

BILL ANALYSIS

Senate Research Center

S.B. 212
By: Birdwell et al.
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas State Use Program (program) is a partnership between government and private nonprofit entities designed to assist people with disabilities in achieving independence through productive employment activities. The program also provides state agencies with a method for complying with the purchasing preference the legislature grants to goods and services provided by people with disabilities. The Texas Council on Purchasing from People with Disabilities (TCPPD) serves as the oversight and policymaking body for the program and contracts with a central nonprofit agency, currently TIBH Industries, to administer it. TIBH contracts with local community rehabilitation programs (CRPs) that hire people with disabilities to provide goods and services through the program.

TCPPD is subject to the Texas Sunset Act and will be abolished on September 1, 2015, unless continued by the legislature. The Texas Sunset Advisory Commission determined that TCPPD lacks the expertise and resources needed to effectively oversee the program as evidenced by its long-term lack of performance information and inability to show whether the supposed benefits of the program outweigh its additional cost to the state.

This bill abolishes TCPPD and transfers responsibility for the program to the office of the comptroller of public accounts of the State of Texas (comptroller) to strengthen oversight and ensure that the program benefits people with disabilities and requires the comptroller to establish an advisory committee to help set goals for the program. It specifies that the committee would consist of nine members, including two representatives from participating CRPs; three representatives from advocacy groups for people with disabilities; one representative from the state's vocational rehabilitation service agency; and at least three people with disabilities, one of whom is employed by a CRP that participates in the program.

In addition, the bill requires the comptroller and advisory committee to set the program objectives, CRP certification standards, and performance measures related to wages paid to people with disabilities, percent of sales revenue spent on training and professional development services for people with disabilities, and percentage of people with disabilities outplaced into competitive employment. (Original Author's / Sponsor's Statement of Intent)

S.B. 212 amends current law relating to the abolishment of the Texas Council on Purchasing from People with Disabilities and the transfer of its functions to the Texas Workforce Commission.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Council on Purchasing from People with Disabilities is transferred to the Texas Workforce Commission in SECTION 14 (Section 122.013, Human Resources Code), SECTION 20 (Section 122.0215, Human Resources Code), and SECTION 26 (Section 122.030, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2155.138(a) and (b), Government Code, as follows:

- (a) Provides that the competitive bidding provisions of this chapter do not apply to a state purchase of goods or services that:

(1) Makes no change to this subdivision;

(2) are offered for sale to a state agency through efforts made under Chapter 122 (Texas Council on Purchasing from People with Disabilities), Human Resources Code, rather than under law by the Texas Council on Purchasing from People with Disabilities;

(3) and (4) Makes no change to these subdivisions.

(b) Requires the Texas Workforce Commission (TWC), rather than the Texas Council on Purchasing from People with Disabilities (TCPPD), to test the goods and services to the extent necessary to ensure quality. Authorizes TWC, rather than TCPPD, to enter into a contract with a private or public entity to assist with testing.

SECTION 2. Amends the heading to Chapter 122, Human Resources Code, to read as follows:

CHAPTER 122. PURCHASING FROM PEOPLE WITH DISABILITIES

SECTION 3. Amends Section 122.0012, Human Resources Code, as follows:

Sec. 122.0012. SUNSET PROVISION. (a) Creates this subsection from existing text. Provides that the authority of the comptroller of public accounts of the State of Texas (comptroller) to perform any act under this chapter that relates to state purchasing is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that, notwithstanding any other law, that authority expires September 1, 2021, unless continued in existence as provided by Chapter 325, Government Code.

(b) Provides that TWC's authority to administer and oversee the program administered under this chapter is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, notwithstanding any other law, that authority expires September 1, 2021, unless continued in existence as provided by Chapter 325, Government Code.

SECTION 4. Amends Section 122.002, Human Resources Code, by adding Subdivision (6) to define "workforce commission."

SECTION 5. Amends Section 122.0057, Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

Sec. 122.0057. ADVISORY COMMITTEE. (a) Requires TWC to establish an advisory committee to assist TWC in establishing:

(1) performance goals for the program administered under this chapter; and

(2) criteria for certifying a community rehabilitation program for participation in the program administered under this chapter.

Deletes existing text authorizing TCPPD to establish an advisory committee if TCPPD considers the committee necessary. Deletes existing text providing that the membership of the committee is determined by TCPPD.

(b) Provides that the advisory committee consists of 13 members appointed by TWC as follows:

(1) four representatives from community rehabilitation programs that participate in the program administered under this chapter;

(2) four representatives from organizations that advocate for persons with disabilities;

(3) the executive commissioner of the health and human services commission or designee; and

(4) four persons with disabilities, of whom two are employed by a community rehabilitation program that participates in the program administered under this chapter.

