

By: Eissler

H.B. No. 1441

A BILL TO BE ENTITLED

AN ACT

relating to the relationship between and operation of the Texas Education Agency and regional education service centers.

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

SECTION 1. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.030 to read as follows:

Sec. 7.030. CONTRACTS BETWEEN AGENCY AND REGIONAL EDUCATION SERVICE CENTERS. (a) For purposes of this section, a person is considered "purchasing personnel" if the person is:

(1) the commissioner;

(2) a deputy commissioner;

(3) an ethics advisor; or

(4) an employee of the agency who makes decisions or recommendations to the agency regarding:

(A) the terms or conditions for a contract with a regional education service center;

(B) whether to enter into a contract with a regional education service center; or

(C) whether to approve a contract with a regional education service center.

(b) Before entering into a contract with a regional education service center, the commissioner shall require each person who is purchasing personnel to disclose in writing to the commissioner and the general counsel of the agency any known

1 personal, professional, business, or familial relationship between
2 the person and an owner, employee, or paid consultant of a
3 subcontractor of the regional education service center. The
4 commissioner shall provide all statements received under this
5 subsection to the comptroller or the comptroller's successor in
6 function responsible for administering the procurement functions
7 under Subtitle D, Title 10, Government Code. In this subsection,
8 "owner" includes a major stockholder, partner, or sole proprietor.

9 (c) Each contract between the agency and a regional
10 education service center must contain:

11 (1) a date for each signature to the contract;

12 (2) an independence statement in which each party:

13 (A) certifies that the contracting process was
14 independent and free from actual or apparent conflicts of interest;
15 and

16 (B) agrees to notify the other party if an actual
17 or apparent conflict of interest arises that could impact either
18 party's independence; and

19 (3) any other information required by the board of
20 directors of the regional education service center.

21 (d) Before entering into a contract with a regional
22 education service center, the agency shall publish a notice in the
23 Texas Register of the agency's intent to enter into the contract.
24 The notice must be published not later than the 14th day before the
25 date the agency enters into the contract.

26 (e) When the agency enters into a contract with a regional
27 education service center, the agency shall publish notice of the

1 contract in the Texas Register not later than the 14th day after the
2 date the contract is entered into.

3 (f) A notice under Subsection (d) or (e) must include:

4 (1) the name of the regional education service center;

5 (2) the total amount of the contract;

6 (3) a description of the services to be provided; and

7 (4) the term of the contract.

8 SECTION 2. Section 8.004, Education Code, is amended to
9 read as follows:

10 Sec. 8.004. EXECUTIVE DIRECTOR. The regional education
11 service center board of directors shall employ an executive
12 director. Before finally hiring an executive director, the board
13 of directors shall provide the commissioner an opportunity to
14 review and provide written comments on the selection of the
15 executive director. ~~[The selection and dismissal of the executive~~
16 ~~director is subject to the approval of the commissioner.]~~ The
17 executive director is the chief executive officer of the regional
18 education service center and may employ personnel as necessary to
19 carry out the functions of the center.

20 SECTION 3. Subchapter B, Chapter 8, Education Code, is
21 amended by adding Section 8.058 to read as follows:

22 Sec. 8.058. CONTRACTS FOR CONSULTING AND PROFESSIONAL
23 SERVICES. (a) In this section:

24 (1) "Consulting service" means the service of studying
25 or advising a regional education service center under a contract
26 that does not involve the traditional relationship of employer and
27 employee.

1 (2) "License" means a license, certificate,
2 registration, permit, or other authorization that a person must
3 obtain to engage in a particular business, occupation, or
4 profession.

5 (3) "Licensing authority" means a department,
6 commission, board, office, or other agency of this state or a
7 political subdivision of this state that issues a license.

8 (4) "Professional services" has the meaning assigned
9 by Section 2254.002, Government Code.

10 (b) The executive director of a regional education service
11 center may enter into a contract for a consulting service or for
12 professional services.

13 (c) If the executive director reasonably anticipates that
14 the total value of the payments under a contract described by
15 Subsection (b), or under an amendment, modification, renewal, or
16 extension of a contract described by Subsection (b), will exceed
17 \$25,000, the executive director shall award the contract using
18 competitive sealed proposals or another competitive procurement
19 procedure that state agencies are allowed to use under state law and
20 that is appropriate under the circumstances. The executive director
21 shall:

22 (1) specifically determine that the person to whom the
23 contract is awarded is capable of performing the work; and

24 (2) award the contract to the person whose proposal,
25 bid, or offer will provide the best value to the regional education
26 service center.

27 (d) A person may submit a bid or proposal for and enter into

1 a contract described by Subsection (b), notwithstanding any law or
2 rule that would otherwise prohibit the person as a license holder or
3 as a person practicing a regulated occupation from:

4 (1) submitting a competitive bid or proposal for a
5 professional services contract or consulting service contract; or

6 (2) entering into a professional services contract or
7 consulting service contract awarded by competitive sealed
8 proposals or another competitive procurement procedure.

9 (e) A licensing authority may not suspend or revoke a
10 person's license or otherwise take disciplinary action against the
11 person because the person submitted a bid or proposal or entered
12 into a contract as provided by Subsection (d).

13 SECTION 4. Section 8.103, Education Code, is amended to
14 read as follows:

15 Sec. 8.103. ANNUAL EVALUATION. (a) The commissioner
16 shall conduct an annual evaluation of each [~~executive director and~~]
17 regional education service center. Each evaluation must include:

18 (1) an audit of the center's finances;

19 (2) a review of the center's performance on the
20 indicators adopted under Section 8.101; and

21 (3) a review of client satisfaction with services
22 provided under Subchapter B [~~, and~~

23 [~~(4) a review of any other factor the commissioner~~
24 ~~determines to be appropriate]~~.

