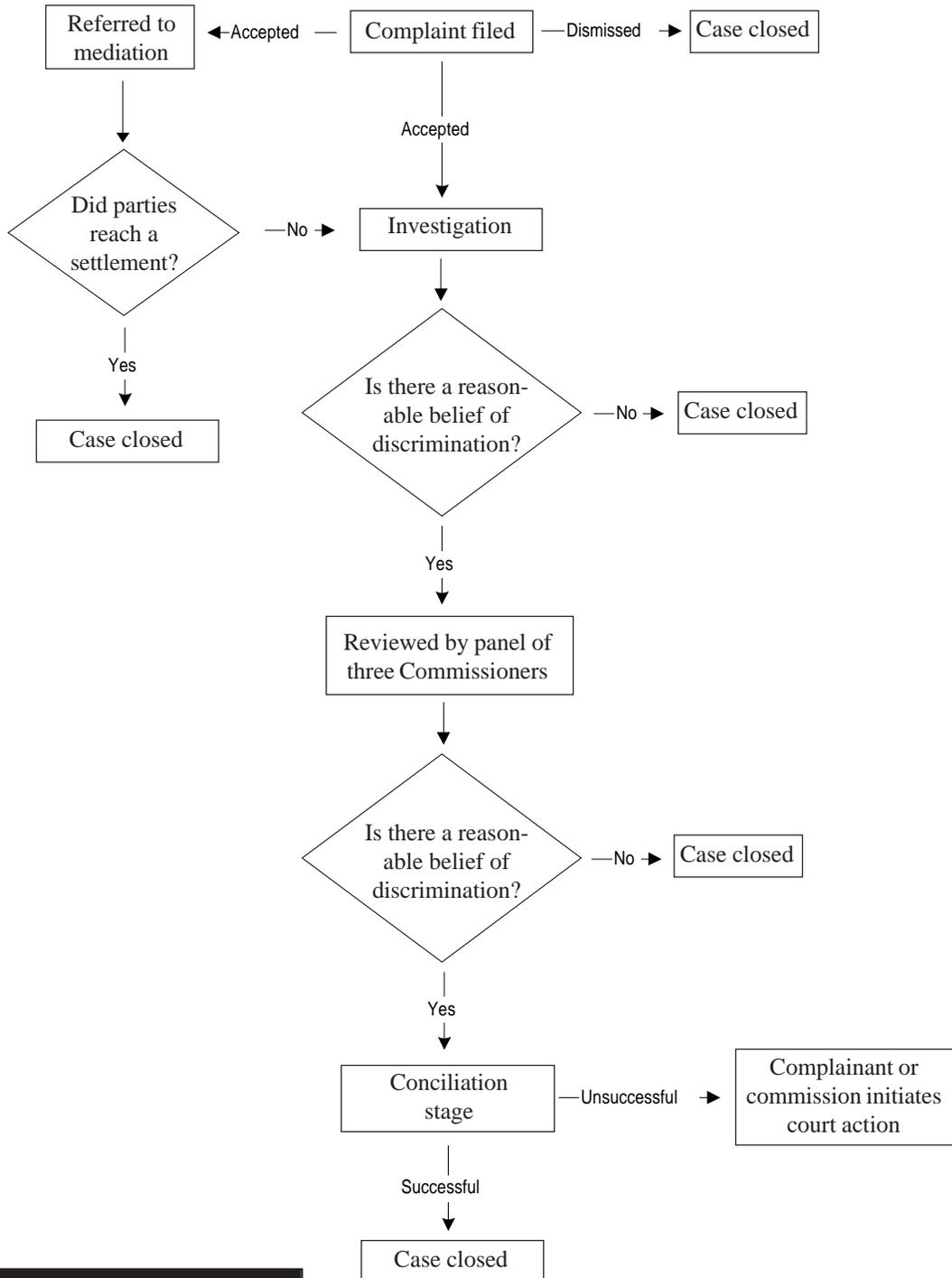
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The Act details a process for parties to resolve employment complaints administratively, without resorting to legal action. Employees must try to settle their cases through these administrative procedures before they may go to court. If administrative efforts to settle fail, however, the Act also assures that individuals have the ability to take legal action. The Commission cannot initiate employment discrimination complaints on its own.