Deletes existing text requiring TCPPD to specify the purpose and duties of the advisory committee, which must include reviewing the effectiveness of the program administered under this chapter and recommending procedures to create higher skilled and higher paying employment opportunities.

(c) Provides that members of the advisory committee serve at the will of TWC, rather than TCPPD. Deletes existing text authorizing TCPPD to dissolve an advisory committee when appropriate. Makes a nonsubstantive change.

(d) Requires TWC to appoint a presiding officer from among the advisory committee members. Deletes existing text requiring TCPPD to make reasonable attempts to have balanced representation on all advisory committees, including attempting to seek representation from the Lighthouse for the Blind and Visually Impaired community rehabilitation programs, the Goodwill community rehabilitation programs, other community rehabilitation programs, representatives from central nonprofit agencies, representatives of disability advocacy groups, government purchasing agents with knowledge of this chapter, private industry representatives with knowledge of this chapter, and private citizens with disabilities who have knowledge of the sale of products and services.

(e) Provides that the members of the advisory committee serve staggered four-year terms, with the terms of either six or seven members expiring February 1 of each odd-numbered year. Prohibits a member from serving more than two terms.

(f) Requires that a vacancy on the committee be filled in the same manner as the original appointment for that position.

(g) Requires the advisory committee to meet semiannually.

(h) Requires the advisory committee to:

(1) establish specific objectives for the program administered under this chapter that are appropriate given the program's status as one of several employment-related services this state offers to persons with disabilities;

(2) develop performance measures that may be used by TWC to evaluate whether the program is meeting the objectives established under Subdivision (1); and

(3) recommend criteria for certifying community rehabilitation programs for participation in the program.

(i) Requires the advisory committee to consider the following factors as applicable to the program administered under this chapter in developing the performance measures under Subsection (h):

(1) the percentage of total sales revenue attributable to the program:

(A) paid in wages to persons with disabilities; and

(B) spent on direct training and professional development services for persons with disabilities;

(2) the average hourly wage earned by a person participating in the program;

(3) the average annual salary earned by a person participating in the program;

(4) the number of persons with disabilities participating in the program paid less than minimum wage;

(5) the average number of hours worked each week by a person with a disability who participates in the program;

(6) the percentage of persons with disabilities who participate in the program and who are placed into competitive positions, including competitive management or administrative positions within community rehabilitation programs; and

(7) the percentage of work performed by persons with disabilities who participate in the program that is purely repackaging labor.

(j) Requires the advisory committee to meet at the call of the presiding officer at least once each fiscal year to review and, if necessary, recommend changes to program objectives, performance measures, and criteria established under Subsection (h).

(k) Requires the advisory committee to provide input to TWC in adopting rules applicable to the program administered under this chapter relating to the employment-first policies described by Sections 531.02447 (Employment- First Policy) and 531.02448 (Employment-First Task Force), Government Code.

(l) Authorizes TWC to provide administrative support to the advisory committee.

(m) Provides that the advisory committee is not subject to Chapter 2110 (State Agency Advisory Committees).

SECTION 6. Amends Chapter 122, Human Resources Code, by adding Section 122.0058, as follows:

Sec. 122.0058. APPLICATION OF OPEN MEETINGS LAW, OPEN RECORDS LAW, AND ADMINISTRATIVE PROCEDURE LAW TO ADVISORY COMMITTEE. Provides that the advisory committee established under Section 122.0057 is subject to the requirements of the open meetings law, Chapter 551 (Open Meetings), Government Code, the open records law, Chapter 552 (Public Information), Government Code, and Chapter 2001 (Administrative Procedure), Government Code.

SECTION 7. Amends Sections 122.007(a) and (c), Human Resources Code, and Section 122.007(d), Human Resources Code, as amended by S.B. 21, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Requires TWC, rather than TCPPD, to determine the fair market price of all products and services manufactured or provided by persons with disabilities and offered for sale to the various agencies and departments of the state and its political subdivisions by a community rehabilitation program participating in the program administered under this chapter. Requires TWC, rather than TCPPD, to ensure that the products and services offered for sale offer the best value for the state or a political subdivision. Requires the comptroller to provide TWC with the information and resources necessary for TWC to comply with this subsection.

(c) Changes a reference to TCPPD to TWC.

