

SUBJECT: Continuing the Texas Workforce Commission

COMMITTEE: Economic Development — committee substitute recommended

VOTE: 5 ayes — J. Keffer, Homer, Hughes, Rodriguez, Thompson

0 nays

2 absent — Isett, Wong

SENATE VOTE: On final passage, April 23 — voice vote

WITNESSES: For — None

Against — None

On — Susan Maxwell, Texas Council for Developmental Disabilities; Shirley Knox; (*Registered, but did not testify:*) Angela Lello, ACRIL, Inc.

BACKGROUND: The Texas Workforce Commission (TWC) administers the state's workforce services system. The Legislature created TWC in 1995 by merging workforce programs from several state agencies. TWC oversees the local workforce development system, based in 28 local boards and more than 260 one-stop workforce centers and satellite offices statewide. The agency operates the state's unemployment insurance system by collecting unemployment taxes from employers, processing claims, and determining claimant eligibility and employer liability. TWC also administers other workforce-related programs, such as the enforcement of payday and child labor laws and the regulation of proprietary schools.

TWC employs about 3,900 full-time workers with a fiscal 2002-03 budget of about \$2.1 billion. Approximately 87 percent of the agency's budget comes from federal sources.

Governing structure. TWC is governed by three full-time commissioners, each appointed by the governor and representing a different constituency: labor, employers, and the public. The governor appoints commissioners for

six-year terms and designates a chair to serve for two years. The commission meets weekly to establish policy, administer the unemployment compensation insurance program, rule on insurance claims, and adopt rules governing agency policies. The commissioners appoint an executive director who manages TWC's administration and day-to-day operations.

Workforce development system. Each local workforce development board (LWDB) contains a majority of business representatives, plus other members who represent labor, education, community-based organizations, economic development, vocational rehabilitation, public employment, human service agencies, child care, and veterans. TWC, the LWDBs, and the workforce centers plan and administer workforce services in conjunction with the Texas Council on Workforce and Economic Competitiveness (TCWEC).

TANF Choices. The 1996 federal welfare reform law created Temporary Assistance to Needy Families (TANF) to replace Aid to Families with Dependent Children and other assistance programs. States use a mixture of state and federal TANF funds to provide cash assistance, child care, job preparation, and other services. TWC provides job training and child-care services to current and recent TANF recipients through the Choices program, and federal block grant funds make up the majority of the agency's funding.

Unemployment insurance. Texas' unemployment insurance program, funded by a tax on employers, replaces a portion of wages for workers who become unemployed through no fault of their own. Seven telephone call centers process unemployment insurance claims by individuals. The agency also provides an administrative adjudication process for parties to appeal decisions regarding payment of benefits.

Labor Code, sec. 204.084 governs the transfer of unemployment compensation experience from one employer to another in cases of acquisition. Both entities may apply to TWC to transfer the experience rating from the previous employer to the subsequent employer, and TWC must grant the transfer if various criteria are met.

Child care. LWDBs provide subsidized child care to TANF recipients, people moving from TANF to work, and low-income people at risk of becoming eligible for TANF. Other services include providing training and

education opportunities for child-care providers and resource and referral services to help parents make child-care choices.

Labor law and other programs. TWC adjudicates claims for unpaid wages for workers, collects unpaid amounts, and helps employers comply with labor laws. The agency also processes and investigates child labor complaints and works with employers seeking to gain labor certification for workers from other countries. The agency provides consumer protection to students enrolled in private, proprietary career schools. It also provides employers with tax incentives for hiring hard-to-place employees, including former TANF recipients and ex-offenders.

TWC is undergoing its first sunset review. Its authority will expire on September 1, 2003, unless renewed by the Legislature.

DIGEST:

CSSB 280 would continue TWC and its functions until September 1, 2009, and would change its administration of federal block grant programs, the child care program, LWDB partnerships, the unemployment insurance program, and other programs.

Partnership with the business community. CSSB 280 would require TWC to partner with the business community to meet the needs of business and to equip workers with skills demanded in the state. TWC would have to identify skills in demand, key sectors that would benefit from the commission's skill development programs, and employment opportunities offered in the business community. The commission would have to develop services to equip workers with skills required by the business community and to support the economic development activities of LWDBs.

