

1-1 By: Nelson S.B. No. 285
1-2 (In the Senate - Filed March 12, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Government Organization;
1-4 April 15, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 15, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 285 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the administration and functions of the Texas
1-11 Department of Human Services.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (d), (h), and (j), Section 21.003,
1-14 Human Resources Code, are amended to read as follows:

1-15 (d) The governor shall designate a member of ~~[After the~~
1-16 ~~biennial appointment of new members,]~~ the board as the ~~[shall elect~~
1-17 ~~a]~~ presiding officer of the board to serve in that capacity at the
1-18 pleasure of the governor ~~[who shall preside over meetings of the~~
1-19 ~~board].~~

1-20 (h) A person is not eligible for appointment to the board if
1-21 the person or the person's spouse:

1-22 (1) owns or controls, directly or indirectly, more
1-23 than a 10 percent interest in a business entity or other
1-24 organization regulated by or receiving money from the department;
1-25 ~~[or]~~

1-26 (2) uses or receives a substantial amount ~~[more than~~
1-27 ~~25 percent]~~ of tangible goods, services, or money ~~[the person's or~~
1-28 ~~the spouse's professional income in funds]~~ from the department,
1-29 other than compensation or reimbursement authorized by law for
1-30 board membership, attendance, or expenses;

1-31 (3) is registered, certified, or licensed by a
1-32 regulatory agency in the field of nursing facility administration
1-33 or medical permits; or

1-34 (4) is employed by or participates in the management
1-35 of a business entity or other organization regulated by or
1-36 receiving money from the department.

1-37 (j) A person may not be a member of the board or act as
1-38 general counsel to the board or the department if the person ~~[who]~~
1-39 is required to register as a lobbyist under Chapter 305, Government
1-40 Code, because ~~[by virtue]~~ of the person's activities for
1-41 compensation ~~[in or]~~ on behalf of a profession related to the
1-42 operation of the department ~~[board, may not serve as a member of the~~
1-43 ~~board or act as general counsel to the board].~~

1-44 SECTION 2. Section 21.0031, Human Resources Code, is
1-45 amended to read as follows:

1-46 Sec. 21.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND
1-47 EMPLOYMENT. (a) ~~[An officer, employee, or paid consultant of a~~
1-48 ~~trade association in the field of human services may not be a member~~
1-49 ~~or employee of the board or department.]~~ A person ~~[who is the~~
1-50 ~~spouse of any officer, employee, or paid consultant of a trade~~
1-51 ~~association in the field of human services]~~ may not be a member of
1-52 the board and may not be a department ~~[an]~~ employee employed in a
1-53 "bona fide executive, administrative, or professional capacity,"
1-54 as that phrase is used for purposes of establishing an exemption to
1-55 the overtime provisions of the federal Fair Labor Standards Act of
1-56 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
1-57 amendments, if:

1-58 (1) the person is an officer, employee, or paid
1-59 consultant of a Texas trade association in the field of human
1-60 services; or

1-61 (2) the person's spouse is an officer, manager, or paid
1-62 consultant of a Texas trade association in the field of human
1-63 services ~~[of the department, including an employee exempt from the~~

2-1 ~~state's classification plan, who is compensated at or above the~~
 2-2 ~~amount prescribed by the General Appropriations Act for step 1,~~
 2-3 ~~salary group 17, of the position classification salary schedule].~~

2-4 (b) ~~In [For the purposes of]~~ this section, "Texas ~~[a]~~ trade
 2-5 association" means ~~[is]~~ a ~~[nonprofit,]~~ cooperative~~[,]~~ and
 2-6 voluntarily joined statewide association of business or
 2-7 professional competitors in this state, including a nonprofit
 2-8 association, designed to assist its members and its industry or
 2-9 profession in dealing with mutual business or professional problems
 2-10 and in promoting their common interests.

