

BILL ANALYSIS

C.S.S.B. 280
By: Nelson
Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Workforce Commission (TWC) was created in 1995 by the 74th Legislature to merge employment and training programs from 10 agencies into a single, locally-controlled workforce system. The Commission's two key functions are overseeing employment and job training services provided through Local Workforce Development Boards, and operating the State's unemployment insurance system. TWC is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the Legislature. CSSB 280 continues TWC and contains several recommendations of the Sunset Advisory Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly delegated to the Texas Workforce Commission in SECTION 1.01 (Sec. 301.0015, Labor Code); SECTION 4.03 (Section 302.048, Labor Code); SECTION 4.05 (Section 302.048, Labor Code); SECTION 6.04 (Section 203.105 (b)); and SECTION 8.03 (Section 132.306, Education Code).

ANALYSIS

CSSB 280 amends Subchapter A, Chapter 301, Labor Code, by adding Section 301.0015 and amending Section 301.008. Sets guidelines for the activities of the commissioners when acting as a governmental body and as individual members of the commission. Prohibits the Commission, or individual commission members, from directing the implementation of commission policies and day-to-day operations of the staff. Updates the Texas Workforce Commission's Sunset date to September 1, 2009.

CSSB 280 amends Section 301.002 (a), Labor Code, with technical changes by the Texas Legislative Council to clarify definitions.

CSSB 280 amends Section 301.003, Labor Code, to update standard Sunset language to prohibit commissioners, high-level employees, and their spouses from serving as officers or paid consultants of a related Texas trade association. Modifies standard Sunset language to prohibit a person from serving as a commissioner if the person or the person's spouse has certain ties to the agency or an industry that receives money from the commission.

CSSB 280 amends Section 301.004, Labor Code, to update standard Sunset language to prohibit a commissioner or the agency's general counsel from being registered as a lobbyist related to the operations of the agency.

CSSB 280 amends Section 301.006 (a), Labor Code, as renumbered from Section 202.005, Labor Code, by Section 1.02, Chapter 655, Acts of the 74th Legislature, Regular Session, 1995, to update standard Sunset language to clarify that the Chair serves in that capacity at the pleasure of the Governor.

CSSB 280 amends Section 301.007, Labor Code, by amending Subsection (a) and adding Subsection (c) to update standard Sunset language to specify the grounds for removing a commissioner.

CSSB 280 amends Subchapter A, Chapter 301, Labor Code, by adding Section 301.0075, to add standard Sunset language to require commissioners to complete training before assuming their duties. Adds a requirement for new TWC commission members to be trained on civil rights laws relevant to employment programs offered by the agency.

CSSB 280 specifies that the changes to commissioner qualifications and prohibitions apply only to a commissioner appointed on or after September 1, 2003.

CSSB 280 amends Section 301.023, Labor Code, to update standard Sunset language requiring the commission to maintain information on written complaints and notify the parties about policies for and status of complaints.

CSSB 280 amends Section 301.043, Labor Code, to update standard Sunset language requiring the executive director to inform commissioners and employees of the qualifications and responsibilities for office.

CSSB 280 amends Section 301.045, Subsections (a) and (b), Labor Code, and adds Subsection (a-1), to update standard Sunset language requiring the commission to have a current equal employment opportunity policy.

CSSB 280 amends Subchapter C, Chapter 301, Labor Code, by adding Sections 301.046 and 301.047, to add standard Sunset language requiring the executive director to inform employees about the State Employee Incentive Program. Clarifies that employees of the commission are directly accountable to the executive director.

CSSB 280 amends the heading to Section 301.061, Labor Code, to clarify that the section pertains to both the commissioners and the executive director.

CSSB 280 amends Sections 301.061 (a) and (b), Labor Code, to add standard Sunset language requiring the commissioners to give the public a reasonable opportunity to present issues under the commission's jurisdiction. Specifies that the executive director shall oversee and manage the daily operations of the commission and the implementation of commission policies set by the commissioners, and shall hold commission staff accountable for the staff's performance of its duties.