(d) Requires TWC, rather than TCPPD, to test the goods and services in accordance with Section 2155.069 (Testing and Inspection), Government Code, to the extent necessary to ensure quality before offering for sale products and services manufactured or provided by persons with disabilities to state agencies and political subdivisions. Authorizes TWC, rather than TCPPD, to enter into a contract with a private or public entity to assist with testing. Requires the comptroller to make awards under this section based on proposed goods and services meeting formal state specifications developed by the comptroller or meeting commercial specifications approved by the comptroller.

SECTION 8. Amends Section 122.008, Human Resources Code, as follows:

Sec. 122.008. PROCUREMENT AT DETERMINED PRICE. Provides that a suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a community rehabilitation program at the price determined by TWC, rather than TCPPD, to be the fair market price under Section 122.007 (Fair Market Price; Purchasing Procedures).

SECTION 9. Amends Section 122.009, Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to change a reference to TCPPD to TWC.

Deletes existing Subsection (a) designation. Deletes existing text Subsection (b) providing that the comptroller is the depository for all records concerning TCPPD's operations. Deletes existing Subsection (c) providing that TCPPD is subject to Chapter 552, Government Code.

SECTION 10. Amends Sections 122.0095(a) and (e), Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Changes a reference to TCPPD to TWC.

(e) Requires TWC, rather than TCPPD, to review and analyze the information contained in the reports under this section and Sections 122.012 (Duties of Commission; Interagency Cooperation) and 122.016 (Exceptions). Requires the comptroller to assist TWC, rather than TCPPD, in reviewing and analyzing the reports in order to improve state agency compliance with this chapter.

SECTION 11. Amends Section 122.010, Human Resources Code, to change references to TCPPD to TWC.

SECTION 12. Amends Section 122.011, Human Resources Code, to change a reference to TCPPD to TWC.

SECTION 13. Amends Sections 122.012(a), (b), and (e), Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Requires the comptroller to cooperate with, and provide any necessary support to TWC in accordance with legislative appropriation, rather than requires the comptroller to provide legal and other necessary support to TCPPD in accordance with legislative appropriation. Deletes existing text requiring the comptroller to assign an upper-level management employee to ensure that the comptroller meets the requirements of this chapter.

(b) Changes a reference to TCPPD to TWC. Authorizes the Department of Assistive and Rehabilitative Services (DARS) and other state human services agencies responsible for assisting persons with disabilities to, through written agreements or interagency contracts, provide space, storage, logistical support, consultation, expert services, communications

services, or financial assistance with respect to the program administered under this chapter, rather than to any function or responsibility of TCPPD.

(e) Changes a reference to TCPPD to TWC.

SECTION 14. Amends Sections 122.013(a) and (c), Human Resources Code, as follows:

(a) Changes a reference to TCPPD to TWC.

(c) Makes a conforming change.

SECTION 15. Amends Section 122.015, Human Resources Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires TWC, rather than the subcommittee established under Section 122.007(b) and TCPPD, in determining the fair market value of products or services offered for sale under this chapter, to give due consideration to the certain type of factors set forth.

(d) Requires the comptroller to provide TWC with the information and resources necessary for TWC to comply with this section.

SECTION 16. Amends Section 122.016(b), Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to change references to TCPPD to TWC.

SECTION 17. Amends Section 122.019, Human Resources Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

Sec. 122.019. CENTRAL NONPROFIT AGENCY. (a) Changes a reference to TCPPD to TWC. Requires TWC, rather than authorizes TCPPD, once the selection process is completed, to contract with a central nonprofit agency to facilitate certain programs.

(b)-(d) Changes references to TCPPD to TWC.

(e) Requires TWC to determine the best method to structure the maximum management fee rate charged by a central nonprofit agency for its services. Requires that the management fee rate be reviewed on an annual basis. Deletes existing test requiring that the maximum management fee rate charged by a central nonprofit agency for its services be computed as a percentage of the selling price of the product or the contract price of a service, must be included in the selling price or contract price, be paid at the time of sale, and be approved by TCPPD.

(f) Requires that a percentage of the management fee described by Subsection (e) be paid to TWC, rather than TCPPD, and is subject to Section 122.023 (Council Funds). Requires the percentage to be set by TWC, rather than TCPPD, in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the comptroller and TWC, rather than reasonable costs incurred by the comptroller, TWC, TCPPD, and TCPPD staff, in administering the comptroller's and TWC's, rather than TCPPD's, duties under this chapter, including any costs associated with providing support to the advisory committee.

(g)-(i) Changes references TCPPD to TWC..

SECTION 18. Amends Section 122.020, Human Resources Code, as follows:

Sec. 122.020. CONSUMER INFORMATION; COMPLAINTS. (a) Requires TWC to prepare information of consumer interest describing the activities of TWC under this chapter and describing TWC's procedures by which consumer complaints are filed with and resolved by TWC under this chapter. Requires TWC to make the information

available to the general public and appropriate state agencies. Makes conforming changes.