Federal block grant programs. TWC would have to ensure that LWDBs assessed the skill development needs of recipients referred by the Choices program. If a LWDB determined that a recipient required specific training for a job paying self-sufficiency wages, the local board would have to place the recipient in training activities to improve the person's wage and employment outcomes and job retention. The board also would have to ensure that these training activities were targeted to occupations in demand by local employers. A LWDB could use a single list of targeted occupations developed for other purposes to satisfy this requirement. A Choices recipient could engage in

work and training activities concurrently. To administer this mandate, TWC would have to use Choices program funds and funds from other existing training programs.

The commission would have to compile certain wage information on recipients of Choices employment services. It would have to determine whether each recipient had been placed in employment paying wages that were at least 200 percent of the federal poverty level, adjusted for family size, and if a recipient placed in this type of job had earned that amount within a year of obtaining the job. TWC would have to report to the Legislature the percentage of recipients who met these wage criteria.

Integration of block grant and workforce services. TWC and the LWDBs would have to integrate the administration of several federal block grant programs and caseworker services associated with the programs. These programs would include TANF Choices training and employment programs, child care programs, Workforce Investment Act training employment programs, and food stamp training and employment programs. Each local career development center providing federal block grant program services would have to provide integrated services across the programs, eligibility determination for each program at a single point of contact, and case management at a single point. TWC and the LWDBs would have to ensure that state-level performance measures, rules, policies, and organization supported this integration.

By September 1, 2004, TWC would have to review the programs, rules, and organization to identify barriers to integration and would have to conduct three to five pilot programs to identify the best methods for integration. By January 15, 2005, TWC would have to submit a report to the Legislature on the findings of the review and the pilot programs.

Local boards. An organization comprising a member and staff director of each LWDB in the state would have to establish a LWDB advisory committee of nine members, who would be appointed by the organization's executive director. This advisory committee would have to include six members of LWDBs who served as members of the statewide LWDB organization and three LWDB staff directors from the organization, and it would have to represent different geographic areas of the state. The committee would have

to meet quarterly, report annually to TWC, and advise the commission on programs, policies, and rules that affected the LWDBs and the state's workforce delivery system.

In consultation with the LWDBs, the commission would have to establish criteria to evaluate each LWDB's capacity to administer local workforce funds and services. The criteria would address a board's ability to maintain fiscal management systems; retain qualified staff; work with local contractors and manage their performance across multiple programs; oversee and improve the operations of career development centers; and address long-standing oversight and performance problems for the board and contractors.

TWC would have to develop performance measures based on these criteria to evaluate each LWDB. Each year, TWC would have to compile information aggregating performance measure data to demonstrate overall performance across multiple programs. The evaluation and aggregated data would have to be placed on TWC's website.

Child care. TWC would have to evaluate annually the formulas used to distribute federal child-care development funds to LWDBs. This evaluation would have to assess each board's use of child care funds, each board's ability to meet child-care performance measures, the average cost of child care in each local workforce development area, the poverty rate in each area, the length of child-care waiting lists, and the number of vacant slots in each area.

TWC would have to evaluate the effectiveness of the child care program in helping participating parents to maintain employment. The commission would have to compile information on whether a parent who received subsidized child care and financial assistance from TANF found and maintained employment for one year. For a parent exclusively receiving subsidized child care, TWC would have to determine whether that parent had maintained employment or experienced a change in earnings after one year. TWC also would have to determine why a parent left the child care program and whether that parent had returned to or began receiving TANF assistance. TWC also would have to measure and evaluate the program's effectiveness at improving the training of child-care professionals and at collaborating with Head Start, the Texas Education Agency (TEA), the Texas Department of Protective and Regulatory Services, and the Health and Human Service Commission. TWC

would have to analyze and compile this information, make it available to LWDBs, and report the findings to the Legislature by January 15 of each odd-numbered year.

CSSB 280 would authorize TWC to administer a scholarship program for professional child-care training for eligible people. Current law requires TWC to provide such a program.

Adult literacy. TWC would have to collaborate with TEA to improve the coordination and implementation of adult education and literacy programs. TEA would have to evaluate the educational and employment outcomes of students participating in TEA adult education programs.