CSSB 280 amends Subchapter D, Chapter 301, Labor Code, by adding Sections 301.0681, 301.0682, and 301.069, to add standard Sunset language requiring the commission to make effective use of technology in its delivery of services and provision of information to the public. Adds standard Sunset language requiring the commissioners to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution, with exceptions for unemployment, wage claim, and child labor proceedings. Requires TWC to partner with the business community to better meet the needs of businesses and to equip job seekers with the skills required to compete for jobs. Requires TWC to identify key industries, skills needs and employment opportunities, and requires TWC to develop services and programs that promote the development of skills in job seekers and workers. Requires TWC to support the business and community economic development activities of the local boards and the State.

CSSB 280 amends Section 301.081 (c), Labor Code, to specify that changes to TWC's written complaint and notification policy apply only to written complaints filed on or after the effective date of the bill, September 1, 2003.

CSSB 280 amends Subchapter F, Chapter 301, Labor Code, by adding Section 301.0811 to specify that TWC must implement training on the state employee incentive program, make effective use of technology, develop a policy that encourages the use of negotiated rulemaking, and partner with the business community not later than February 1, 2004.

CSSB 280 amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.0121 to require TWC to ensure that each local workforce board assesses the skills development needs of Choices

program recipients, and provides appropriate training activities, to the extent allowed by federal law, to those in need of such activities to obtain jobs paying wages that equal or exceed the local board's self-sufficiency wage. Specifies that training activities target occupations in demand, allows the recipient to participate in both work and training activities, and requires TWC to consider multiple funding sources to meet these requirements.

CSSB 280 amends Section 302.006 (a), Labor Code, to clarify that the commission may, but is not required to, develop and administer a program to award scholarships for professional childcare training to eligible recipients.

CSSB 280 amends Subchapter A, Chapter 302, Labor Code, by adding Sections 302.0042, 302.0043, 302.0044, and 302.013, to require TWC to conduct an annual evaluation of child care allocation formulas to ensure that local child care needs and costs are reflected in the formulas. Specifies that the evaluation assess each local workforce board area's use of current allocations, ability to meet performance measures, average cost of care in the area, poverty rate relative to state poverty rate, and other factors. Requires TWC to track employment-related outcomes of parents receiving subsidized child care, including whether parents who receive child care get and keep jobs, whether their earnings increase, and the reasons parents leave care. Requires TWC to measure and evaluate the effectiveness of its child care subsidy program to improve the training of child care professionals, and to facilitate collaboration with other related agencies. Requires TWC to track and report to the Legislature the percentage of TANF Choices Program recipients placed in employment paying wages 200 percent or more of the federal poverty level. Establishes a nine-member Local Workforce Board Advisory Committee to advise TWC on the programs, policies, and rules that affect the boards and local workforce operations. Requires the executive committee of the Workforce Leadership of Texas (WLT) to appoint the committee members, consisting of nine representatives from WLT.

CSSB 280 amends Subchapter C, Chapter 302, Labor Code, by adding Section 302.048, to require TWC to develop, by rule, criteria to assess local workforce development boards' overall capacity to administer and oversee local funds and services. Requires TWC to use these criteria to develop performance measures and publish the results on the agency's web site. Requires TWC to compile existing performance measure data from local workforce development boards to evaluate how well individual local workforce centers are performing, and to make that information available to the public on the agency's web site.

CSSB 280 amends Subchapter D, Chapter 302, Labor Code, by adding Section 302.065, to require TWC and local workforce development boards to streamline the delivery of services in local career development centers by integrating state-level administration of federal workforce programs, and associated caseworker functions. Requires each local career development center that provides the programs to provide integrated eligibility determination and case management through a single point of contact for customers receiving services under more than one program.

CSSB 280 requires the commissioners to adopt rules establishing criteria to evaluate local workforce development boards not later than May 1, 2004.