(b)-(d) Changes references to TCPPD to TWC.

SECTION 19. Amends Sections 122.0205(a) and (c), Human Resources Code, to change references to TCPPD to TWC.

SECTION 20. Amends Section 122.0215, Human Resources Code, to make conforming changes and delete an existing reference to Section 122.003(j). Deletes existing text requiring the committee designated under Section 122.003(j) to review the inspection results and recommend appropriate action to TCPPD.

SECTION 21. Amends Section 122.022, Human Resources Code, as amended by S.B. 21, Acts of the 84th Legislature, Regular Session, 2015, as follows:

Sec. 122.022. REPORTS. (a) Requires TWC to prepare an annual financial report in the form prescribed by Section 2101.011(Financial Information Required of State Agencies), Government Code, relating to TWC's activities under this chapter and file the report with the governor and the presiding officer of each house of the legislature on or before November 1 of each year, rather than requiring TCPPD to file with the governor and the presiding officer of each house of the legislature a copy of the annual financial report prepared by TCPPD under Section 2101.011, Government Code, on or before November of each year.

(b) Changes a reference to TCPPD to TWC.

SECTION 22. Amends Section 122.023, Human Resources Code, as follows:

Sec. 122.023. New heading: FUNDS. Changes a reference to TCPPD to TWC.

SECTION 23. Amends Section 122.024, Human Resources Code, as follows:

Sec. 122.024. STRATEGIC PLAN; FINAL OPERATING PLAN. Requires TWC, rather than TCPPD, to prepare a strategic plan, rather than to prepare an agency strategic plan, and a final operating plan relating to TWC's activities under this chapter as required by Subchapter E (Strategic and Operating Plans; Information Resources Deployment Review), Chapter 2054, Government Code.

SECTION 24. Amends Section 122.028, Human Resources Code, to change a reference to TCPPD to TWC.

SECTION 25. Amends Section 122.029, Human Resources Code, to make conforming changes.

SECTION 26. Amends Section 122.030, Human Resources Code, to make conforming changes.

SECTION 27. Provides that the following provisions of the Human Resources Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, are repealed:

Repealers: Sections 122.002(4) (defining "council" as the Texas Council on Purchasing from People with Disabilities), 122.003 (Texas Council on Purchasing from People with Disabilities), 122.004 (Information Relating to Standards of Conduct), 122.005 (Member Training), 122.0055 (Council Staff), 122.006 (Sunset Provision), 122.007(b) (requiring a subcommittee composed of three council members appointed by the presiding officer to review the data used to determine fair market price and make recommendations to TCPPD concerning fair market price for the products and services and offering the best value to customers), 122.013(b) (requiring the commission to provide legal support to assist TCPPD in adopting rules under this section), 122.0206 (Negotiated Rulemaking and Alternative Dispute Resolution Procedures), 122.021 (Public Testimony and Access),

Section 122.025 (Open Meetings; Administrative Procedure), and 122.027 (Technology Policy).

SECTION 28. (a) Provides that TCPPD is abolished.

(b) Provides that the validity of an action taken by or in connection with the authority of TCPPD before it is abolished is not affected by the abolition.

SECTION 29. (a) Provides that all powers and duties of TCPPD are transferred to TWC.

(b) Provides that a rule, form, policy, procedure, or decision of TCPPD continues in effect as a rule, form, policy, procedure, or decision of TWC until superseded by an act of TWC.

(c) A reference in law to TCPPD means TWC.

(d) Provides that any action or proceeding before TCPPD is transferred without change in status to TWC and TWC assumes, without a change in status, the position of TCPPD in any action or proceeding to which TCPPD is a party.

(e) Provides that all money, contracts, leases, rights, bonds, and obligations of TCPPD are transferred to TWC.

(f) Provides that all personal property, including records, in the custody of TCPPD becomes the property of TWC.

(g) Provides that all funds appropriated by the legislature to TCPPD are transferred to TWC.

SECTION 30. Provides that the terms of the current members of the advisory committee amended by this Act expire on the effective date of this Act. Requires TWC, on that date or as soon as possible after that date, to appoint new members to the advisory committee in accordance with the requirements of Section 122.0057, Human Resources Code, as amended by this Act. Requires TWC to designate the six members of the committee whose terms expire on February 1, 2017, and the seven members of the committee whose terms expire on February 1, 2019.

SECTION 31. Effective date: September 1, 2015.