

By: Davis of Dallas

H.B. No. 2105

A BILL TO BE ENTITLED

AN ACT

1
2 relating to employment restrictions on persons awarded certain
3 government contracts or public subsidies; providing a civil
4 penalty.

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

6 SECTION 1. The legislature finds that:

7 (1) public agencies procure services in part through
8 contracts with vendors;

9 (2) increasingly, vendors carry out, subcontract, or
10 otherwise procure these services from a location outside the United
11 States;

12 (3) international outsourcing exacerbates
13 unemployment and workforce dislocation and deprives Texas
14 residents of job opportunities, including industries and jobs this
15 state has expended public subsidies to attract;

16 (4) international outsourcing erodes state and local
17 revenues by drawing jobs and income away from the state; and

18 (5) international outsourcing may provide less
19 privacy protection for state residents whose personal information
20 may, in the course of service delivery, be transmitted to locations
21 outside the United States.

22 SECTION 2. Subtitle F, Title 10, Government Code, is
23 amended by adding Chapter 2267 to read as follows:

24 CHAPTER 2267. REQUIREMENTS FOR CERTAIN CONTRACTS AND PUBLIC

SUBSIDIES; OUTSOURCING PROHIBITIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, municipality, public school district, or special-purpose district or authority.

(2) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.

Sec. 2267.002. CONDITION FOR CONTRACT OR PUBLIC SUBSIDY.

(a) Except as provided by Section 2267.005(a), a public agency may not award a contract to a vendor, bidder, contractor, or subcontractor that will perform the work related to the contract with workers located outside the United States.

(b) Except as provided by Section 2267.005(b), a public agency may not award or provide a public subsidy to an applicant that will perform any work related to the subsidy with workers located outside the United States.

Sec. 2267.003. ELIGIBILITY FOR CONTRACTS AND PUBLIC SUBSIDIES. (a) In addition to any other eligibility requirements a

1 vendor, bidder, contractor, or subcontractor must satisfy before
2 submitting a bid or contract with a public agency, the vendor,
3 bidder, contractor, or subcontractor must agree in writing to:

4 (1) perform the services covered by the bid or
5 contract with workers located in the United States; and

6 (2) repay the public agency the amount paid to workers
7 outside of the United States to perform work under the contract in
8 violation of Section 2267.004(a).

9 (b) In addition to any other eligibility requirements a
10 public subsidy applicant must satisfy before receiving a public
11 subsidy, the applicant must agree in writing to:

12 (1) perform any services covered by the subsidy with
13 workers located in the United States; and

14 (2) repay the public agency the amount of the subsidy
15 used to pay workers outside of the United States in violation of
16 Section 2267.004(b).

17 Sec. 2267.004. OUTSOURCING PROHIBITED. (a) Except as
18 provided by Section 2267.005(a), the vendor, contractor, or
19 subcontractor may not employ workers located outside the United
20 States to perform services under a contract with a public agency.

21 (b) Except as provided by Section 2267.005(b), a recipient
22 of a public subsidy may not employ workers located outside the
23 United States with funds from a public subsidy.

24 Sec. 2267.005. WAIVERS. (a) A public agency may waive the
25 requirements of Section 2267.002(a), 2267.003(a), or 2267.004(a)
26 for a period not to exceed six months for a contract or a bid for a
27 contract if:

1 (1) the agency submits a written finding to the state
2 auditor's office that:

3 (A) the agency determines a contract is necessary
4 to respond to an emergency because:

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

8 (ii) public health and safety is threatened
9 if the contract is not performed; and

10 (iii) a vendor, bidder, contractor, or
11 subcontractor that can perform the work related to the contract
12 with workers located in the United States is not immediately
13 available to perform the services; or

14 (B) the agency determines that:

15 (i) the work related to the contract is
16 mandatory; and

17 (ii) workers located in the United States
18 cannot adequately perform the unique work related to the contract;
19 and

20 (2) the state auditor's office determines the finding
21 submitted under Subdivision (1) to be valid.

22 (b) A public agency may waive the requirements of Section
23 2267.002(b), 2267.003(b), or 2267.004(b) for a period not to exceed
24 six months for a public subsidy if:

25 (1) the agency submits a written finding to the state
26 auditor's office that:

27 (A) the agency determines a public subsidy is

1 necessary to respond to an emergency because:

2 (i) the agency's ability to provide
3 essential services would be adversely affected if the public
4 subsidy is not awarded; and

5 (ii) workers located in the United States
6 are not immediately available to perform the work related to the
7 subsidy; or

8 (B) the agency determines that:

9 (i) the work related to the public subsidy
10 is mandatory; and

11 (ii) workers located in the United States
12 cannot adequately perform the unique work related to the public
13 subsidy; and

14 (2) the state auditor's office determines the finding
15 submitted under Subdivision (1) to be valid.

16 Sec. 2267.006. TERMINATION OF CONTRACT; REPAYMENT OF
17 SUBSIDY. (a) If a vendor, contractor, or subcontractor violates
18 Section 2267.004(a):

19 (1) the vendor, contractor, or subcontractor shall
20 repay to the public agency that is a party to the contract the
21 amount used to pay workers outside of the United States to perform
22 services under the contract; and

23 (2) the public agency that is a party to the contract:

24 (A) shall terminate the contract for
25 noncompliance; and

26 (B) may not enter into a contract with the
27 vendor, contractor, or subcontractor before the fifth anniversary

1 after the date of termination of the contract.

2 (b) If a public subsidy recipient violates Section
3 2267.004(b):

4 (1) the recipient shall repay the public agency that
5 awarded the subsidy the amount of the subsidy used to pay workers
6 outside of the United States; and

7 (2) the public agency that awarded the public subsidy
8 may not award a public subsidy to the recipient before the fifth
9 anniversary after the date the recipient repays the subsidy.

10 Sec. 2267.007. ATTORNEY'S FEES AND COSTS. A public agency
11 may bring a civil action to recover damages in a district court. If
12 the public agency prevails in the civil action, the court shall
13 award reasonable attorney's fees and costs to the agency.

14 SECTION 3. Chapter 2267, Government Code, as added by this
15 Act, applies only to a bid for a contract submitted or an
16 application for a public subsidy filed on or after the effective
17 date of this Act. A bid for a contract submitted or an application
18 filed before the effective date of this Act is governed by the law
19 in effect on the date the bid was submitted or the application was
20 filed, and that law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect September 1, 2011.