

BILL ANALYSIS

Senate Research Center
84R19023 TSR-D

C.S.S.B. 212
By: Birdwell et al.
Health & Human Services
4/7/2015
Committee Report (Substituted)

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 the council 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)

C.S.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 comptroller of public accounts.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Council on Purchasing from People with Disabilities (TCPPD) is transferred to the comptroller of public accounts of the State of Texas in SECTION 12 (Section 122.013, Human Resources Code), SECTION 18 (Section 122.015, Human Resources Code), and SECTION 24 (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 comptroller of public accounts of the State of Texas (comptroller), rather than the Texas Council on Purchasing from People with Disabilities (council), to test the goods and services to the extent necessary to ensure quality. Authorizes the comptroller, rather than the council, 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: New heading: PURCHASING FROM PEOPLE WITH DISABILITIES

SECTION 3. Amends Section 122.0057, Human Resources Code, as follows:

Sec. 122.0057. ADVISORY COMMITTEE. (a) Requires the comptroller to establish an advisory committee to assist the comptroller 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, rather than if the council considers the committee necessary.

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

(b) Provides that the advisory committee consists of nine members appointed by the comptroller, as follows:

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

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

(3) one representative from a state agency that provides vocational rehabilitation services to persons with disabilities; and

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

Deletes existing text requiring the council 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 the comptroller, rather than council. Deletes existing text authorizing the council to

dissolve an advisory committee when appropriate. Makes a nonsubstantive change.

(d) Requires the comptroller to appoint a presiding officer from among the advisory committee members. Deletes existing text requiring the council 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 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 four or five 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 at the call of the presiding officer.

(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 the comptroller 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 the comptroller 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 the advisory committee to request administrative support from the comptroller. Requires the comptroller to provide the requested assistance.

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

SECTION 4. 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 5. Amends Sections 122.007(a), (c), and (d), Human Resources Code, as follows:

(a) Requires the comptroller, rather than council, 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 the comptroller, rather than council, to ensure that the products and services offered for sale offer the best value for the state or a political subdivision.

(c) Changes a reference from council to comptroller.

(d) Requires the comptroller, rather than council, 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 the comptroller, rather than council, 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 6. 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 the comptroller, rather than council, to be the fair market price under Section 122.007 (Fair Market Price; Purchasing Procedures).

SECTION 7. Amends Sections 122.009(a) and (b), Human Resources Code, as follows:

- (a) Changes a reference to council to comptroller.
- (b) Requires that the comptroller maintain all records concerning the comptroller's operations under this chapter, rather than providing that the comptroller is the depository for all records concerning the council's operations.

SECTION 8. Amends Sections 122.0095(a) and (e), Human Resources Code, as follows:

- (a) Requires each state agency that purchases products or services through a program under this chapter to:
 - (1) Makes no change to this subdivision;
 - (2) report to the comptroller, rather than to the comptroller and the council, the purchase of products or services available from a central nonprofit agency or community rehabilitation program under this chapter, but purchased from another business that is not a central nonprofit agency or community rehabilitation program under this chapter.
- (e) Requires the comptroller, rather than the council, 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) in order to improve state agency compliance with this chapter.

Deletes text requiring the comptroller to assist the council in reviewing and analyzing the reports.

SECTION 9. Amends Section 122.010, Human Resources Code, to change references to council to comptroller.

SECTION 10. Amends Section 122.011, Human Resources Code, to change a reference to council to comptroller.

SECTION 11. Amends Sections 122.012(a), (b), and (e), Human Resources Code, as follows:

- (a) Requires the comptroller to perform the comptroller's duties under this chapter with assistance from the advisory committee established under Section 122.0057 (Advisory Committee) in accordance with legislative appropriation, rather than requiring the comptroller to provide legal and other necessary support to the council 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 council to comptroller. 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 any function or responsibility of the comptroller under this chapter, rather than of the council.
- (e) Requires the comptroller to assist a state agency that is not complying with this chapter to comply with this chapter after any audit or review the comptroller conducts with regard to state agency compliance with purchasing laws and procedures, rather than requiring the comptroller to report to the council a state agency that is not complying

with this chapter after any audit or review the commission conducts with regard to state agency compliance with purchasing laws and procedures.

SECTION 12. Amends Sections 122.013(a) and (c), Human Resources Code, as follows:

(a) Changes a reference to council to comptroller.