The flowchart, *Overview of Employment Complaint Processing System*, illustrates the Commission's administrative review procedure. The process begins when an employee or prospective employee files a complaint with the Commission or EEOC alleging a discriminatory employment practice. Complaints must be filed within 180 days of the last alleged discriminatory act.

When an employee or prospective employee files a complaint with the Commission, a Commission investigator reviews the complaint. The agency reports that it rejects approximately 45 percent of cases at this stage because

### Overview of Employment Complaint Processing System



Source: Texas Commission on Human Rights, *Overview of Employment Complaint Processing System (December 1997)*

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The Commission has 180 days to process a complaint before it must issue a notice giving the individual the right to sue in court.

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of some jurisdictional bars, or because the complainant cannot establish a basic case of employment discrimination. Within ten days of receiving the complaint, the Commission must notify the employer that a charge has been filed. By statute, the Commission has 180 days after the filing date to process complaints before it must give employees notice of the right to take action in state court. After receiving this notice, the complainant has 60 days in which to take legal action, but may not take action after two years from the original filing date with the Commission. The Commission reports that its average time frame for processing employment complaints was 121 calendar days in fiscal year 1997.<sup>2</sup>

Throughout the process, the Commission tries to help the parties reach an agreed settlement. This may be a formal or informal procedure. First, the parties may agree to a settlement at any time during the process. In fiscal year 1997, the Commission had a 12.3 percent voluntary settlement rate in employment complaints in fiscal year 1997.<sup>3</sup>

#### **Texas Commission on Human Rights Mediation Process**

Mediation is a process in which an impartial person, the mediator, helps the parties to resolve their dispute. The mediator assists the parties to identify ways of resolving the dispute but does not make any judgment. The purpose of the mediation conference is to provide for the exchange of concerns from both parties and to work towards a possible resolution of the dispute. This informal conference is an opportunity for the employee and employer to resolve their dispute before the Commission's investigation. The average mediation conference lasts about two-and-a-half hours, and most take place at the Commission's Austin office. Mediation conferences are private and confidential.

Possible outcomes of mediation:

- The parties may enter into a settlement agreement before or during the conference. If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is binding and enforceable in the same manner as any other written contract.
- The mediator may declare that further efforts at mediation are no longer worthwhile. If the parties fail to voluntarily resolve the dispute, the case will be assigned to an investigator.
- The parties may complete the full mediation conference, at which time a written declaration of a party will be made to the effect that the mediation proceedings are terminated.

If mediation efforts are not successful within 30 days of the complaint being referred to the mediator, the case will be forwarded to a Commission investigator.

Additionally, the Executive Director may refer a case to the agency's mediation process within ten days of receiving a complaint. The Commission employs two full-time mediators to impartially conduct mediation conferences. The text box, *Texas Commission on Human Rights Mediation Process*, explains the mediation process. Either party may file objections within five days of receiving notice of the referral to mediation. If the parties are unable to mediate the case within 30 days from the date of referral to mediation, the Commission transfers the case to an investigator. The agency had 139 employment complaints processed through the mediation process, resulting in a settlement rate of 57 percent.<sup>4</sup>

If mediation or settlement efforts fail, the Commission begins the full-scale investigation stage to determine whether reasonable cause exists to believe an employer has engaged in discriminatory conduct. The agency generally conducts investigations in-house. Investigators collect most information about the employment

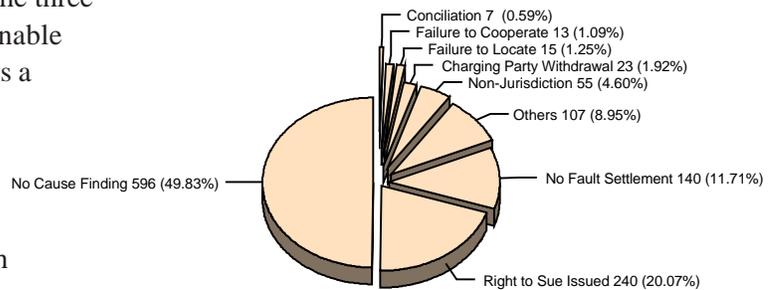
practice and the employer’s work force by telephone or by sending information requests to the employer. The Commission may subpoena the information if the employer does not comply with these requests. In response, the employer can assert various defenses to the allegation. For example, the employer may have hired a more qualified person for the job.