25 (b) Each regional education service center board of
26 directors shall conduct an annual evaluation of the center's
27 executive director. Each evaluation must consider any written

comments submitted by the commissioner.

SECTION 5. Section 2254.003(a), Government Code, is amended to read as follows:

(a) Except as provided by Section 2254.0035, a [A] governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

SECTION 6. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.0035 to read as follows:

Sec. 2254.0035. CERTAIN CONTRACTS WITH TEXAS EDUCATION AGENCY. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that a person must obtain to engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of this state or a political subdivision of this state that issues a license.

(b) This section applies to a contract for professional services entered into by the Texas Education Agency when the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$25,000.

1 (c) The Texas Education Agency shall award a contract to
2 which this section applies using competitive sealed proposals or
3 another competitive procurement procedure that state agencies are
4 allowed to use under state law and that is appropriate under the
5 circumstances. The Texas Education Agency shall:

6 (1) specifically determine that the person to whom the
7 contract is awarded is capable of performing the work; and

8 (2) award the contract to the person whose proposal,
9 bid, or offer will provide the best value to the state.

10 (d) A person may submit a bid or proposal for and enter into
11 a contract to which this section applies, notwithstanding any law
12 or rule that would otherwise prohibit the person as a license holder
13 or as a person practicing a regulated occupation from:

14 (1) submitting a competitive bid or proposal for a
15 professional services contract; or

16 (2) entering into a professional services contract
17 awarded by competitive sealed proposals or another competitive
18 procurement procedure.

19 (e) A licensing authority may not suspend or revoke a
20 person's license or otherwise take disciplinary action against the
21 person because the person submitted a bid or proposal or entered
22 into a contract as provided by Subsection (d).

23 (f) A contract to which this section applies that is made in
24 violation of this section is void as against public policy.

25 (g) A contract to which this section applies is exempt from
26 all other provisions of this subchapter except Section 2254.002.

27 SECTION 7. Subchapter B, Chapter 2254, Government Code, is

amended by adding Section 2254.041 to read as follows:

Sec. 2254.041. CERTAIN CONTRACTS WITH TEXAS EDUCATION AGENCY. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that a person must obtain to engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of this state or a political subdivision of this state that issues a license.

(b) This section applies to a contract for a consulting service entered into by the Texas Education Agency when the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$25,000.

(c) The Texas Education Agency shall award a contract to which this section applies using competitive sealed proposals or another competitive procurement procedure that state agencies are allowed to use under state law and that is appropriate under the circumstances. The Texas Education Agency shall:

(1) specifically determine that the person to whom the contract is awarded is capable of performing the work; and

(2) award the contract to the person whose proposal, bid, or offer will provide the best value to the state.

(d) A person may submit a bid or proposal for and enter into a contract to which this section applies, notwithstanding any law or rule that would otherwise prohibit the person as a license holder or as a person practicing a regulated occupation from:

1 (1) submitting a competitive bid or proposal for a
2 consulting service contract; or

3 (2) entering into a consulting service contract
4 awarded by competitive sealed proposals or another competitive
5 procurement procedure.

6 (e) A licensing authority may not suspend or revoke a
7 person's license or otherwise take disciplinary action against the
8 person because the person submitted a bid or proposal or entered
9 into a contract as provided by Subsection (d).

10 (f) A contract to which this section applies that is made in
11 violation of this section is void as against public policy.

12 (g) Sections 2254.021 and 2254.024(a)(1) apply in relation
13 to a contract to which this section applies. A contract to which
14 this section applies is exempt from all other provisions of this
15 subchapter.

16 SECTION 8. (a) Section 7.030, Education Code, as added by
17 this Act, applies to a contract between the Texas Education Agency
18 and a regional education service center entered into on or after the
19 effective date of this Act. A contract entered into before the
20 effective date of this Act is governed by the law in effect on the
21 date the contract is entered into, and the former law is continued
22 in effect for that purpose.

23 (b) Section 8.004, Education Code, as amended by this Act,
24 applies to an executive director of a regional education service
25 center selected on or after the effective date of this Act. The
26 selection of an executive director selected before the effective
27 date of this Act is governed by the law in effect when the executive

1 director is selected, and the former law is continued in effect for
2 that purpose.

3 (c) Section 8.058, Education Code, as added by this Act,
4 applies to a contract entered into by a regional education service
5 center on or after the effective date of this Act. A contract
6 entered into before the effective date of this Act is governed by
7 the law in effect on the date the contract is entered into, and the
8 former law is continued in effect for that purpose.

9 (d) Section 8.103, Education Code, as amended by this Act,
10 applies to an evaluation of a regional education service center
11 conducted on or after the effective date of this Act. An evaluation
12 of a regional education service center conducted before the
13 effective date of this Act is governed by the law in effect when the
14 evaluation is conducted, and the former law is continued in effect
15 for that purpose.

16 (e) Section 2254.003(a), Government Code, as amended by
17 this Act, and Sections 2254.0035 and 2254.041, Government Code, as
18 added by this Act, apply to a contract entered into by the Texas
19 Education Agency on or after the effective date of this Act. A
20 contract entered into before the effective date of this Act is
21 governed by the law in effect on the date the contract is entered
22 into, and the former law is continued in effect for that purpose.

23 SECTION 9. This Act takes effect September 1, 2009.