(c) Makes a conforming change.

SECTION 13. Amends Section 122.015(a), Human Resources Code, to require the comptroller, rather than the subcommittee established under Section 122.007(b) and the council, in determining the fair market value of products or services offered for sale under this chapter, to give due consideration to certain enumerated factors.

SECTION 14. Amends Section 122.016(b), Human Resources Code, as follows:

(b) Requires the comptroller to prepare a list of all items purchased under the exception provided by Subsection (a) (authorizing that exceptions from the operation of the mandatory provisions of Section 122.014 be made in any case where under the rules of the Texas Building and Procurement Commission, the product or service so produced or provided does not meet the reasonable requirements of the office, DARS, institution, or agency or the requisitions made cannot be reasonably complied with through provision of products or services produced by persons with disabilities) each month, rather than requires the comptroller to provide the council with a list of all items purchased under the exception provided by Subsection (a) of this section each month. Requires the comptroller to adopt the form in which the list is to be provided and authorizes the comptroller to include in the list the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the comptroller considers relevant to a determination of why the product or service was not purchased in accordance with Section 122.014 (Product Specifications), rather than requires the council to adopt the form in which the list is to be provided and authorizes the council to require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the council considers relevant to a determination of why the product or service was not purchased in accordance with Section 122.014.

SECTION 15. Amends Section 122.019, Human Resources Code, as follows:

Sec. 122.019. CENTRAL NONPROFIT AGENCY. (a)-(d) Changes references to council to comptroller.

(e) Requires the comptroller 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 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 the council.

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

(g)-(i) Changes references to council to comptroller.

SECTION 16. Amends Section 122.020, Human Resources Code, as follows:

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

(b)-(d) Changes references to council to comptroller.

SECTION 17. Amends Sections 122.0205(a) and (c), Human Resources Code, to change references to council to comptroller.

SECTION 18. 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 the council.

SECTION 19. Amends Section 122.022, Human Resources Code, as follows:

Sec. 122.022. REPORTS. (a) Requires the comptroller to prepare an annual financial report in the form prescribed by Section 2101.011(Financial Information Required of State Agencies), Government Code, relating to the comptroller'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 the council to file with the governor and the presiding officer of each house of the legislature a copy of the annual financial report prepared by the council under Section 2101.011, Government Code.

(b) Changes a reference to council to comptroller.

SECTION 20. Amends Section 122.023, Human Resources Code, as follows:

Sec. 122.023. New heading: COMPTROLLER FUNDS. Changes a reference to council to comptroller.

SECTION 21. Amends Section 122.024, Human Resources Code, as follows:

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

SECTION 22. Amends Section 122.028, Human Resources Code, to change a reference to council to comptroller.

SECTION 23. Amends Section 122.029, Human Resources Code, to make conforming changes.

SECTION 24. Amends Section 122.030, Human Resources Code, to make conforming changes.

SECTION 25. 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 the council concerning fair market price for the products and services and offering the best value to customers), 122.009(c) (providing that the council is subject to Chapter 552, Government Code), 122.013(b) (requiring the commission to provide legal support to assist the council in adopting

rules under this section), 122.0206 (Negotiated Rulemaking and Alternative Dispute Resolution Procedures), 122.021 (Public Testimony and Access), 122.025 (Open Meetings; Administrative Procedure), and 122.027 (Technology Policy).

SECTION 26. (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 27. (a) Provides that all powers and duties of TCPPD are transferred to the comptroller of public accounts.

(b) Provides that a rule, form, policy, procedure, or decision of TCPPD continues in effect as a rule, form, policy, procedure, or decision of the comptroller of public accounts until superseded by an act of the comptroller of public accounts or the comptroller of public accounts' staff.

(c) Provides that a reference in law to TCPPD means the comptroller of public accounts.

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

(e) Transfers all money, contracts, leases, rights, bonds, and obligations of TCPPD to the comptroller of public accounts.

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

(g) Transfers all funds appropriated by the legislature to TCPPD to the comptroller of public accounts.

SECTION 28. 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 the comptroller 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 the comptroller to designate the four members of the committee whose terms expire on February 1, 2017, and the five members of the committee whose terms expire on February 1, 2019.

SECTION 29. Effective date: September 1, 2015.