The Commission dismisses a complaint if the investigation reveals that reasonable cause does not exist to establish that the employer engaged in an unlawful employment practice. At this time, the Commission gives the employee a letter granting permission to sue in state court.

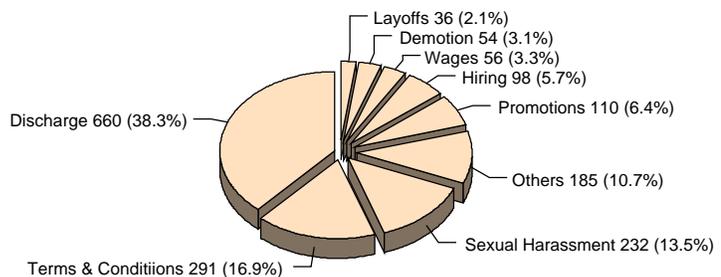
If the Executive Director determines that reasonable cause exists, a panel of three Commission members reviews the evidence. If at least two of the three Commission members determine reasonable cause exists, the Executive Director issues a finding of reasonable cause.

After a finding of reasonable cause, the conciliation stage begins. The Commission tries to help the parties reach an agreement that provides for elimination of the unlawful employment practice and relief for the employee. If the parties accept the conciliation terms, the Commission closes the case. If conciliation efforts fail, either the agency or the employee may sue the employer in state court. The chart, *Employment - Type of Case Closure — Fiscal Year 1997*, shows the disposition of complaints for fiscal year 1997.

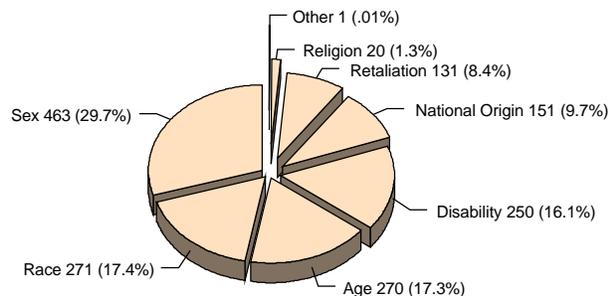
**Employment - Type of Case Closure  
Fiscal Year 1997**



**Analysis of Employment Cases Filed by Issue  
Fiscal Year 1997**



**Analysis of Employment Cases Filed by Basis  
Fiscal Year 1997**



The charts, *Analysis of Employment Cases Filed by Issue—Fiscal Year 1997*, and *Analysis of Employment Cases Filed by Basis—Fiscal Year 1997*, show the number and types of complaints filed for fiscal year 1997.

Based on its contract with EEOC, the Commission must submit 10 percent of its cases to the appropriate EEOC district office for its review and approval. EEOC has district offices in Dallas, Houston, and San Antonio. During this review, EEOC

determines whether the Commission conducted a proper investigation and drew appropriate conclusions regarding the evidence. If EEOC agrees with the action taken by the agency, it also closes the case. EEOC issues letters granting the right to sue in federal court to individuals whose complaints have not been settled. Employees 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 the Commission for further investigation. In fiscal year 1997, EEOC accepted 97.9 percent of the Commission's cases.<sup>5</sup>

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Employees may choose to pursue legal action in either state or federal court, but not in both.

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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 has not achieved a settlement or filed a civil action within 180 days of the original filing date of the complaint.

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;
- payment of court costs; and
- limited punitive or compensatory damages.

The court may allow the prevailing party, other than the Commission, to receive attorney's fees as part of costs.