2-11 SECTION 3. Section 21.0032, Human Resources Code, is
 2-12 amended to read as follows:

2-13 Sec. 21.0032. GROUNDS FOR REMOVAL. (a) It is a ground for
 2-14 removal from the board that ~~[if]~~ a member:

2-15 (1) does not have at the time of taking office
 2-16 [appointment] the qualifications required by Section 21.003 ~~[of~~
 2-17 ~~this code for appointment to the board];~~

2-18 (2) does not maintain during ~~[the member's]~~ service on
 2-19 the board the qualifications required by Section 21.003 ~~[of this~~
 2-20 ~~code for appointment to the board];~~

2-21 (3) is ineligible for membership under ~~[violates a~~
 2-22 ~~prohibition established by Subsection (j) of]~~ Section 21.003(h) or
 2-23 (j) [21.003] or under [by] Section 21.0031 [of this code];

2-24 (4) cannot, because of illness or disability, [is
 2-25 ~~unable to]~~ discharge the member's duties for a substantial part of
 2-26 the member's term ~~[for which the member was appointed because of~~
 2-27 ~~illness or disability]; or~~

2-28 (5) is absent from more than half ~~[one-half]~~ of the
 2-29 regularly scheduled board meetings that the member is eligible to
 2-30 attend during a [each] calendar year without an excuse approved[,
 2-31 ~~except when the absence is excused]~~ by a majority vote of the board.

2-32 (b) The validity of an action of the board is not affected by
 2-33 the fact that it is ~~[was]~~ taken when a ground for removal of a board
 2-34 member exists ~~[of the board existed].~~

2-35 (c) If the commissioner has knowledge that a potential
 2-36 ground for removal exists, the commissioner shall notify the
 2-37 presiding officer ~~[chairman]~~ of the board of the potential ground.
 2-38 The presiding officer ~~[chairman of the board]~~ shall then notify the
 2-39 governor and the attorney general that a potential ground for
 2-40 removal exists. If the potential ground for removal involves the
 2-41 presiding officer, the commissioner shall notify the next highest
 2-42 ranking officer of the board, who shall then notify the governor and
 2-43 the attorney general that a potential ground for removal exists.

2-44 SECTION 4. Section 21.0051, Human Resources Code, is
 2-45 amended by amending Subsections (a) and (c) and adding Subsection
 2-46 (f) to read as follows:

2-47 (a) The board shall develop and implement ~~[adopt]~~ policies
 2-48 that clearly separate the policy-making ~~[define the respective]~~
 2-49 responsibilities of the board and the management responsibilities
 2-50 of the commissioner and the staff of the department.

2-51 (c) The commissioner or the commissioner's designee shall
 2-52 prepare and maintain a written policy statement that implements ~~[to~~
 2-53 ~~assure implementation of]~~ a program of equal employment opportunity
 2-54 to ensure that ~~[by which]~~ all personnel decisions ~~[transactions]~~
 2-55 are made without regard to race, color, disability ~~[handicap]~~, sex,
 2-56 religion, age, or national origin. The policy statement must
 2-57 include:

2-58 (1) personnel policies, including policies relating
 2-59 to recruitment, evaluation, selection, ~~[appointment,]~~ training,
 2-60 and promotion of personnel, that show the intent of the department
 2-61 to avoid the unlawful employment practices described by Chapter 21,
 2-62 Labor Code; and

2-63 (2) an ~~[a comprehensive]~~ analysis of the extent to
 2-64 which the composition of the department's personnel is in
 2-65 accordance with ~~[work force that meets]~~ federal and state law and a
 2-66 description of reasonable methods to achieve compliance with
 2-67 federal and state law ~~[guidelines,~~

2-68 ~~procedures by which a determination can be made~~
 2-69 ~~of significant underutilization in the department work force of all~~

~~persons of whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address areas of significant underutilization in the department work force of all persons of whom federal or state guidelines encourage a more equitable balance].~~

(f) The policy statement under Subsection (c) must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (c)(1); and

(3) be filed with the governor's office.

SECTION 5. Chapter 21, Human Resources Code, is amended by adding Section 21.0053 to read as follows:

Sec. 21.0053. STATE EMPLOYEE INCENTIVE PROGRAM. The commissioner or the commissioner's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 6. Chapter 21, Human Resources Code, is amended by adding Section 21.00605 to read as follows:

Sec. 21.00605. REGIONAL BUSINESS PLANNING. (a) The department shall develop a business plan for each service region that:

(1) addresses the department's statewide goals and states the region's specific objectives and strategies to meet the goals;

(2) includes region-specific targets for client-centered outcome measures; and

(3) requires regional administrators to report at least annually to the state office on the region's progress in achieving the goals and objectives contained in the region's business plan.

(b) The department shall develop standard client-centered outcome measures and use the standard measures in all regional business plans.

(c) The department must seek public input in the development of regional business plans and regional strategies.

