STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

FILED
INDEX DEPARTMENT
MAR 3 1 2017
IN THE OFFICE OF
SECRETARY OF STATE

EXECUTIVE ORDER **2017-02**

EXECUTIVE ORDER STRENGTHENING THE STATE'S INVESTIGATION, ADJUDICATION, AND ENFORCEMENT OF ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY LAWS

WHEREAS, agencies of the State of Illinois make decisions that significantly impact the lives and livelihoods of Illinois residents and businesses, and some of the most direct and personal impacts are made when State agencies determine whether unlawful discrimination has occurred with regard to housing, employment, financial credit, public accommodation, and sexual harassment in higher education; and

WHEREAS, the Illinois Constitution affords due process to people and businesses of our State and also provides a complete and expedited investigation, adjudication, and ultimate enforcement of orders against these forms of discrimination; and

WHEREAS, under the direction of Governor James R. Thompson and his Cost Control Task Force, Illinois consolidated the patchwork of agencies that administer the laws and administrative process of investigating and adjudicating Illinois civil rights law; and

WHEREAS, as part of this consolidation effort, the Governor and the General Assembly worked to pass the Illinois Human Rights Act in 1979 (the "Act");

WHEREAS, the Act created the Department of Human Rights ("DHR") to receive, investigate, and conciliate charges of unlawful discrimination and to undertake affirmative action and public education activities to prevent discrimination; and

WHEREAS, the Act further established the Human Rights Commission ("HRC"), a body with the function of hearing and adjudicating discrimination cases; and

WHEREAS, the decentralized approach whereby one agency investigates charges of discrimination and a separate agency adjudicates the charges of discrimination has resulted in an antiquated, inefficient, and unresponsive process for obtaining reasonably prompt resolution for Illinois taxpayers and businesses alike; and

WHEREAS, these two State agencies now bear dual responsibility for creating applicable rules and regulations as well as maintaining separate internal policies, processes, and filing and case management systems; and

WHEREAS, although a single statute governs these two State agencies, HRC and DHR often have different, conflicting, and inconsistent rules of administrative procedure, which confuse parties, impede transparency, and create backlog and delay; and

WHEREAS, under our current outdated and unproductive structure, people and businesses wait at least four years, on average, after filing a charge of discrimination for DHR to investigate and HRC to issue its final decision on the case; and

WHEREAS, HRC currently has over 1,000 backlogged cases pending two years or more without a decision, and some parties wait as long as three years for a resolution to their case; and

WHEREAS, these delays are unacceptable and unfair to aggrieved parties and businesses and to the general public; and

WHEREAS, individuals and groups most harmed by delay are impoverished and minority parties and small businesses without the resources to obtain counsel and pay expensive legal fees to appear in Illinois courts; and

WHEREAS, these delays are in direct contradiction to the goal of providing efficient and effective processes to administer the State's civil rights laws; and

WHEREAS, the consolidation of these two State agencies will have real, tangible benefits for Illinois citizens and businesses that rely on these two State agencies, as well as for taxpayers; and

WHEREAS, the consolidation of these two State agencies will produce considerable cost-savings to the State, with an estimated savings of approximately $500,000 in the first year of consolidation alone; and

WHEREAS, the consolidation of these two State agencies will produce faster investigative and adjudicative processes because they will be able to share resources effectively and cut bureaucratic red tape; and

WHEREAS, consolidation will not compromise the independence of the appellate process, because HRC will continue to review cases and discharge its adjudicatory functions pursuant to the Administrative Procedures Act; and

WHEREAS, many states, including Indiana, Michigan, Ohio, and Minnesota, and many local governments, including the City of Chicago, conduct civil rights proceedings through a single consolidated governmental body that houses both investigative and adjudicative functions;

THEREFORE, I, Bruce Rauner, Governor of Illinois, by virtue of the executive authority vested in me by Section 8 and Section 11 of Article V of the Constitution of the State of Illinois, do hereby order as follows:

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I. CONSOLIDATION OF HRC INTO DHR

HRC is hereby consolidated into DHR as of July 1, 2017.

II. TRANSITION

Beginning on the effective date of this Executive Order, DHR and HRC shall work cooperatively to prepare for the transfer of functions, commissioners, employees, property, and funds pursuant to Section III of this Executive Order, and to carry out all other actions required to give effect to such transfers, as of July 1, 2017. HRC shall provide DHR with access to personnel and other resources necessary to accomplish such transition. During the transition period:

1. Under the direction of the Governor, the Director of DHR, in consultation with HRC and labor organizations representing the affected employees and commissioners, shall identify each position, employee and commissioner who is engaged in the performance of functions transferred to DHR or engaged in the administration of a law the administration of which is transferred to DHR, to be transferred to DHR pursuant to Section III(1) of this Executive Order. The Director of DHR shall ensure compliance with all applicable provisions of the Personnel Code and collective bargaining agreements, including providing any notices required thereunder within the applicable time periods.

2. Under the direction of the Governor, the Director of DHR, in consultation with HRC, shall identify personnel records, documents, books, correspondence, and other property, both real and personal, affected by the transfer to DHR pursuant to Section III(2) of this Executive Order. Such property may include contracts pertaining to the functions transferred to DHR.

3. Under the direction of the Governor, the Director of the Governor's Office of Management and Budget, in consultation with the respective Director of DHR and the Executive Director of HRC, shall identify the unexpended balances of Fiscal Year 2017 and Fiscal Year 2018 appropriations and other funds, or the relevant portions thereof, to be transferred to DHR pursuant to Section III(3) of this Executive Order.