### **DEFERRAL OF EMPLOYMENT DISCRIMINATION COMPLAINTS**

The Commission operates with EEOC and local human rights commissions as part of a three-tiered approach to eliminating employment discrimination. Appendix A, *Criteria for Identifying Agency to Process Charges of Discrimination*, shows the division of responsibility between EEOC, the Commission, and the three 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. In fiscal year 1997, these commissions processed 772 complaints.

The Commission generally processes all complaints originally filed with it and complaints sent from EEOC. The Commission processes most complaints against other state agencies and political subdivisions. In fiscal year 1997, the Commission received 1,082 complaints for processing. Of these, 1,076 were originally filed with the Commission, and six were sent from EEOC for processing.

<b>Processing of Employment Discrimination Cases Fiscal Year 1997</b>		
<b>Agency</b>		<b>Number of Cases Processed</b>
Local	Austin Human Rights Commission	404
	Corpus Christi Human Relations Commission	123
	Fort Worth Human Rights Commission	245
	<b>Local Commissions Subtotal</b>	<b>772</b>
State	Texas Commission on Human Rights	1,258
Federal	Equal Employment Opportunity Commission	11,716
<b>Total</b>		<b>13,746</b>

EEOC processes the remainder of the employment complaints in Texas. 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 filed against the state agency. In fiscal year 1997, EEOC processed 11,716 complaints, or about 77.8 percent of the employment complaints processed in Texas. The chart, *Processing of Employment Discrimination Cases — Fiscal Year 1997*, shows the breakdown of complaints processed at the local, state, and federal levels.

## Investigation of Housing Discrimination

Investigating housing discrimination complaints is another main function of the Commission. The Texas Fair Housing Act prohibits discrimination in housing practices based on race, color, religion, sex, national origin, familial status, or disability. The text box, *Illegal Housing Discrimination*, lists the types of illegal housing discrimination and exemptions.

The flowchart, *Overview of Housing Complaint Processing System*, illustrates the Commission's administrative review procedure of housing complaints. The housing discrimination complaint process is similar to the employment

### Illegal Housing Discrimination

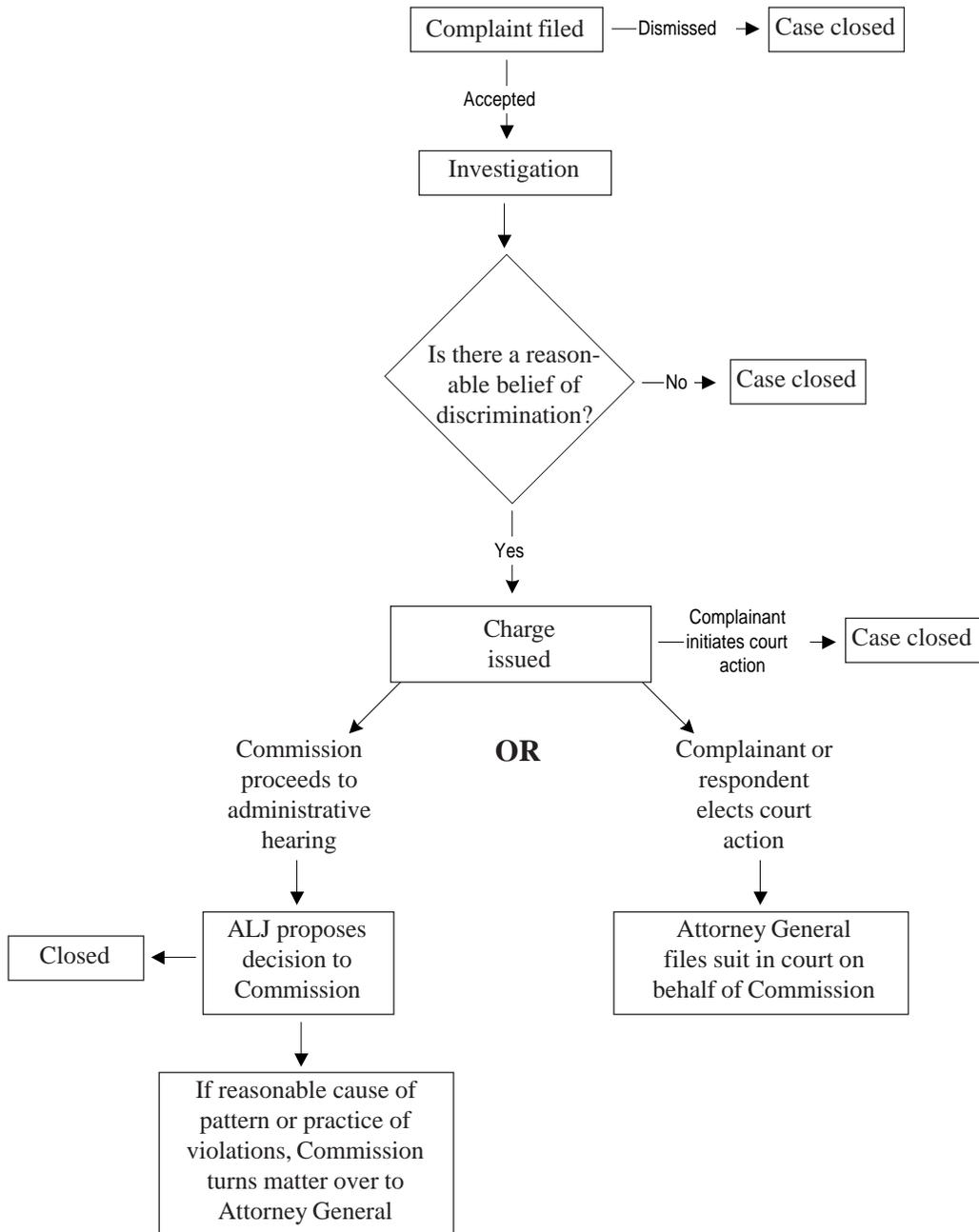
State law prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability in any of the following ways:

