

By: Shapleigh

S.B. No. 823

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use of foreign workers in the performance of certain government service contracts that relate to health and human services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. RESTRICTIONS ON USE OF FOREIGN WORKERS IN CERTAIN

HEALTH AND HUMAN SERVICES CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Domestic worker" means an individual in the United States who performs a service for a contractor or subcontractor.

(3) "Foreign worker" means an individual in a country other than the United States who performs a service for a contractor or subcontractor.

(4) "Public agency" means this state or an agency, instrumentality, or political subdivision of this state.

Sec. 2264.002. APPLICABILITY OF CHAPTER. This chapter applies only in relation to a contract that is:

(1) primarily a contract for services entered into by

1 a public agency for which the agency will spend money derived
2 directly or indirectly from the state treasury; and

3 (2) for the performance of a function that the public
4 agency is required or encouraged to perform in whole or in part
5 through a contract with a private entity under Chapter 198, Acts of
6 the 78th Legislature, Regular Session, 2003, or a law added or
7 amended by Chapter 198, Acts of the 78th Legislature, Regular
8 Session, 2003.

9 [Sections 2264.003-2264.050 reserved for expansion]

10 SUBCHAPTER B. DOMESTIC WORKER REQUIREMENTS FOR SERVICE CONTRACTS

11 Sec. 2264.051. PROHIBITION ON CERTAIN HEALTH AND HUMAN
12 SERVICES CONTRACTS THAT PROVIDE JOBS TO FOREIGN WORKERS. A public
13 agency may not award a contract to a contractor or subcontractor
14 that proposes to perform any portion of the contract with foreign
15 workers.

16 Sec. 2264.052. STATEMENT IN CERTAIN BIDS FOR HEALTH AND
17 HUMAN SERVICES CONTRACTS. A contractor or subcontractor that
18 submits a bid, proposal, or other offer to a public agency for a
19 contract must include in the bid, proposal, or other offer a
20 verified statement certifying that the work required by the
21 contract and any subcontract performed under that contract will be
22 performed only by domestic workers. The contractor must:

23 (1) require each subcontractor that submits a bid,
24 proposal, or other offer in relation to the contract to include in
25 the bid, proposal, or other offer a verified statement that
26 identifies the public contract and the subcontractor and certifies
27 that the work performed under the subcontract will be performed

1 only by domestic workers; and

2 (2) send a copy of each verified statement received
3 under Subdivision (1) to the public agency in the manner prescribed
4 by the agency.

5 Sec. 2264.053. PROVISION IN CERTAIN HEALTH AND HUMAN
6 SERVICES CONTRACTS. A public agency that enters into a contract
7 must include in the contract a provision stating that, in the event
8 a contractor or subcontractor performs any part of the contract or a
9 subcontract with foreign workers, the contract shall be terminated
10 and the contractor or subcontractor shall be liable to the public
11 agency in an amount equal to the amount paid by the public agency
12 for the percentage of work that was performed with foreign workers.

13 [Sections 2264.054-2264.100 reserved for expansion]

14 SUBCHAPTER C. WAIVER OF DOMESTIC WORKER REQUIREMENTS FOR CERTAIN
15 HEALTH AND HUMAN SERVICES CONTRACTS

16 Sec. 2264.101. AUTOMATIC WAIVER IN CERTAIN CIRCUMSTANCES.
17 The requirements of Subchapter B are automatically waived in
18 circumstances under which compliance with Subchapter B would create
19 a violation of the specific terms of the Agreement on Government
20 Procurement of the World Trade Organization or any bilateral or
21 regional free trade agreement with which the State of Texas must
22 comply.

23 Sec. 2264.102. REQUEST FOR WAIVER IN CERTAIN CIRCUMSTANCES.
24 (a) The commission may waive the requirements of Subchapter B for a
25 particular contract or proposed contract for a specified period of
26 time not to exceed one year.

27 (b) To request a waiver under this section, a public agency

1 must submit a written request to the commission that includes the
2 agency's findings that:

3 (1) the contract is necessary to respond to an
4 emergency, as determined by the agency, because:

5 (A) the ability of the agency to provide
6 essential services would be adversely affected if the contract is
7 not performed;

8 (B) public health, safety, or welfare would be
9 endangered if the contract is not performed; and

10 (C) no contractor or subcontractor that has the
11 ability to perform the contract solely with domestic workers is
12 immediately available to perform the contract; or

13 (2) the contract is necessary to provide a unique
14 service, as determined by the agency, because:

15 (A) the agency regards a particular service to be
16 performed under the contract as essential; and

17 (B) domestic workers cannot adequately perform
18 the unique service to be performed under the contract.

19 Sec. 2264.103. GRANT OF WAIVER. A waiver request submitted
20 in accordance with Section 2264.102 is considered to be granted
21 unless it is denied in writing by the commission not later than the
22 30th day after the date of the commission's receipt of the request.

23 Sec. 2264.104. REJECTION OF WAIVER AFTER COMMENCEMENT OF
24 CONTRACT. If the commission rejects a request for a waiver that is
25 submitted in accordance with Section 2264.102 during the time the
26 contract is being performed or after the contract has been
27 completed, the contractor or subcontractor shall be liable to the

1 public agency in an amount equal to the amount paid by the public
2 agency for the percentage of work that was performed with foreign
3 workers.

4 Sec. 2264.105. REPORT OF WAIVER REQUEST TO CERTAIN
5 LEGISLATIVE COMMITTEES. At the same time that a public agency
6 provides a written request for a waiver to the commission under
7 Section 2264.102, the agency shall provide a copy of that request to
8 the House Committee on Human Services, the House Committee on
9 Appropriations, the Senate Committee on Health and Human Services,
10 and the Senate Committee on Finance.

11 SECTION 2. (a) The changes in law made by this Act to public
12 contracting procedures for certain health and human services
13 contracts apply only to a contract for which a public agency first
14 advertises or otherwise solicits bids, proposals, offers, or
15 qualifications, as applicable, on or after September 1, 2005.

16 (b) A contract for which a public agency first advertised or
17 otherwise solicited bids, proposals, offers, or qualifications, as
18 applicable, before September 1, 2005, is governed by the law as it
19 existed immediately before the effective date of this Act, and that
20 law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2005.