SECTION 7. Subsection (a), Section 21.011, Human Resources Code, is amended to read as follows:

(a) On or before December 31 of each year the commissioner shall prepare and submit to the board a full report on the operation and administration of the department together with the commissioner's [his] recommendations for changes. The report must include information relating to the status of the client-centered outcome measures developed by the department under Section 21.00605(b) and the department's progress in improving those outcome measures. The board shall submit the report to the governor and the legislature.

SECTION 8. Section 21.015, Human Resources Code, is amended by amending Subsections (c) and (d) and adding Subsection (f) to read as follows:

(c) ~~The [If a written complaint is filed with the department that relates to an individual or entity regulated by the department or to a service provided by the department, the] department, at least [as frequently as] quarterly [and] until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint [complainant, the service provider, and the individual or entity regulated by the department] of the status of the investigation [complaint] unless the notice would jeopardize an undercover investigation [or potential criminal prosecution].~~

(d) The department shall maintain a [keep an information] file on [about] each written complaint filed with the department [that relates to an individual or entity regulated by the department or to a service provided by the department]. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

4-1 (4) the name of each person contacted in relation to
4-2 the complaint;

4-3 (5) a summary of the results of the review or
4-4 investigation of the complaint; and

4-5 (6) an explanation of the reason the file was closed,
4-6 if the agency closed the file without taking action other than to
4-7 investigate the complaint.

4-8 (f) The department shall provide to the person filing the
4-9 complaint and to each person who is a subject of the complaint a
4-10 copy of the department's policies and procedures relating to
4-11 complaint investigation and resolution. The department may delay
4-12 providing the information to a person who is a subject of the
4-13 complaint if providing the information would jeopardize an
4-14 investigation.

4-15 SECTION 9. Section 21.016, Human Resources Code, is amended
4-16 to read as follows:

4-17 Sec. 21.016. PUBLIC TESTIMONY. The board shall develop and
4-18 implement [~~adopt~~] policies that provide the public with a
4-19 reasonable opportunity to appear before the board and to speak on
4-20 any issue under the jurisdiction of the department [~~board~~].

4-21 SECTION 10. Chapter 21, Human Resources Code, is amended by
4-22 adding Sections 21.018 and 21.019 to read as follows:

4-23 Sec. 21.018. POLICY ON TECHNOLOGICAL SOLUTIONS. The board
4-24 shall develop and implement a policy that requires the commissioner
4-25 and the staff of the department to research and propose appropriate
4-26 technological solutions to improve the ability of the department to
4-27 perform its mission. The technological solutions must include
4-28 measures to ensure that the public is able to easily find
4-29 information about the department through the Internet and that
4-30 persons who have a reason to use the department's services are able
4-31 to use the Internet to interact with the department and to access
4-32 any services that can be provided effectively through the Internet.
4-33 The policy shall also ensure that proposed technological solutions
4-34 are cost-effective and developed through the department's planning
4-35 processes.

4-36 Sec. 21.019. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION
4-37 PROCEDURES. (a) The board shall develop and implement a policy to
4-38 encourage the use of:

4-39 (1) negotiated rulemaking procedures under Chapter
4-40 2008, Government Code, for the adoption of department rules; and

4-41 (2) appropriate alternative dispute resolution
4-42 procedures under Chapter 2009, Government Code, to assist in the
4-43 resolution of internal and external disputes under the department's
4-44 jurisdiction.

4-45 (b) The department's procedures relating to alternative
4-46 dispute resolution must conform, to the extent possible, to any
4-47 model guidelines issued by the State Office of Administrative
4-48 Hearings for the use of alternative dispute resolution by state
4-49 agencies.

4-50 (c) The board shall designate a trained person to:

4-51 (1) coordinate the implementation of the policy
4-52 adopted under Subsection (a);

4-53 (2) serve as a resource for any training needed to
4-54 implement the procedures for negotiated rulemaking or alternative
4-55 dispute resolution; and

4-56 (3) collect data concerning the effectiveness of those
4-57 procedures, as implemented by the department.