CSSB 280 requires TWC to assess local workforce development boards' overall capacity to administer and oversee local funds and services, and to post the results on the Commission's web site not later than September 1, 2004.

CSSB 280 requires TWC to implement an evaluation of child care allocation formulas, employment outcomes of parents receiving subsidized child care, and wage tracking of TANF Choices program recipients as soon as possible after the effective date of the bill, September 1, 2003.

CSSB 280 gives local career development centers four years to phase in the integration of services across programs and to provide a single point of contact for a customer receiving services under more than one program, for both eligibility determination and case management, not later than September 1, 2007.

CSSB 280 requires TWC, by September 1, 2004, to conduct a review to identify state-level barriers to service integration; conduct three to five pilot projects in different local workforce board areas to identify best methods to integrate services; and modify its programs, policies, procedures, and organizational structure to support service integration. Allows TWC to request a waiver from federal requirements to implement service integration. Requires TWC to submit a report by January 15, 2005 to the 79th Legislature regarding the results of the pilot projects.

CSSB 280 amends Chapter 301, Labor Code, by adding Subchapter I, to require the Texas Education Agency (TEA) and TWC to improve the coordination and implementation of adult education and literacy services. Requires TWC, using existing funds, to develop a workplace literacy and basic skills curriculum. Requires TWC to evaluate existing efforts and potential cost savings resulting from such a curriculum; contract for development assistance; target up to five industry sectors that would benefit; pilot test the curriculum in those industry sectors; and develop appropriate credentials associated with the curriculum. This section expires September 1, 2005.

CSSB 280 amends Section 302.021(a), Labor Code, to make technical changes to delete an incorrect reference to adult education programs that were not consolidated at TWC, and to remove outdated language referring to the Job Training Partnership Act. Changes reference to the words “proprietary schools” to “career schools and colleges.”

CSSB 280 amends Section 29.252, Subsection (a), Education Code, to require TEA to collaborate with TWC to improve the coordination and implementation of adult education and literacy services, and to monitor and evaluate educational and employment outcomes of students who participate in TEA adult education and literacy programs.

CSSB 280 amends Subchapter C, Chapter 2308, Government Code, by adding Section 2308.1016, to require the Texas Council on Workforce and Economic Competitiveness (the Council) to evaluate adult education and literacy programs at the Texas Education Agency (TEA) and TWC to identify any problems, including any duplication of planning and lack of client information sharing. Requires the Council to develop and implement immediate and long-term strategies for improving any problems affecting the delivery of services. Requires the Council to develop a system to monitor and evaluate the employment outcomes of participants in TEA-administered adult education and literacy programs. Requires the Council to report to the Governor and the Legislature problems identified, and the result of measures taken to address them. Requires the Council to identify the agency responsible for implementing each strategy, and a schedule for implementation.

CSSB 280 amends Section 2308.104, Government Code, by adding Subsection (i), to require the Council to include any long-term strategies for improving the delivery of adult education and literacy services in its strategic plan.

CSSB 280 requires TWC to collaborate with TEA to improve the coordination and implementation of adult education and literacy as soon as possible after the effective date of the bill, September 1, 2003.

CSSB 280 requires TWC to develop a workplace literacy and basic skills curriculum by September 1, 2005.

CSSB 280 requires TEA to collaborate with TWC to improve the coordination and implementation of adult education and literacy, as soon as possible after the effective date of the bill, September 1, 2003.

CSSB 280 requires the Council, by December 31, 2003, to develop long-range strategies to facilitate delivery of adult education and literacy services, and include them in the Council’s strategic plan.

CSSB 280 amends the heading to Subchapter C, Chapter 203, Labor Code, on advances from the Federal Trust Fund, to include the text “and Obligation Assessment.”

CSSB 280 amends Section 203.102, Labor Code, to replace the advanced interest trust fund with the obligation trust fund. Restructures the fund to authorize the Commission, in addition to the Governor, to use the Fund to pay bond obligations, and pay principal and interest on advances from the federal trust fund.

