

SUBJECT: Texas Council on Purchasing from People with Disabilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Hilderbran, Naishtat, Davila, Denny, J. Jones, Krusee, Maxey,  
Park, Wohlgemuth

0 nays

WITNESSES: (*On original version*)

For — Terry McFarlane, Austin; Melodie Clemons, Fairweather Associates  
and Phoenix House; Joyce Kendrick, Dallas

Against — Terry McFarlane, Austin; Sue Evans, Round Rock; Bob  
Lindholm, On Our Own Services; Gibson M. DuTerroil and Leticia M.  
Turner, Houston.

On — Wayne Sanders, Austin

BACKGROUND: In the late 1970s Texas adopted a policy of encouraging and assisting blind  
and severely disabled persons in employment activities. The state created a  
program of purchasing preferences by state agencies, institutions and  
political subdivisions for products made and services performed by people  
with disabilities.

The state established the Texas Committee for the Purchasing of Products  
and Services of the Blind and Severely Disabled Persons to determine the  
"fair market value" of products and services. State agencies represented on  
the committee are used to perform routine functions and a nonprofit  
organization handles marketing. The committee employs no staff and  
receives no state appropriations.

The nonprofit organization functions as a broker between the rehabilitation  
or workcenters (e.g. Goodwill, Lighthouse for the Blind) and the state  
agencies and political subdivisions. The committee permits the nonprofit

organization to retain a commission of between 5 percent and 7 percent of each sale it procures.

DIGEST:

CSHB 2658 would rename the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons as the Texas Council on Purchasing from People with Disabilities. The bill would make other changes in the council's functions, including:

**Council members.** The bill would reduce the council from 10 members to nine. The governor would be required to make appointments to the council by February 1, 1995. Instead of five designated state agency representatives and three representatives from workcenters and two private citizens, appointees would consist of:

- three private citizens who understand the employment needs of persons with disabilities, including blindness, and with current experience in the pricing and marketing of goods and services;
- three representatives of community rehabilitation programs that represent different disability groups, including persons with blindness, and that provide or seek to provide products produced or services performed by persons with disabilities;
- three representatives of state agencies or political subdivisions that purchase a significant amount of products produced or services performed by persons with disabilities.

Members of the council would serve six-year staggered terms rather than two-year terms. The governor would select one council member, with certain restrictions, to serve as the presiding officer. The bill would establish additional removal provisions for council members.

The bill would require the executive director to provide members of the council with information regarding their qualifications for office and their responsibility under applicable law.

Before members could be confirmed by the Senate and assume their duties they would be required to complete at least one training program. The training session would include information about the role and function of the council, applicable statutes, open meeting laws and administrative procedures laws, ethics policies and programs operated by the council.

The bill would abolish the positions of the members of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons who are serving on the committee immediately before September 1, 1995.

**Sunset provision.** The council would be abolished on September 1, 1999, unless reauthorized by the Legislature.

**Interagency cooperation.** The commissioner of the General Service Commission (GSC) would provide legal, clerical, administrative and other necessary support to the council in accordance with legislative appropriations and to assist in providing legal support to assist the council in adopting rules in order to implement the provisions of the bill.

A percentage of the management fee collected by a central nonprofit agency would be required to be paid to the council. The percentage would be set by the council to reimburse the general revenue fund for direct and reasonable costs incurred by GSC in administering its duties on behalf of the council.

**Central nonprofit agency.** The council would contract with a central nonprofit agency (CNA) to:

- recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services;
- facilitate the distribution of orders among community rehabilitation programs;

- manage and coordinate the day-to-day operation of the program, including the general administration of contracts with community rehabilitation programs; and
- promote increased supported employment opportunities for persons with disabilities.

A CNA would, as part of its marketing and marketing support services: assist community rehabilitation programs regarding solicitation and negotiation of contracts; engage in direct marketing of products and services to consumers; research and development of products and services; public relations activities to promote the program customer relations; education and training; and accounting services.