4-58 SECTION 11. Chapter 22, Human Resources Code, is amended by
4-59 adding Section 22.040 to read as follows:

4-60 Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY
4-61 CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES.
4-62 The department by rule shall develop and implement a plan to assist
4-63 elderly persons or persons with disabilities requesting community
4-64 care services in receiving those services as quickly as possible
4-65 when those services become available. The plan must require the
4-66 department to:

4-67 (1) forecast participant openings that will become
4-68 available in a community care program serving the elderly person or
4-69 person with a disability during the next fiscal quarter because of

5-1 program expansion or case closures;

5-2 (2) contact an individual on an interest list and
 5-3 begin the program eligibility determination process at least 30
 5-4 days before an opening is forecasted to become available in the
 5-5 program; and

5-6 (3) ensure that an individual determined to be
 5-7 eligible for services does not begin receiving services until after
 5-8 the opening actually becomes available.

5-9 SECTION 12. Section 31.0128, Human Resources Code, is
 5-10 amended by adding Subsection (e) to read as follows:

5-11 (e) On the department's formulation of recommendations and
 5-12 strategies under Section 31.0129(b), the department and the Texas
 5-13 Workforce Commission shall, as necessary, revise and update a
 5-14 memorandum of understanding and coordinated interagency case
 5-15 management plan under this section to include the recommendations
 5-16 and strategies.

5-17 SECTION 13. Subchapter A, Chapter 31, Human Resources Code,
 5-18 is amended by adding Section 31.0129 to read as follows:

5-19 Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY
 5-20 TRANSITIONS. (a) The department, the Texas Workforce Commission,
 5-21 and representatives of local workforce development boards shall
 5-22 conduct a survey of best practices used to transition clients
 5-23 between local department offices and workforce centers.

5-24 (b) The department shall:

5-25 (1) analyze information collected by a survey under
 5-26 Subsection (a); and

5-27 (2) formulate recommendations and strategies to
 5-28 improve practices used to transition clients between local
 5-29 department offices and workforce centers.

5-30 (c) Using existing resources, the department and local
 5-31 workforce development boards shall adopt policies to implement the
 5-32 recommendations and strategies contained in the revised and updated
 5-33 memorandum of understanding under Section 31.0128.

5-34 SECTION 14. Section 242.610, Health and Safety Code, is
 5-35 amended by amending Subsections (b), (d), and (g) and adding
 5-36 Subsections (h) through (m) to read as follows:

5-37 (b) The department shall prepare and conduct, at the site of
 5-38 the training program, an examination for the issuance of a permit.
 5-39 The results of the examination shall be reported in accordance with
 5-40 Section 242.6101.

5-41 (d) Subject to Subsections (h)-(m), the [The] department
 5-42 shall issue a permit or renew a permit to an applicant who:

5-43 (1) meets the minimum requirements adopted under
 5-44 Section 242.608;

5-45 (2) successfully completes the examination or the
 5-46 continuing education requirements; and

5-47 (3) pays a nonrefundable application fee determined by
 5-48 the board.

5-49 (g) The board by rule may adopt a system under which permits
 5-50 expire on various dates during the year. For the year in which the
 5-51 permit expiration date is changed, the department shall prorate
 5-52 permit fees on a monthly basis so that each permit holder pays only
 5-53 that portion of the permit fee that is allocable to the number of
 5-54 months during which the permit is valid. On renewal of the permit
 5-55 on the new expiration date, the total permit renewal fee is payable
 5-56 [The department may shorten the term of a permit to provide for the
 5-57 staggered renewal of permits. If a permit is issued for a term that
 5-58 is less than one year, the fee assessed under Section 242.611 must
 5-59 be prorated appropriately].

5-60 (h) A person who is otherwise eligible to renew a permit may
 5-61 renew an unexpired permit by paying the required renewal fee to the
 5-62 department before the expiration date of the permit. A person whose
 5-63 permit has expired may not engage in activities that require a
 5-64 permit until the permit has been renewed.

5-65 (i) A person whose permit has been expired for 90 days or
 5-66 less may renew the permit by paying to the department a renewal fee
 5-67 that is equal to 1-1/2 times the normally required renewal fee.

5-68 (j) A person whose permit has been expired for more than 90
 5-69 days but less than one year may renew the permit by paying to the

6-1 department a renewal fee that is equal to two times the normally
 6-2 required renewal fee.

6-3 (k) A person whose permit has been expired for one year or
 6-4 more may not renew the permit. The person may obtain a new permit by
 6-5 complying with the requirements and procedures, including the
 6-6 examination requirements, for obtaining an original permit.

6-7 (l) A person who was issued a permit in this state, moved to
 6-8 another state, currently holds a valid permit or license issued by
 6-9 the other state, and has been in practice in that state for the two
 6-10 years preceding the date of application may obtain a new permit
 6-11 without reexamination. The person must pay to the department a fee
 6-12 that is equal to two times the normally required renewal fee for the
 6-13 permit.

