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Commission on Human Rights

November 18, 2014

VIA HAND DELIVERY

Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Re: Response of the Texas Commission on Human Rights to Issue 1 of the Sunset Staff Report on the Texas Workforce Commission

Dear Mr. Levine:

The Texas Commission on Human Rights (TCHR) has requested that I provide the enclosed Response to Issue 1 of the Sunset Staff Report on the Texas Workforce Commission. On behalf of the TCHR, this response synthesizes input of the TCHR Commissioners on the recommendations, provides additional information and raises other pertinent issues that the TCHR would like considered by the Sunset Advisory Commission.

Thank you for this opportunity to provide feedback during the Sunset process. Please feel free to contact me or the Chair of the TCHR, Thomas Anderson, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Keig", is written over the typed name.

Lowell A. Keig
Director

Enclosure

cc: Texas Commission on Human Rights



TEXAS COMMISSION ON HUMAN RIGHTS RESPONSES TO SUNSET RECOMMENDATIONS ON ISSUE 1

1.1 Transfer the powers and duties of the Human Rights Commission to the Texas Workforce Commission.

The Texas Commission on Human Rights (TCHR) should continue to oversee the Civil Rights Division. Equal employment and fair housing civil rights are important to the people of Texas, who deserve to have these rights ensured by the independent oversight of the TCHR. The TCHR is comprised of seven (7) members who have extensive experience in labor and employment law, business administration and employee relations. Three (3) of the seven members are attorneys with vast background related to the work of the Division. This experience should be utilized to ensure proper management of cases, issuance of cause findings and the availability of adequate budgetary resources to support the operations of the Division.

Immediate measures should be taken to ensure sufficient budgetary support of the Division to enable the Division to implement 21st century technology. More resources will allow the Division the authority and opportunity to develop and maintain systems to process and manage the data needed to accomplish its mission. The Civil Rights Division should not be required to rely solely upon TWC for technological support.

The Commission disagrees with the characterization by the staff of the Sunset Advisory Commission of the Division's dual reporting relationship as "awkward" and "confusing." This dual reporting relationship is not unlike other agencies and commission relationships in state government—for example, the independent Manufactured Housing Division Board and its division within the Texas Department of Housing and Community Affairs, and the Texas Appraiser Licensing and Certification Board and its independent subdivision within the Texas Real Estate Commission.

Texas Workforce Commission (TWC) Commissioners and staff have been fully supportive and cooperative with the Texas Commission on Human Rights (TCHR) Commissioners and Division staff. Likewise, TCHR Commissioners enjoy an excellent working relationship with TWC staff and TWC Commissioners. Furthermore, many employee initiated complaints and lawsuits occurred before the Division became part of the TWC, so dual reporting was not and should not be considered a factor with regard to litigation.

With regard to the TCHR's workload and decision-making, TCHR Commissioners operate within the parameters of the current law. TCHR Commissioners had greater involvement when

the agency stood alone and was not a division within the TWC. Consequently, the split oversight of the Division should be remedied by giving full oversight to the TCHR. To accomplish this proposal, the TCHR should be given rulemaking authority, control of the budget, and approval authority of those types of agency-wide internal procedures that are applied to the Division. In addition, the TCHR should retain the authority to appoint the Division Director, establish divisional policies, review and vote on employment complaints, and authorize the Civil Rights Division to act as a complainant in employment and housing complaints. Given the breadth of experience of the TCHR commissioners, the Civil Rights Division Director should be relieved of any responsibility with regard to the issuance of final decisions on both employment and housing discrimination matters.

TCHR should continue to receive staff support for accounting, legal, human resources, information technology and similar staff functions, for which the division would continue to pay its fair pro-rata share.

The TCHR is comprised of one commissioner representing labor, one commissioner representing industry and five public Commissioners. This structure presents a much greater opportunity for public representation in this agency than in other agencies such as TWC, where the representation is solely one commissioner for each of the public, labor, and employers.

While the 2003 decision to abolish the TCHR as an independent agency might have been perceived as necessary at that time, the situation in 2014 presents capable, competent and qualified TCHR Commissioners, who are dedicated to protecting the public from employment and housing discrimination and who are supported by the TWC staff functions, which allows the Division employees to conduct the business of the Division. The TCHR Commissioners are also dedicated to ensuring accountability and ethical operations of the Division. It is recommended the powers of the TCHR be returned, so as to allow the TCHR to operate unencumbered by a split authority structure.

1.2 Eliminate the statutory requirement for the division to review fire department exams for discriminatory factors.

The TCHR agrees with this recommendation. If the recommendation is implemented, the resulting excess capacity of the Division's Monitor will be redeployed for other monitoring tasks. If the firefighter reviews are not eliminated, general revenue should be appropriated to fund the cost of performing such reviews.

1.3 Require TWC, as part of its Civil Rights Division's annual report, to provide data on the number and type of state agency employment discrimination complaints with merit.

The TCHR concurs with this recommendation. If this recommendation is implemented, data on the employment complaints with merit against state agencies can be reported annually in totals, without identifying any particular respondent to meet state and federal confidentiality requirements. The data can be added to the annual report that is currently posted on TWC's website.

1.4 Require TWC to develop risk assessment criteria in rule for determining when an agency could be subject to review more frequently than the regular six-year schedule.

The TCHR concurs with this recommendation. If this recommendation is implemented, the Commission will evaluate and adapt auditing-type practices for conducting risk assessments and implement with rulemaking. If the requirement to conduct reviews of initial firefighter testing is removed, the excess capacity of the Division's Monitor would be reallocated for these additional policy reviews.

1.5 Require TWC to charge state agencies a rate that covers the costs of reviewing their personnel policies and procedures, and annually reassess reimbursement rates to ensure true cost recovery.

The TCHR agrees that the rates should be evaluated each year and the Division has already been doing so. The Division conducted a re-evaluation of the monitoring costs with the assistance of the Finance Division prior to setting the reimbursement rates for Fiscal Years 2013 and 2014.