The council would be required annually to review services provided by the CNA and revenues required to accomplish the program to determine whether each agency's performance complies with contractual specifications. The council would be required to publish in the Texas Register a request for comment on services of a CNA that participates in community rehabilitation programs.

At least once during each two-year period, the council would be required to review and renegotiate the contract of each CNA. The council would be required to publish in the Texas Register notice of any proposed contract.

The maximum management fee rate charged, with approval by the council, by a CNA for its services would be required to be computed as a percentage of the selling price of the product or the contract price of the service, would be required to be included in the selling price or contract price, and must be paid at the time of sale.

The council would have to keep an information file about each complaint filed relating to a product or service.

**Fair market price and purchasing procedures.** The bill would delete a requirement that community rehabilitation programs be recognized first by the Texas Commission for the Blind and the Texas Rehabilitation Commission as qualified work centers in order to participate.

The purchasing council would have to contract with a nonprofit agency to manage and operate the marketing aspects of the program and publish notice of a proposed contract in the Texas Register at least 60 days before renewing or adopting a contract. The bill would eliminate a provision requiring the council to designate a central nonprofit agency to facilitate the distribution of orders among agencies serving blind or other severely disabled persons and regarding other matters related to the state's use of the products and services of blind and severely disabled persons.

**Determination of fair market value.** The council would give due consideration to factors including the actual cost of manufacturing the product performing a service at a community rehabilitation program offering employment services on or off premises to persons with disabilities, with adequate weight to be given to legal and moral imperatives to pay workers with disabilities equitable wages.

The actual cost of manufacturing a product or performing a service would consist of costs directly associated with a contract and include costs for labor and raw materials used in the production of the product, storage, and delivery. Actual costs would not include a cost associated with an individual's preparation to perform work activity.

**Records.** Records of the council or of a central nonprofit agency would, to the extent that they pertain to state purchases of products and services of persons with disabilities, be under the state's Open Records Act. The General Services Commission (GSC) would be the depository of all records concerning the council's operation.

**Other provisions.** The bill excludes from mandatory participation in the program any political subdivisions that are not covered by Title V of the Federal Rehabilitation Act (1973). It would specify that the statute does not ban a political subdivision from acting as a willing buyer outside the bid systems.

The council would have to prepare an agency strategic plan and a final operating plan.

The council could establish criteria for recognition and approval of community rehabilitation programs if the programs maintain accreditation by a nationally accepted vocational rehabilitation accrediting organization and approve community rehabilitation program services that have been approved for purchase by a state habilitation or rehabilitation agency. The council would be required to develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the council's jurisdiction. The council would be required to comply with federal and state laws relating to program and facility accessibility. The council would be required to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the council's programs and services.

All money paid to the council due to this act would be subject to Subchapter F, Chapter 404, Government Code, State Funds Reform Act.

The bill would take effect on September 1, 1995

**SUPPORTERS  
SAY:**

CSHB 2658 would provide more objectivity for the council by separating routine functions from those relating to the marketing of products and services. Routine functions would be assigned to GSC, with costs of administering the program being derived from a percentage of the sales commission of the nonprofit. The bill would also restructure the governing body, eliminating the current scheme of slotted positions for a slate more balanced and similar to other regulatory agencies.

It is important that CSHB 2658 allows a nonprofit organization to keep the marketing functions for these products and services. Starting out small, the program has grown to annual sales of \$33 million in 1994, with more than 5,100 persons employed.

Six-year staggered terms would allow members to become trained in their jobs and gain expertise. In addition, requiring GSC to provide support staff will eliminate any potential conflicts of interest that arises when seeking assistance from the nonprofit that is under contract.

OPPONENTS SAY: No apparent opposition.

NOTES: The committee substitute makes some substantive changes including adding a definition of "disabilities" and clarifying language relating to the terms "community rehabilitation programs" and "including blindness." The committee substitute would permit the council to select criteria for workcenters to meet in order to participate in the purchasing program.