CSSB 280 amends Section 203.104, Labor Code, to require all bond obligations, including bond administrative expenses, to be paid before transfers can be made from the Obligation Trust Fund to the Compensation Fund.

CSSB 280 amends Section 203.105, Labor Code, to require an unemployment obligation assessment to be collected from each employer with an experience rating if the amount in the Obligation Trust Fund is not enough to pay the interest payment to the federal trust fund, or bond obligations are due and the Obligation Trust Fund cannot cover these obligations. Requires the Commission to set the rate to ensure timely payment of bond obligations, including administrative expenses, and to provide an amount necessary to enhance investor acceptance of the bonds. Provides that the rate is based on a formula prescribed by Commission rule.

CSSB 280 amends Chapter 203, Labor Code, by adding Subchapter F, to authorize the Texas Public Finance Authority to issue bonds to reduce or avoid the need to borrow from the federal government to maintain sufficient funds in the unemployment compensation fund, provided that it is the most cost effective method of funding the payment of benefits, and will result in the savings to the State and to employers. Sets the maximum principal amount of bonds not to exceed \$2 billion and the maximum term of the bonds not to exceed 10 years. Authorizes the use of bond proceeds to: repay principal and interest of previous advances from the federal trust fund, to pay unemployment benefits, pay the cost of issuing the bonds, provide a bond reserve, pay capitalized interest on bonds, or purchase or redeem outstanding bonds. Requires TWC to assess an unemployment obligation assessment on all experience rated employers, as long as bonds issued under this chapter are outstanding. Requires that revenue collected from this assessment be deposited in the Obligation Trust Fund. Authorizes TWC to use excess revenue collected from the unemployment obligation assessment to pay bond obligations, redeem or purchase outstanding bonds, deposit in the unemployment trust fund, or pay interest and principal on advances from the federal trust fund. Provides that bonds issued under this chapter are not debts of the state, and may be repaid only as provided in this chapter. Prohibits the state from limiting TWC from repaying the bonds. Provides that earnings from bonds issued under this chapter are exempt from taxes by the state or any other taxing jurisdiction within the state. Provides that the commission and commission employees, and the board of directors and employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under the subchapter.

CSSB 280 amends the heading to Section 204.063, Labor Code to delete the text “ax” and to add the text “assessment.”

CSSB 280 amends Section 204.064 (b), Labor Code, to change the computation of the numerator of the deficit assessment. Provides that the numerator is computed by subtracting only the balance of the compensation fund from its floor, not any other liabilities of the fund.

CSSB 280 abolishes the advance interest trust fund, established under Section 203.102, Labor Code, on the effective date of this bill, September 1, 2003. Transfers the balance in that fund to the Obligation Trust Fund.

CSSB 280 amends Section 204.084 (c), Labor Code, and adds Subsection (d). Establishes a one-year time limit for employers to file an application for a partial transfer due to an acquisition or reorganization. Prohibits partial transfers for part of an organization, trade, or business that cannot operate separately and independently. Authorizes TWC to deny a partial transfer of unemployment compensation experience if TWC determines the acquisition or reorganization was done primarily to qualify for a reduced tax rate by circumventing the experience rating system or eliminating chargebacks.

CSSB 280 specifies that changes to requirements for partial transfers of unemployment compensation experience apply only to an acquisition of an organization, trade, or business that occurs on or after the effective date of the bill, September 1, 2003.

CSSB 280 amends Subchapter A, Chapter 132, Education Code, by adding Section 132.0015 to change all references to the words “proprietary schools” to mean “career schools and colleges” in this code or another law.

CSSB 280 amends Section 132.061, Education Code, to change all references to the words “proprietary schools” to “career schools and colleges.” Clarifies that each owner of a career school or college that is not certified under this law is personally liable for refunds to students if the school or colleges closes.