The commission would have to develop a demand-driven curriculum for workplace literacy and skills to help LWDBs equip workers with necessary skills for jobs in the state. The commission would have to identify any cost savings from designing curricula for specific industry sectors and would have to solicit assistance from workers, employers, and LWDBs in developing industry sector curricula. TWC would have to target five sectors likely to benefit from specific curricula; pilot test the curricula within those targeted sectors; adjust the curricula based on worker and employer feedback; and evaluate the ability of participants to master basic skills from these curricula. These requirements would expire September 1, 2005.

TCWEC would have to evaluate adult education and literacy programs administered by TEA and TWC to identify areas of planning duplication, inadequate sharing of client information, and any other problems afflicting adult education programs. The two agencies would have to establish long-term strategies to address problems and would have to evaluate the outcomes of students participating in the adult education and literacy programs to ensure that the programs improved the students' employment prospects. TCWEC would have to include in its annual report a list of the specific problems and the results of measures taken to address those problems.

Career schools. CSSB 280 would change each reference to a proprietary school in current law to "a career school or college." A closing career school or college would have to pay a refund to each student owed a refund under the law. Each owner of a closing career school or college to which a certificate of

approval had not been issued would be personally liable for any refund. TWC could set a hearing to decide whether to issue a cease-and-desist order against a person charged with operating a career school or college without a certificate from TWC if a person that TWC suspected of operating an unlicensed career school or college had not responded to more than one written notice. The commission could refer such a matter to the attorney general's consumer protection division.

The bill would increase from \$200,000 to \$400,000 the amount in the career school tuition protection fund below which TWC must collect a fee from career schools or colleges. Before September 1, 2005, that amount could not exceed \$300,000. The fee could be collected in order to bring the fund balance to \$500,000, rather than \$250,000, but before September 1, 2005, the balance could not exceed \$375,000. TWC would have to attempt to provide a full refund to each student of a closed career school or college. Partial refunds could be provided if sufficient funds were not available to provide full refunds. In determining the amount of a partial refund, TWC would have to consider the amount of money in the fund, the cost of claims against the fund from the school closure, the average cost of a claim in the past, and the availability of other licensed career schools or colleges at which the student could complete the training.

Unemployment compensation fund. CSSB 280 would rename the unemployment insurance Advance Interest Trust Fund as the Obligation Trust Fund and would make several changes to fund administration. The fund would be a dedicated trust fund outside the state treasury that TWC and the governor could use to pay bond obligations and expenses in addition to principal and interest on advances from the federal unemployment trust fund. An unemployment obligation assessment would have to be imposed if an interest payment on an advance from the federal trust fund was due, the money to make this payment was not available, bond obligations were due, and money to pay these bonds was not available.

The assessment rate would be the total amounts required to make the necessary payments. TWC would have to set an assessment rate needed to pay interest on the federal advance, but not to exceed two-tenths of 1 percent. The rate would have to be sufficient to ensure payment of bond obligations and to provide an amount necessary to enhance investor acceptance of the bonds.

The rate would have to use an employer's experience rating from the previous year and would apply to the employer's unemployment tax wage base for that year. Revenue from the assessment could not be transferred to the compensation fund unless all bond obligations had been paid in full.

If TWC decided that bond issuance was necessary to avoid borrowing or refinancing a loan from the federal unemployment trust fund and that bond financing was the most cost-effective way to fund benefits, the commission could ask the Texas Public Finance Authority (TPFA) to issue bonds on its behalf. TWC would have to determine by resolution that bonds would save money for the state and employers. TWC would specify the maximum principal of the bonds, up to \$2 billion, and the maximum term, up to 10 years. The principal could be increased to pay the costs of issuance, provide a bond reserve fund, and capitalize interest. TPFA would have to issue bonds requested by TWC and determine the best method and type of sale. TPFA could enter into a credit agreement in connection with the bonds.

Proceeds could be deposited with a trustee selected by TPFA or held in a dedicated trust fund. TWC would have to use proceeds exclusively to pay the principal and interest from federal advances, pay unemployment benefits, pay the cost of the issuance, provide a bond reserve, and pay capitalized interest on the bonds for a period not to exceed two years. Any excess money could be used to buy outstanding bonds or, if none were outstanding, transferred into the unemployment compensation fund.