- in sale or rental of a dwelling
- in negotiation for the sale or rental of a dwelling
- in establishing the terms, conditions, or privileges in the sale or rental of a dwelling
- in making or printing any statements or advertisements with respect to the sale or rental of a dwelling that indicate any preference, limitation, or discrimination regarding a protected group
- in representing to a member of a protected group that a dwelling is not available for inspection, sale, or rental when the dwelling is in fact available
- in inducing a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a member of a protected group
- in real estate related transactions or other financial assistance because of the person's membership in a protected group

Exemptions:

- the sale or rental of a single-family house by its owner if the owner does not own more than three single-family houses at any one time
- rooms or units occupied by no more than four families living independently of each other, if the owner maintains and occupies one unit as his or her residence
- housing provided by religious organizations or private clubs for their members' use
- these exemptions do not apply to the prohibitions on discriminatory advertising or to the prohibitions on discriminatory financing

### Overview of Housing Complaint Processing System



discrimination complaint process, with some exceptions. An aggrieved person may file a complaint with the agency within one year of the alleged discrimination, rather than within 180 days as in the employment complaint process. The majority of cases are filed with HUD and sent to the Commission for processing. Complaints may be filed by individual victims, organizations on behalf of a victim, or the Commission. Unlike in the employment context, where the Commission may not initiate complaints, the agency itself may file housing complaints.

Also in contrast to the employment complaint process, the Commission tries to perform on-site investigations of all fair housing complaints. In some cases, the Commission may perform a test by sending different classes of people to uncover discriminatory practices, but this is rare.

The cause determination stage of the housing discrimination process also differs slightly, in that if the Executive Director determines that a discriminatory housing practice has occurred, he or she issues a finding of reasonable cause and a charge that sets forth the alleged violation, evidence, and other important information. The findings and factual basis of a determination is established through a final investigative report. Unlike employment discrimination, the Executive Director, rather than the Commissioners, decide whether or not reasonable cause exists.