CSSB 280 amends Chapter 132, Education Code, by adding Subchapter J, to authorize TWC to issue a cease-and-desist order to bring an unlicensed proprietary school into compliance with state law. Only schools that fail to respond to the cease-and-desist order would be referred to the Consumer Protection Division of the Office of the Attorney General for further action. Requires TWC to adopt rules as necessary to implement the changes.

CSSB 280 amends Section 132.241 (a), (b), (d), and (e), Education Code, and adds Subsections (f) and (g), to change all references to the words “proprietary schools” to “career schools and colleges.” Increases the amount that triggers the replenishment of the proprietary school Tuition Protection Fund (TPF) from \$200,000 to \$400,000. Increases the ceiling on the TPF from \$250,000 to \$500,000 by September 1, 2005. Clarifies that refunds from the TPF depend on available funding, and that students might not receive a full refund of prepaid tuition from TWC if a proprietary school closes. Outlines the factors TWC can take into consideration if paying full student refunds is not possible. Provides that the Tuition Protection Fund balance may not exceed \$375,000 until after September 1, 2005, to allow two years to phase in new Fund ceiling.

CSSB 280 amends Section 132.242, Education Code, to change all references to the words “proprietary schools” to “career schools and colleges.” Increases from \$50,000 to \$150,000 the amount that can be spent per school closure from the Tuition Protection Fund.

CSSB 280 amends the Education Code to change references to “proprietary schools” to “career schools and colleges”

CSSB 280 amends Section 52.013 (b), Government Code, to change all references to the words “proprietary schools” to “career schools and colleges.”

CSSB 280 amends the Labor Code, to change all references to the words “proprietary schools” to “career schools and colleges.”

CSSB 280 amends Section E, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon’s Texas Civil Statutes), to change all references to the words “proprietary schools” to “career schools and colleges.” Includes conforming changes to update agency names.

CSSB 280 repeals Section 201.002, Labor Code, to eliminate the application of the Texas Sunset Act to the Texas Employment Commission. This section was replaced by Section 301.008, Labor Code, to apply the Texas Sunset Act to TWC. Repeals 203.102, Labor Code, to delete the Advance Interest Trust Fund. Repeals Section 301.006, Labor Code, to eliminate an outdated section related to Private Industry Councils. Repeals 301.061(c), Labor Code, to delete a provision that gives TWC commissioners broad authority to take actions necessary to fulfill their duties. Repeals Section 302.005 (k), Labor Code, to eliminate a section on Child-Care Training Center Pilot Programs that ended in 1999.

CSSB 280 amends Section 30.103, Education Code, with a conforming change to update the agency name.

CSSB 280 amends Sections 501.095(d), Government Code, with a conforming change to update the agency name.

CSSB 280 amends Section 531.045 (b), Government Code, to clarify that the executive director of TWC appoints a representative of TWC to the Interagency Task Force on Electronic Benefits Transfers.

CSSB 280 amends Section 572.003 (c), Government Code, with conforming changes to update agency names. Includes a conforming change to delete a reference to an agency that no longer exists.

CSSB 280 amends the Government Code to make conforming changes to update the agency name.

CSSB 280 amends Section 772.0031 (a), Government Code, to clarify that the executive director of TWC appoints a representative of TWC to the Human Resource Task Force.

CSSB 280 amends Section 115.002 (c), Human Resources Code, to clarify that the Executive Director of TWC is an ex-officio member of the Governor's Committee on People with Disabilities. A conforming change updates the agency name.

CSSB 280 amends Section 61.005 (a), Labor Code, to clarify that agency staff, or an authorized representative, have responsibility for implementing procedures tied to a person's refusal to obey a subpoena issued by the agency.

CSSB 280 amends the Labor Code to make conforming changes to update the agency name.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute clarifies that the guidelines regarding activities of the commission when acting as a governmental body and as individual members of the commission; and prohibits the commission, or individual commission members, from directing the implementation of commission policies and day-to-day operations of the staff.

