

SUBJECT: Relating to the Texas Council on Purchasing from People with Disabilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Naishtat, Chavez, J. Davis, Ehrhardt, Noriega, Raymond, Villarreal, Wohlgemuth

0 nays

1 absent — Telford

WITNESSES: For — Frank Curtis, Texas Association of Goodwills

Against — Sean Quigley, On Our Own Services, Inc.; Nathaniel Rido and John D. Ward, Jr., Southeast Keller Corp.; Joe Scott, World Technical Services, Inc.

On — Joe Knauth, The Texas House-Houston; Margaret Pfluger, Texas Council on Purchasing from People with Disabilities; Jonas Schwartz, Advocacy, Inc.; *Registered but did not testify:* Juliet King, Texas Council on Purchasing from People with Disabilities

BACKGROUND: In 1975, the Legislature created the Texas Council on Purchasing from People with Disabilities (TCPPD) — originally called the Texas Committee on Purchases from Blind-Made Products and Services — to encourage and help persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities. The Legislature established the State Use Program to give preferential contracts to blind or visually impaired Texans who manufacture products for sale to state agencies. Texas Industries for the Blind and Handicapped (TIBH) was formed several years later to implement the program. In 1981, the Legislature expanded the program to include vendors that employed people with all disabilities and to establish set-aside contracts.

Human Resources Code, ch. 122 requires the TCPPD to designate a central nonprofit agency (CNA) to administer the State Use Program and requires the use of community rehabilitation programs (CRPs) to further employment

opportunities for disabled workers. The council has authorized TIBH to serve as the program's sole CNA. The council approves products and services for use by state agencies and political subdivisions and sets prices based on its assessment of fair market prices. The CNA acts as a liaison between state agency users and the CRPs, which employ people with disabilities to provide the products and services. Participation in the State Use Program is mandatory for state agencies and voluntary for political subdivisions.

The nine-member TCPPD includes three members appointed by the governor and approved by the Senate from each of these groups:

- ! private citizens conversant with the employment needs of people with disabilities;
- ! CRP representatives; and
- ! groups representing state agency users.

The council is not authorized to employ its own staff but receives administrative, clerical, legal, and other support from the General Services Commission (GSC). The council reimburses GSC's costs out of fees derived from a portion of the management fee that TIBH collects from CRPs.

After a dispute arose over program information and TIBH filed a lawsuit against the council, the House General Investigating Committee and the Senate State Affairs Committee were asked to review the State Use Program, the roles of the council, TIBH, and GSC, the council's oversight of CRPs, and other issues. The committees held joint hearings in March and April 2000 and later issued reports of their findings and recommendations.

DIGEST:

CSHB 1691 would amend the TCPPD's authorizing statute to change the composition of the council and authorize it to employ staff and to establish an advisory committee; require the council to establish a process for certifying CRPs; allow the council to contract with one or more CNAs through competitive bidding and to obtain financial or other information and records from CNAs and CRPs; and require state agencies to designate employees to ensure compliance with the State Use Program.

The bill would require the governor to appoint at least one member to the

council from each of the groups now represented, plus at least one person with disabilities. To the extent possible, the governor would have to ensure that each category was represented proportionately on the council.

TCPD could employ staff to provide management oversight, policy guidance, and administrative support and could establish an advisory committee if the council considered it necessary. TCPD would have to determine the membership of the committee and specify its purpose and duties, which would have to include reviewing the effectiveness of the State Use Program and recommending procedures to create higher-skilled and higher-paying employment opportunities for disabled people.

Each state agency that bought products or services through the State Use Program would have to designate an employee to ensure that the agency complied with program requirements. Each purchasing agency would have to report to the council and GSC on the agency's purchase of products or services that were available from a CNA or CRP but were purchased from another business. The report could be based on a sampling of these purchases in an audit conducted after the purchases. GSC would have to post these reports on its Internet web site.

GSC would have to assign an upper-level management employee to ensure that the commission met its duties and would have to include programs on purchasing from people with disabilities in its procurement policy manuals.

The TCPD would have to adopt rules for implementing, extending, administering, or improving the State Use Program. The rules would have to address possible conflicts of interest for CNAs and CRPs; establish a certification process for CRPs; establish a minimum percentage of disabled labor that an organization would have to employ to be considered a CRP; and define the terms "value-added" and "direct labor" for products manufactured and services provided for sale. The council could adopt rules to encourage cooperation between CRPs and other nonprofit or for-profit organizations.

The council could select and contract with one or more CNAs through a competitive bidding process or proposal request for a period of up to five years. Under current law, the council must review and renegotiate its contract with the CNA at least once every two years.

The council would have to review the management fee rate charged by the CNA every year and would have to consider the council's costs (including staff costs) as well as those of GSC in setting the percentage of the management fee to be paid to the council.