6-14 (m) Not later than the 30th day before the date a person's
 6-15 permit is scheduled to expire, the department shall send written
 6-16 notice of the impending expiration to the person at the person's
 6-17 last known address according to the records of the department.

6-18 SECTION 15. Subchapter N, Chapter 242, Health and Safety
 6-19 Code, is amended by adding Section 242.6101 to read as follows:

6-20 Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF
 6-21 PERMIT. (a) Not later than the 30th day after the date a person
 6-22 takes an examination for the issuance of a permit under this
 6-23 subchapter, the department shall notify the person of the results
 6-24 of the examination.

6-25 (b) If the examination is graded or reviewed by a testing
 6-26 service:

6-27 (1) the department shall notify the person of the
 6-28 results of the examination not later than the 14th day after the
 6-29 date the department receives the results from the testing service;
 6-30 and

6-31 (2) if notice of the examination results will be
 6-32 delayed for longer than 90 days after the examination date, the
 6-33 department shall notify the person of the reason for the delay
 6-34 before the 90th day.

6-35 (c) The department may require a testing service to notify a
 6-36 person of the results of the person's examination.

6-37 (d) If requested in writing by a person who fails an
 6-38 examination for the issuance of a permit administered under this
 6-39 subchapter, the department shall furnish the person with an
 6-40 analysis of the person's performance on the examination.

6-41 SECTION 16. Section 242.611, Health and Safety Code, is
 6-42 amended to read as follows:

6-43 Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO
 6-44 ADMINISTER MEDICATION. The board shall set the fees in amounts
 6-45 reasonable and necessary to recover the amount projected by the
 6-46 department as required to administer its functions. Except as
 6-47 otherwise provided by Section 242.610, the [The] fees may not
 6-48 exceed:

6-49 (1) \$25 for a combined permit application and
 6-50 examination fee; and

6-51 (2) \$15 for a renewal permit application fee.

6-52 SECTION 17. Section 242.612, Health and Safety Code, is
 6-53 amended by amending Subsection (a) and adding Subsection (c) to
 6-54 read as follows:

6-55 (a) The board shall revoke, [~~For the violation of this~~
 6-56 subchapter or a rule adopted under this subchapter, the department
 6-57 may:

6-58 [~~(1)~~] suspend, [~~revoke,~~] or refuse to renew a permit
 6-59 or shall reprimand a permit holder for a violation of this
 6-60 subchapter or a rule of the board adopted under this subchapter. In
 6-61 addition, the board may[+]

6-62 [~~(2)~~] suspend a permit in an emergency[+] or

6-63 [~~(3)~~] rescind training program approval.

6-64 (c) The board may place on probation a person whose permit
 6-65 is suspended. If a permit suspension is probated, the board may
 6-66 require the person:

6-67 (1) to report regularly to the department on matters
 6-68 that are the basis of the probation;

6-69 (2) to limit practice to the areas prescribed by the

7-1 board; or
7-2 (3) to continue or review professional education until
7-3 the person attains a degree of skill satisfactory to the board in
7-4 those areas that are the basis of the probation.

7-5 SECTION 18. The changes made by this Act to Subsection (a),
7-6 Section 21.011, Human Resources Code, apply only to a report on the
7-7 operations and administration of the Texas Department of Human
7-8 Services that is required to be submitted to the governor and the
7-9 legislature under that section after December 31, 2003.

7-10 SECTION 19. The Texas Department of Human Services shall
7-11 develop a business plan for each service region, in accordance with
7-12 Section 21.00605, Human Resources Code, as added by this Act, not
7-13 later than September 1, 2004.

7-14 SECTION 20. The Texas Department of Human Services shall
7-15 formulate recommendations and strategies in accordance with
7-16 Subsection (b), Section 31.0129, Human Resources Code, as added by
7-17 this Act, not later than September 1, 2004.

7-18 SECTION 21. Not later than December 1, 2004, the Texas
7-19 Department of Human Services and the Texas Workforce Commission
7-20 shall, as necessary, update the memorandum of understanding and
7-21 coordinated interagency case management plan required under
7-22 Section 31.0128, Human Resources Code, as amended by this Act.

7-23 SECTION 22. This Act takes effect September 1, 2003.

7-24 * * * * *