TWC would have to collect an annual unemployment obligation assessment on each employer with an experience rating if any bonds authorized under the bill were outstanding. TPFA would have to notify TWC of the amount of its bond obligations in time to allow TWC to assess the annual rate of the unemployment obligation assessment. TWC would have to deposit all revenue from the assessment into the obligation trust fund, where it could be invested. TWC would have to pay for the bonds by pledging revenues received from the unemployment obligation assessment and amounts on deposit in the trust fund, along with any bond reserve fund. Revenue from the assessment that exceeded bond obligations and expenses could be used to pay obligations the subsequent year, buy outstanding bonds, or pay the principal on advances from the federal trust fund, or could be deposited into the unemployment compensation fund.

A bond issued under CSSB 280 would not be a debt of the state or of any state agency or political subdivision and would be payable only from revenue from the unemployment obligation assessment. The state could not restrict TWC's right to pay for bonds, nor could it impair the rights of bondholders. Bonds issued under the bill would be tax-exempt.

Transfer of unemployment compensation experience rates. CSSB 280 would add criteria that would have to be met for TWC to approve the transfer of an unemployment insurance experience rating from a previous to a subsequent employer. The application to TWC would have to be filed within a year of the acquisition, and the applicants would have to have shown that the acquired portion of the organization was capable of functioning independently from the previous employer. Also, wages attributable to an organization would have to be solely attributable to services provided on behalf of the organization. The commission could deny a transfer if it determined that the primary purpose of the acquisition had been to qualify for a reduced unemployment tax rate by circumventing or manipulating the experience rating system.

Across-the-board provisions. CSSB 280 would add standard sunset language governing conflicts of interest, equal employment opportunity, standards of conduct, grounds for removal of the policymaking body, training, handling of public complaints, and public input.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

TWC should be continued, as it provides essential employment, job training, child care, and unemployment insurance services. However, because of the commission's broad and challenging relationship with the LWDBs, as well as the constantly changing nature of the Texas economy, TWC should undergo sunset review again in six years, rather than 12.

Governing structure. TWC's constituents are well served by the current governing structure of three appointed commissioners and one executive director. This arrangement allows the commission to balance appropriately the interests of labor, business, and the public and to separate the policy-making aspects of the commission from its day-to-day operations. The three-member structure allows transparency and openness in the commission's deliberations

and encourages responsiveness to the public. The three-member commission gives the Legislature a broader voice in TWC's operations, contributes to long-term stability in the commission's policies, and retains institutional memory within the commission.

Partnership with the business community. If TWC is to serve job seekers effectively, its programs must address the needs of business. Recognizing that without employers, there would be no jobs for the people that the commission serves, TWC was created with employers as its primary customers. The Legislature should underscore this purpose by requiring TWC to partner with the business community by identifying the needs of businesses and by tailoring training programs to meet those needs.

Federal block grant programs and LWDBs. To serve workforce program participants effectively, LWDBs must offer a single point of contact for people to navigate the maze of programs and requirements that can confuse and intimidate potential customers. Under CSSB 280, a person could visit a single location to obtain eligibility confirmation and counseling on a range of state and federal programs designed to end unemployment and dependence on welfare, speeding the person's transition to successful employment.

CSSB 280 also would improve collaboration between TWC and the LWDBs, on which the commission's success hinges. The advisory committee created by the bill would improve communication between state and local workforce officials, while the bill's prescriptions to evaluate the use of TWC funds by LWDBs would ensure uniform and effective use of the state's limited workforce development resources.

Adult education. CSSB 280 would improve the effectiveness of TWC and TEA adult education and literacy programs by ensuring that these programs provided their students with needed skills. These education programs would benefit participants most by ensuring that the skills being taught would lead to employment and self-sufficiency. A pilot program for this initiative would allow TWC to understand the best method for administering a demand-driven adult education program. Also, the bill would reduce inefficiency and waste by requiring TCWEC to evaluate and coordinate adult education programs offered by TWC and TEA.

Child care. CSSB 280 would require TWC to take into account the unique needs of each LWDB by evaluating child-care data from each local workforce development area and revising the child-care allocation formula accordingly. TWC should base its allocation of child-care dollars on LWDB performance measures, waiting lists, child-care costs, and poverty rates to ensure that funds go to those areas of the state with the most need.

Evaluation. The bill would require several needed evaluation procedures for many TWC programs, a vital consideration in any successful workforce development system. For too long, federal, state, and local governments have thrown money at workforce development initiatives with little consideration of the effectiveness of these programs. CSSB 280 would require tracking of wage and employment outcomes for TWC's child care, job training, adult literacy, and other programs to enable the commission to adjust and improve those programs if they are not serving job seekers effectively.