III. TRANSFER OF FUNCTIONS

As of July 1, 2017, the authority and responsibility for the investigation, adjudication, and enforcement of anti-discrimination laws and equal opportunity and affirmative action compliance in the State of Illinois shall be consolidated into DHR. All such functions that currently reside in or are carried out by HRC shall be transferred to DHR. These functions derive from 775 ILCS 5/1-101, *et seq.* In connection with such transfer, as of July 1, 2017:

1. Each position, employee, and commissioner who is engaged in the performance of functions transferred to DHR, or engaged in the administration of a law the administration of which is transferred to DHR (as identified pursuant to Section II of this Executive Order), and the employee or commissioner in each such position, shall be transferred to DHR pursuant to the provisions of any applicable collective bargaining agreement. The status and rights of any such employee or commissioner, the State, and its agencies under the Personnel Code and applicable collective bargaining rights or under any pension, retirement, or annuity plan shall not be affected by this reorganization. For the avoidance of doubt, the 13 commissioner positions created by Article 8 of the Act shall be transferred to DHR, and nothing in this Executive Order shall affect the service or term of such commissioners. For the avoidance of doubt, commissioners shall continue to be appointed pursuant to Article 8 of the Act.

2. All personnel records, documents, books, correspondence, and other property, both real and personal, affected by the reorganization (as identified pursuant to Section II of this Executive Order) shall be delivered and transferred to DHR or to the State Archives.

3. The unexpended balances of Fiscal Year 2017 and Fiscal Year 2018 appropriations and other funds available for use by HRC (as identified pursuant to Section II of this Executive Order and deemed necessary by the Governor) shall be transferred to DHR and expended for the purposes for which the appropriations or other funds were originally made or given to HRC.

4. Whenever any previous Executive Order or any statute provides for membership on any board, commission, authority, or other entity by a representative or designee of HRC with responsibility for the functions transferred to DHR, the Director of DHR shall designate the same number of representatives or designees of DHR.

5. Any proceeding or action pending at the time of the transfer before, or in process by, HRC, shall continue after the date of the transfer, and shall be adjudicated by the commission transferred to DHR pursuant to this Executive Order. The rights of all parties in any such proceeding or action shall not be affected by the transfer.

IV. INCONSISTENT ACTS

From the effective date of this reorganization, and as long as such reorganization remains in effect, the operation of any prior act of the General Assembly inconsistent with this reorganization is suspended to the extent of the inconsistency.

V. REPORT TO THE GENERAL ASSEMBLY

DHR shall provide a report to the General Assembly not later than December 31, 2017 and annually thereafter for three years, that includes an analysis of the effect of the reorganization on State government and the Illinois taxpayers. The report shall also include recommendations for further legislation relating to the implementation of the reorganization. A copy of such report shall be filed with the Speaker, the Minority Leader, and the Clerk of the House of Representatives; the President, the Minority Leader, and the Secretary of the Senate; the Legislative Research Unit; and the State Government Report Distribution Center for the General Assembly.

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VI. SAVINGS CLAUSE

1. The rights, powers, duties, and functions transferred to DHR by this Executive Order shall be vested in, and shall be exercised by, DHR. Each act done in exercise of such rights, powers, duties, and functions shall have the same legal effect as if done by HRC. Every person shall be subject to the same obligations and duties and to the associated penalties, if any, and shall have the same rights arising from the exercise of these obligations and duties as if exercised subject to HRC or the officers and employees of HRC.

2. This Executive Order shall not affect any act undertaken, ratified, or cancelled or any right occurring or established or any action or proceeding commenced in an administrative, civil, or criminal case before this Executive Order takes effect (including, for the avoidance of doubt, any administrative case adjudicated by HRC), but these actions or proceedings may be prosecuted and continued by the successor agency in cooperation with another agency, if necessary.

3. This Executive Order shall not affect the legality of any rules in the Illinois Administrative Code that are in force on the effective date of this Executive Order, which rules have been duly adopted by HRC. Any rules, regulations, and other agency actions affected by the reorganization shall continue in effect and be transferred together with the transfer of functions. If necessary, however, DHR shall propose, adopt, or repeal rules, rule amendments, and rule recodifications as appropriate to effectuate this Executive Order. These rule modifications shall coincide with, if applicable, the transfer of functions to DHR.

4. Whenever reports or notices are now required to be made or given or paper or documents furnished or served by any person in regard to the functions transferred from HRC to DHR pursuant to this Executive Order, the same shall be made, given, furnished, or served in the same manner to or upon DHR.

5. This Executive Order does not contravene, and shall not be construed to contravene, any federal law, State statute (except as provided in Section IV), or collective bargaining agreement.

VII. PRIOR EXECUTIVE ORDERS

This Executive Order supersedes any contrary provision of any other prior Executive Order.

VIII. SEVERABILITY CLAUSE

If any part of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

IX. FILINGS

This Executive Order shall be filed with the Secretary of State. A copy of this Executive Order shall be delivered to the Secretary of the Senate and to the Clerk of the House of Representatives and, for the purpose of preparing a revisory bill, to the Legislative Reference Bureau.

X. EFFECTIVE DATE

Provided that neither house of the General Assembly disapproves of this Executive Order by the record vote of a majority of the members elected, this Executive Order shall take effect 60 days after its delivery to the General Assembly.

Bruce Rauner, Governor

Issued by Governor: March 31, 2017
Filed with Secretary of State: March 31, 2017

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