The council could terminate a contract with a CNA if the council found substantial evidence of the agency's noncompliance with contractual obligations and the council provided at least 30 days notice of the termination of the contract. The council could ask the state auditor to audit the CNA's management fee or financial condition.

Disputes between the council and a CNA or CRP would have to be submitted first to alternative dispute resolution. This provision would not constitute authorization to sue and would not modify the remedies available under other law, nor would it limit the council's ability to request opinions from the attorney general.

The council and its staff could obtain financial or other information and records from a CNA or CRP. The council could not release or make public the information on subpoena or otherwise except:

- ! for statistical purposes, but only if a person was not identified;
- ! with the consent of each person identified; or
- ! regarding a compensation package of any CNA employee or subcontractor, if the council deemed it relevant.

The council would have to adopt rules and procedures to ensure that these information and records were kept confidential.

The council's annual report to the governor and the Legislature would have to include, in addition to information already required, the number of people with disabilities employed by businesses or workshops that received supportive employment from CRPs; the number of nondisabled workers employed in CRPs; and the average and range of weekly earnings for disabled and nondisabled workers employed in CRPs.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 1691 would clarify and strengthen the duties and responsibilities of the TCPPD. As a result of ambiguous wording in the council's authorizing statute, the State Use Program has been abused and subjected to lawsuits. In its November 2000 report, the House General Investigating Committee stated that statutory changes are needed to prevent TCPPD's disintegration. CSHB 1691 would implement suggestions of the General Investigating Committee, the Senate State Affairs Committee, and the state auditor.

CSHB 1691 would allow the council to contract for services with one or more CNAs through generally accepted competitive bidding procedures. The invitation for bids would ensure that the State Use Program was served by the most qualified nonprofit corporation.

The bill would allow the council to obtain financial and other types of information from any CNA or CRP. Access to this information would allow the council to gauge the effectiveness of these organizations and would help the council fulfill its obligation to oversee the State Use Program. The council would have to recognize the privacy interests of these organizations' employees.

CSHB 1691 would ensure that for-profit corporations participating in the program did not receive an unfair advantage over non-State Use Program participants. It would require the adoption of rules giving substantive and meaningful guidance to partnerships between CRPs and other nonprofit or for-profit organizations.

Allowing the council to establish an advisory committee would help the council administer the State Use Program more effectively. The program has faced criticism about the types of employment opportunities created for disabled workers. Most jobs now provided through the program are janitorial or custodial-type jobs. An advisory committee could review the effectiveness of the program and recommend ideas to create higher-skilled and higher-paying employment opportunities for the disabled.

The bill also would address lack of accountability of state agencies. State agencies would have to report their purchases of products and services made outside the State Use Program.

OPPONENTS
SAY:

CSHB 1691 would raise the costs of the State Use Program, and these costs would be passed on to nonprofit organizations that already are under tight budgets. This program already puts pressures on the organizations to submit the lowest bids possible. The cost of the staff the council would be allowed to hire probably would be passed on to these organizations as an additional commission, and the organizations would pass these costs on to program users. The bill would not limit the number of staff employees the council could hire. In the long run, the increased rates could force some of the smaller centers to lose business and have to close. This would be detrimental to the employment of people with disabilities and could defeat the purpose of establishing the program.

The council should not be allowed to contract with multiple agencies, such as one agency for services and another for products. This would create more bureaucracy for the ultimate customers of the State Use Program and would lead to confusion about which agency was providing what. The federal program and programs in other states use only one CNA, and Texas should follow their lead. The program has existed for about 22 years with only one CNA, and there is no reason to change that now.

CSHB 1691 would commercialize the State Use Program. It would allow any business or group to participate in the program, even if the group's only interest was to make a profit from sales to state agencies.

CSHB 1691 would establish no mechanisms to enforce the law. All state agencies should have to purchase products and services offered by CNAs and CRPs. The bill would require only that state agencies report the purchase of products and services that were available from CNAs and CRPs but were purchased from other businesses, not to report the amounts purchased from other businesses, nor the reason why the products were purchased from businesses other than CNAs and CRPs.

OTHER
OPPONENTS
SAY:

The composition of the council should remain as it is. People with disabilities should be included but should come from one of the three existing categories.

The council's access to information and records should be limited to records that pertain to the State Use Program. As now worded, CSHB 1691 would allow the council to obtain any type of record from a CNA or CRP.

NOTES:

The committee substitute would require each state agency to report to the TCPPD the purchase of products or services available from a CNA or CRP that were purchased from another business. It added the requirements that these reports be posted on GSC's web site and that GSC assign an upper-level employee, rather than a management employee, to ensure that GSC met its requirements in relation to the council. The substitute also would authorize the council to contract with one or more CNAs and to access certain records from CNAs or CRPs.