Career schools. CSSB 280 would strengthen TWC's ability to protect students from unlicensed and fraudulent career schools. If a career school is unlicensed, TWC cannot determine whether it is financially sound, provides high-quality instruction, and uses a curriculum targeted toward occupations that are in demand. TWC needs cease-and-desist authority to shut down career schools that are operating without TWC oversight. Also, CSSB 280 would raise the tuition protection fund cap to help TWC provide tuition refunds to students harmed by the closure of a career school.

Unemployment compensation insurance. CSSB 280 would help end the costly manipulation of the unemployment compensation insurance program by businesses that organize acquisitions solely to avoid the experience rating system. This system was established to require an employer with a history of layoffs to pay its fair share of the unemployment insurance tax. The bill would allow TWC to deny an application for transfer of a rating if the commission determined that the primary purpose of the transaction was to circumvent the experience rating system.

CSSB 280 would allow Texas to borrow more cost-effectively to fund unemployment insurance benefits. Texas has borrowed hundreds of millions of dollars from the federal unemployment trust fund to pay for increased unemployment benefits during the recent economic downturn. By authorizing

revenue bonds secured by unemployment obligation assessments to refinance outstanding federal unemployment advances, Texas could save millions by taking advantage of tax-exempt bond interest that would be lower than the federal rate of interest.

Although some suggest that additional restrictions on unemployment insurance claimants are needed, now is not the time to adopt measures that would place new burdens on unemployed workers. Fraud in unemployment compensation is a complex and controversial issue that should be dealt with outside the sunset review process.

OPPONENTS
SAY:

Governing structure. The bill should change TWC's governing structure of three full-time commissioners, which contributes to confusion among TWC staff and often results in duplication, delays, and unnecessary expenses, and replace it with a more effective system, such as a single commissioner as was proposed in the first committee substitute for HB 2 by Swinford. Public input into TWC deliberations is too restricted, and reorganizing the commission's structure could address this problem.

Integration of services. Although the commission should continue to strive for integrated workforce services at the local level, CSSB 280 would establish this requirement without providing additional resources for implementation. The eligibility requirements for TWC's many programs vary greatly, and federal funds often are contingent on local adherence to these eligibility guidelines. LWDBs have come a long way in integrating case management and eligibility determination for all TWC programs, but CSSB 280 would add requirements without providing the means to meet them.

Payday law. CSSB 280 would not address some problems with TWC's administration of the state's payday law. For example, there is no requirement that the public information specialists who receive telephone requests from people seeking compensation for unpaid wages speak Spanish. Many of the workers, such as construction day laborers, who most often are taken advantage of by unscrupulous employers do not speak English. CSSB 280 should require that TWC employ at least one payday program operator who could communicate with Spanish-speaking people. Also, TWC consistently has a lengthy backlog of wage claims, and the commission dismisses complaints if it cannot locate an employer within a few weeks, leading to a

wage claim dismissal rate of close to 50 percent. These problems need to be addressed if TWC is to aid unpaid workers effectively.

Unemployment compensation insurance program. CSSB 280 would miss an opportunity to address many major shortcomings in the unemployment compensation program that excessively burden Texas employers. TWC often is unsuccessful in helping unemployed Texans find work before their benefits expire. CSSB 280 should require TWC to clarify and tighten work-search requirements and to provide regular work-search training to reinforce the agency's "work first" philosophy. It also should empower TWC to crack down on fraudulent unemployment insurance claimants who have contributed to the depletion of the unemployment insurance trust fund and to higher tax rates for employers. The bill also should strengthen TWC's authority to reclaim benefit overpayments. The unemployment insurance program has many flaws that need to be addressed if TWC is to serve the interests of Texas workers and businesses appropriately.

NOTES:

The committee substitute changed the Senate engrossed version of SB 280 by:

- directing TWC to become involved in reviewing the decision of an appeal tribunal regarding unemployment compensation;
- adding the requirement that TWC track the wages of TANF Choices participants;
- removing a requirement that TEA use existing funds to contract with TWC for the development of demand-driven adult education programs; and
- adding unemployment obligation assessment bond issuance authority for TWC to refinance federal unemployment insurance advances.