Another important difference between the employment and housing processes is that a victim of housing discrimination may file a private lawsuit in state court without completing the administrative procedures. After the Executive Director makes a reasonable cause finding and issues a charge, complainants or respondents may choose to have the case litigated in state court. If the complainant or respondent fail to notify the Commission within 20 days that they wish the case to proceed through state court, the agency proceeds to an administrative hearing. In the administrative hearing, an administrative law judge submits to the Commission a proposal for decision which the Commission may adopt or amend. If the Commission adopts the proposal and issues an order, it may be appealed to the state district court.

Like in the employment context, the Commission tries throughout the process to convince the parties to settle their agreements. However, the agency does not provide a formal mediation process for housing discrimination complaints. In fiscal year 1997, it had a 40 percent voluntary settlement rate in fair housing complaints.<sup>6</sup>

Remedies for aggrieved complainants include injunctions, damages, civil penalties, and attorney's fees. Additionally, if the Executive Director finds reasonable cause to believe the housing provider has a pattern of violations,

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Unlike employment,  
in housing  
complaints,  
individuals can by-  
pass the Commission's  
complaint resolution  
process and go  
directly to court.

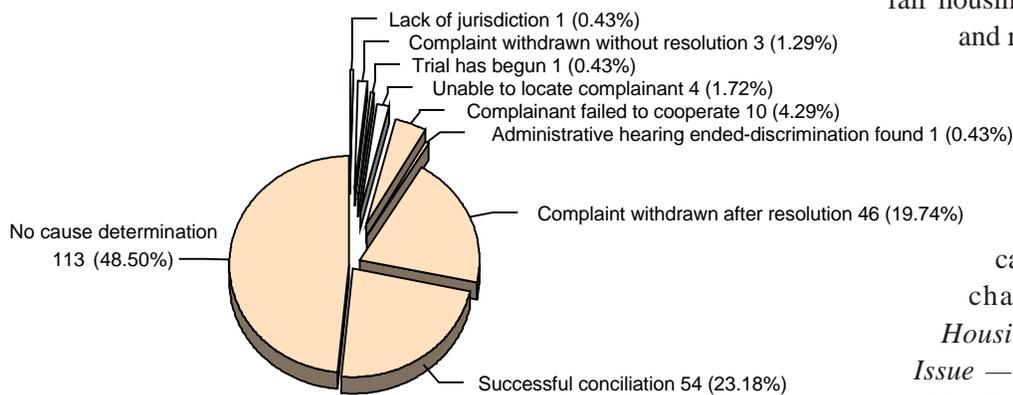
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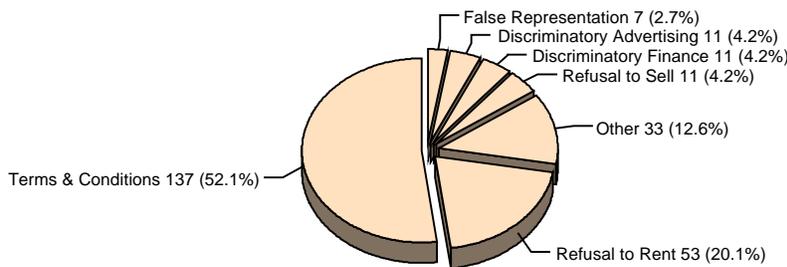
the agency turns the matter over to the Office of the Attorney General for further proceedings. In fiscal year 1997, the Commission sued 41 housing providers in state court, and the average cost per civil action was \$3,511.<sup>7</sup> The chart, *Housing - Type of Case Closure — Fiscal Year 1997*, shows the disposition of complaints for fiscal year 1997.