The substitute modifies the provisions regarding commission member conflicts of interest to better conform to standard Sunset across-the-board language.

The substitute adds a prohibition against a person serving as a commissioner if the person or the person's spouse is employed by or participates in the management of, or owns or controls an interest in a "career school and college."

The substitute also prohibits a person from serving if the person or their spouse is registered, certified, licensed, permitted or otherwise authorized by the commission; rather than simply being registered, certified, or licensed in the field of career schools and colleges.

The substitute expands the prohibition from serving as an officer or paid consultant of a related trade association to all members of the commission and high level employees and their spouses; rather than to just the public member and the public member's spouse.

The substitute expands the definition of related trade associations to include the fields of workforce development, child care, and career schools or colleges; rather than just labor or business.

The substitute also reinstates a provision of current law, that was stricken in the engrossed version, that prohibits commission members from engaging in any other business, employment, or vocation while serving

as a commission member.

The substitute modifies the provision on commission member training by adding a requirement for new TWC commission members to be trained on civil rights laws relevant to employment programs offered by the agency.

The substitute deletes language in the engrossed version that added more specific requirements regarding the contracting for delivery of one-stop services by local workforce boards.

The substitute adds a new provision directing TWC to ensure local workforce boards assess the skills of Choices program recipients, and, upon determining that a recipient requires job-specific training for a job paying wages equal to or exceeding the local board's self-sufficiency wage, provide training for occupations in demand locally, to the extent allowed by federal law.

The substitute adds a new provision requiring TWC to measure and evaluate the effectiveness of its child care subsidy program to improve the training of child care professionals, and to facilitate collaboration with other related agencies.

The substitute also adds a requirement for TWC to track the percentage of TANF Choices Program recipients placed in employment paying wages 200 percent or more of the federal poverty level, and report to the Legislature. The substitute sets certain criteria to be used for tracking employment and wage information.

The substitute modifies the requirement for posting performance measure data on local career development centers to allow TWC to compile existing data, rather than develop new measures to evaluate the performance of the centers.

The substitute modifies several of the provisions regarding the integration of workforce services.

The substitute adds a requirement for local career centers to integrate services through a "single point of contact" for customers receiving services under "more than one program." The substitute adds an implementation date at the local level of 2007, to allow four years to phase in the changes, rather than making full implementation permissive.

The substitute adds a requirement that TWC integrate the administration of the programs and caseworker functions, rather than simply requiring the local boards to integrate the operation of programs and workforce services. The substitute adds "performance measures" to the list of areas that TWC should review and modify at the state level to support the integration of program services at the local level. The substitute also specifies the four federal block grant programs that are to be integrated by name. Adds an implementation date for changes at the state level to be made no later than September 1, 2004.

The substitute modifies the language regarding an adult education curriculum. Requires TWC, rather than the Texas Education Agency, to use existing funds to pay for the costs of developing a workplace literacy and basic skills curriculum. The substitute changes the date for curriculum development from February 1, 2004, to September 1, 2005, to align with modifications adopted by the Sunset Commission. The substitute modifies the implementation date for TCWEC to facilitate coordination on adult education from February 1, 2004, to December 31, 2003, to ensure that TCWEC can include this information in their annual report.

The substitute adds a new provision to authorize TWC to work with the Texas Public Finance Authority to issue bonds to replenish the unemployment compensation fund, if it would reduce costs over borrowing from the federal government. Sets requirements for the issuance and repayment of the bonds.

The substitute modifies the provision authorizing TWC to deny partial transfers and unemployment insurance experience rates. The substitute provides that TWC may deny a transfer of compensation

experience if the acquisition was done “primarily,” instead of “solely,” to manipulate the experience rating system by “minimizing,” not eliminating, the chargebacks to an employer’s tax account.

The substitute clarifies that each owner of a career school or college that is not certified under this law is personally liable for refunds to students if the school or colleges closes.