

BILL ANALYSIS

C.S.H.B. 1198
By: Shine
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that employee stock ownership plans are a well-established form of business organization that allows a company to remain locally owned while giving employees a direct and meaningful stake in the performance of the business. C.S.H.B. 1198 seeks to encourage the use of this organizational model by providing for its adoption by a professional corporation and by a historically underutilized business, establishing the employee ownership assistance office within the Texas Economic Development and Tourism Office, and providing for certain discretionary governmental purchasing preferences.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1198 amends the Business Organizations Code, for purposes of the Texas Professional Corporation Law, to make an employee stock ownership plan, as defined by certain provisions of the federal Internal Revenue Code of 1986, that is established by a professional corporation an authorized person with respect to that corporation if all of the voting trustees of the plan are professional individuals who are licensed to provide at least one category of the professional services described in the corporation's certificate of formation and the ownership interests in the plan are not directly issued to any person other than such a professional individual or the plan trust.

C.S.H.B. 1198 amends the Government Code to establish the employee ownership assistance office as an office within the Texas Economic Development and Tourism Office and sets out the following duties of the employee ownership assistance office:

- to establish and administer for businesses in Texas an outreach and information dissemination program to foster increased awareness of employee stock ownership plans and a technical assistance program to assist businesses in determining the feasibility of establishing such a plan; and
- to make available to businesses in Texas information relating to obtaining assistance under those programs.

C.S.H.B. 1198 authorizes the comptroller of public accounts and all applicable state agencies purchasing goods or services, if other considerations are equal, to give preference to a corporation domiciled in Texas in which a majority of the stock is held by an employee stock

ownership plan, as defined by the federal Internal Revenue Code of 1986. The bill classifies as a historically underutilized business for purposes of state purchasing requirements such an employee-owned company in which 51 percent or more of the ownership interests in the company, including allocated shares of stock in the account of a plan participant of the company's employee stock ownership plan, are held by economically disadvantaged persons who have a proportionate interest and actively participate in the company's control, operation, and management, including as voting trustees of an employee stock ownership plan of the company.

C.S.H.B. 1198 establishes that a business that has been certified as a historically underutilized business on certain other grounds and that establishes an employee stock ownership plan that causes the business to lose status or eligibility for recertification as a historically underutilized business retains that status or eligibility for a period of not more than five years after the date the business establishes the plan. The bill requires the comptroller, in cooperation with each state agency subject to the planning and reporting requirements applicable to historically underutilized businesses, to categorize each historically underutilized business included in a certain required report by whether the business qualifies as a historically underutilized business on the basis of being an employee-owned company that meets the requisite criteria.

C.S.H.B. 1198 amends the Local Government Code to authorize a municipality, county, or special district, in purchasing goods or services, to give preference to an employee-owned company domiciled in Texas if other considerations are equal.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1198 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the characteristics of an employee-owned company that qualifies as a historically underutilized business to specify that at least 51 percent of the ownership interests, including shares allocated under an employee stock ownership plan, are held by economically disadvantaged persons who have a proportionate interest and actively participate in the company's control, operation, and management.

The substitute includes the following provisions:

- a definition by reference of "employee stock ownership plan" for purposes of determining status as a historically underutilized business; and
- a provision clarifying the determination of ownership interest attributable to such a plan in an employee-owned company for purposes of historically underutilized business status.

The substitute does not include a provision establishing that a business certified as a historically underutilized business on other grounds retains that status if the business converts to an employee-owned company, but the substitute establishes instead that a business that is certified as a historically underutilized business on certain grounds retains its status or eligibility for recertification for a maximum period of five years after establishing an employee stock ownership plan that causes the business to lose that status or eligibility.