**Housing - Type of Case Closure  
Fiscal Year 1997**



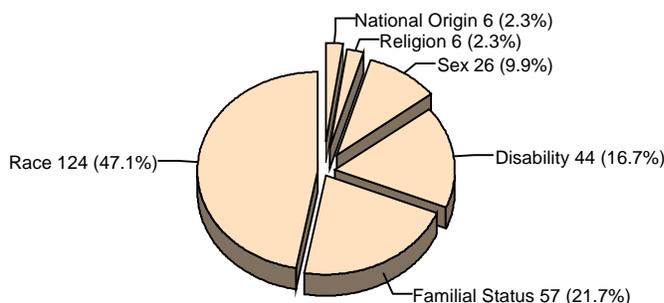
In fiscal year 1997, the Commission had 209 fair housing complaints filed, and resolved 233,<sup>8</sup> with an average time frame for processing housing complaints of 118 calendar days.<sup>9</sup> The charts, *Analysis of Housing Cases Filed by Issue — Fiscal Year 1997*, and *Analysis of Housing Cases Filed by Basis — Fiscal Year 1997*, show the number and types of complaints filed for fiscal year 1997.

**Analysis of Housing Cases Filed by Issue  
Fiscal Year 1997**



Upon closure of a case, the Commission submits every housing case to the HUD regional office for its review and approval. During this review, HUD determines whether the Commission conducted a proper investigation and drew appropriate conclusions regarding the evidence. If HUD agrees with the action taken, it also closes the case. Because housing complainants may take go directly to court without exhausting administrative procedures, HUD does not need to issue letters granting the right to sue. If HUD finds a flaw either in the work or in the decision rendered, it may send the case back to the Commission for further investigation. In fiscal year 1997, HUD accepted 100 percent of the agency's cases.<sup>10</sup>

**Analysis of Housing Cases Filed by Basis  
Fiscal Year 1997**



## Deferral of Housing Complaints

The Commission's deferral relationship with HUD is similar to its relationship with EEOC. The agency processes all housing discrimination complaints except in two situations. First, HUD processes complaints in which there is an alleged violation of the federal fair housing laws in combination with another federal statute.

Additionally, the local commissions in Austin and Fort Worth handle complaints within their jurisdiction. In fiscal year 1997, HUD processed 71 complaints, or about 18 percent of the housing complaints processed in Texas. The chart, *Processing of Housing Discrimination Cases—Fiscal Year 1997*, shows the breakdown of complaints processed at the local, state, and federal levels.

<b>Processing of Housing Discrimination Cases Fiscal Year 1997</b>		
	<b>Agency</b>	<b>Number of Cases Processed</b>
Local	Austin Human Rights Commission	9
	Corpus Christi Human Relations Commission	4
	City of Dallas - Housing Compliance	92
	Fort Worth Human Rights Commission	26
	<b>Local Commissions Subtotal</b>	<b>131</b>
State	Texas Commission on Human Rights	233
Federal	Department of Housing and Urban Development	71
	<b>Total</b>	<b>435</b>

## TECHNICAL ASSISTANCE AND TRAINING

The Commission also works to reduce discrimination by providing technical assistance and training to employers and housing providers in both the public and private sectors. In fiscal year 1997, the agency provided technical assistance and training to 23,610 individuals representing employers, housing providers, and the public at large through individual consultation, seminars, workshops, and conferences.<sup>11</sup>

### TECHNICAL ASSISTANCE

The Commission provides technical assistance to state agencies and institutions of higher education primarily by: 1) reviewing and revising affirmative action plans; 2) reviewing all personnel policy and procedural systems to ensure compliance with state law. The Commission recommends necessary adjustments to policies and procedures, and certifies those in compliance with the law. Each agency or institution is subject to review every six years. In fiscal year 1997, the Commission reviewed the personnel policy and procedural systems for 51 state agencies and institutions of higher learning and reviewed 30 affirmative action plans.<sup>12</sup>

The Commission also distributes documents, training materials, informational brochures, and reports to both public and private housing providers and employers. In fiscal year 1997, the agency provided 17,333 housing providers and employer representatives with technical assistance, in addition to 21 state agencies.<sup>13</sup>

Additionally, state agencies and institutions of higher education must provide equal employment opportunity information to the Commission each year. The agency uses this information to compile a state minority and women hiring practice report, which it submits to the Legislature every two years.

## TRAINING

The Commission offers seven training packages on subjects such as Equal Employment Opportunity compliance, sexual harassment, and accommodation of disabilities. Payment for government agency training is governed by interagency contracts. State agencies or universities that have three or more complaints of employment discrimination per year, other than complaints determined to be without merit, must receive comprehensive equal employment opportunity training from the Commission or other entities approved by the Commission. The average cost per training session conducted is \$800.<sup>14</sup> The agency provided training to 5,877 individuals during fiscal year 1997, and conducted 148 voluntary training sessions.<sup>15</sup>

In fiscal year 1997, 607 employment discrimination complaints were filed against state agencies and institutions of higher education, and the Commission received 191 requests for technical assistance and training.<sup>16</sup> Also in fiscal year 1997, state agencies and institutions of higher education that received training showed an 8 percent reduction in employment discrimination complaints filed with the Commission.<sup>17</sup> Private employers and housing providers that received training and/or technical assistance experienced a 13 percent reduction in employment and housing discrimination complaints in fiscal year 1997.<sup>18</sup>

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Training resulted in an 8 percent reduction in complaints filed against those who received assistance.

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<sup>1</sup> Texas Commission on Human Rights, Annual Report, fiscal year 1997. The discrepancy between cases filed and cases resolved is a result of the Commission resolving some cases filed in the previous year.

<sup>2</sup> Ibid. This total reflects the average time the Commission took to process complaints filed and closed in fiscal year 1997. According to EEOC, the average time required to process all complaints closed in 1997 was 605 days.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Texas Commission on Human Rights, Operating Budget, fiscal year 1998.

<sup>6</sup> Texas Commission on Human Rights, Annual Report, fiscal year 1997.

<sup>7</sup> Texas Commission on Human Rights, Operating Budget, fiscal year 1998.

<sup>8</sup> Texas Commission on Human Right, Annual Report, fiscal year 1997. The discrepancy between cases filed and cases resolved is a result of the Commission resolving some cases filed in the previous year.

<sup>9</sup> Ibid.

<sup>10</sup> Texas Commission on Human Rights, Operating Budget, fiscal year 1998.

<sup>11</sup> Texas Commission on Human Rights, Annual Report, fiscal year 1997.

<sup>12</sup> Texas Commission on Human Rights, Operating Budget, fiscal year 1998.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.



# **APPENDIX**

## APPENDIX A

<b>Criteria for Identifying Agency to Process Charges of Employment Discrimination</b>
<b>Equal Employment Opportunity Commission</b>
<ul style="list-style-type: none"> <li>● charges originally filed with EEOC</li> <li>● charges filed after 180 days from alleged act of discrimination</li> <li>● charges alleging a violation of the Equal Pay Act</li> <li>● charges filed against the Texas Commission on Human Rights</li> <li>● charges initiated by an EEOC Commissioner</li> <li>● charges covered under the Immigration Reform and Control Act</li> <li>● charges referred to EEOC by the Department of Justice, Office of Federal Contracts Compliance Program, or Federal Fund-Granting Agencies</li> <li>● charges where EEOC is a party to a conciliation agreement or consent decree</li> <li>● charges alleging retaliation for previously filing a charge with EEOC</li> <li>● charges against respondents under supplemental memorandum to a worksharing agreement</li> <li>● charges in which the Commission and EEOC grant the right to an initial processing by a mutual agreement</li> </ul>
<b>Texas Commission on Human Rights</b>
<ul style="list-style-type: none"> <li>● charges originally filed with the Commission</li> <li>● charges alleging retaliation for filing a previous charge with the Commission</li> <li>● charges where the Commission is a party to a conciliation agreement or a consent decree</li> <li>● charges which allege more than one basis of discrimination not covered by laws administered by EEOC but are covered by the Texas Commission on Human Rights Act</li> <li>● charges alleging disability over which EEOC does not have jurisdiction</li> <li>● charges in which the Commission and EEOC grant the right to an initial processing by a mutual agreement</li> </ul>
<b>Local Commissions</b>
<p>The three local commissions in Austin, Corpus Christi, and Fort Worth, have deferral standing with EEOC. The Commission will process all charges over which they have jurisdiction unless waived to the Commission or the charge is filed against a public entity.</p>



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