

SUBJECT: Abolishing TCPPD, transferring its functions to TWC

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Rose, Keough, Naishtat, Peña, Price

2 nays — S. King, Spitzer

1 absent — Klick

SENATE VOTE: On final passage, April 15 — 31-0

WITNESSES: (*On House companion bill, HB 1989*)

For — Chris Botello, Texas Advocates; (*Registered, but did not testify*: Shaun Bickley, Imagine Enterprises; Kendra Kerbow, Texas Advocates; Ginger Mayeaux, The Arc of Texas)

Against — Platt Allen, III, Lighthouse For The Blind of Fort Worth; John Luna, Texas Council on Purchasing from People with Disabilities, John Moore; (*Registered, but did not testify*: Deborah Cameron, James Cameron, and William Cameron, Reliable Facilities Service, Inc.; Vikki Kezar, Medina County Workshop, Texspice; Kimball Kuhn, Tania Kuhn, and Charles Shavers, Travis Association for the Blind; and five individuals)

On — Erick Fajardo and Ken Levine, Sunset Advisory Commission; Tanya Lavelle, Easter Seals Central Texas; (*Registered, but did not testify*: Edward Serna, Texas Workforce Commission; Robert Wood, Comptroller of Public Accounts)

BACKGROUND: The Texas Council on Purchasing from People with Disabilities (TCPPD) was established as a policy-making body to encourage employment opportunities for Texans with disabilities through the State Use Program, which requires state agencies to purchase products and services provided by people with disabilities on a non-competitive basis. This program's purpose is to enable people with disabilities to achieve maximum

independence through useful and productive employment.

TCPPD oversees the State Use Program and provides it with guidance and leadership by performing the following duties:

- contracting with a central nonprofit agency, currently TIBH Industries, to administer the program;
- establishing criteria for and certifying all community rehabilitation programs (CRPs) that participate in the program;
- approving products and services to be set aside for non-competitive purchase through the program; and
- determining the fair market price and added value of all products and services provided through the program.

The council has nine members. Three must be private citizens knowledgeable about the employment needs of people with disabilities and with current experience in the pricing and marketing of goods and services. One member represents a CRP, one represents a state agency that purchases from the State Use Program, and one represents people with disabilities. The remaining three members are chosen from any of these categories. Members are appointed by the governor for staggered terms of six years.

TCPPD employs one staff member to provide administrative support to the council and to serve as its liaison. The comptroller provides legal and other support, including providing information about the State Use Program to state agencies' program coordinators and access to the program's products and temporary employment services through the state purchasing portal. The comptroller also compiles and posts online agency exception reports explaining procurements made outside of the program.

TCPPD does not receive a state appropriation. It is funded annually by the central nonprofit agency, currently TIBH Industries, from a portion of the management fee charged to CRPs on the goods and services sold through the State Use Program. TCPPD sets the management fees and reviews them annually with input from CRPs and the public. CRPs include the

management fees in the price of products and services and pay the central nonprofit agency either 5 percent or 6 percent of sales revenue generated by the program.

In fiscal 2013, TCPPD spent a total of \$96,042, including \$69,434 on salaries and personnel costs, \$22,788 on travel expenses for council members, and \$3,820 on other operating expenditures. The total costs represent less than 1 percent of TIBH Industries' total revenue from management fees collected in fiscal 2013, a sum totaling \$7.5 million.

TCPPD last underwent Sunset review and was continued in 2003. The council's authorization will expire on September 1, 2015, unless it is continued.

DIGEST:

CSSB 212 would abolish the Texas Council on Purchasing from People with Disabilities (TCPPD) and would transfer its functions to the Texas Workforce Commission (TWC).

Transfer of functions. All powers and duties of TCPPD, including certain reporting requirements, would be transferred to TWC. Rules, forms, policies, procedures, or decisions of TCPPD would continue in effect until superseded by an act of the commission, and the validity of an action taken by TCPPD before it was abolished would not be affected by the abolition. All money, appropriations, contracts, leases, rights, bonds, and obligations of TCPPD would be transferred to TWC, including all personal property and records in custody of TCPPD. A reference in law to TCPPD would mean TWC.

TWC would be authorized, rather than required, to select and contract with one or more central nonprofit agencies to perform specified functions related to the administration of the State Use Program. The commission's authority to administer the program would be subject to Sunset review, and this authority would expire on September 1, 2021, unless continued by the Legislature.

The comptroller no longer would be the depository for all records

concerning the council's operations, as required in current law, and would not have to assign an upper-level management employee to ensure it provided the required support to TCPPD. The comptroller would cooperate with and provide necessary support to TWC in accordance with funds appropriated by the Legislature, including providing information and resources necessary for TWC to set the fair market price of all products and services for sale through the program.

State agencies would report to the comptroller and TWC, rather than TCPPD, the purchase of products and services available through the State Use Program but purchased from another business that was not a community rehabilitation program (CRP) or a central nonprofit agency. TWC would review and analyze information in these and other specified reports.

TWC advisory committee. TWC would establish an advisory committee to assist in establishing performance goals for the State Use Program and criteria for certifying a CRP for participation in the program.

The bill would specify the advisory committee's membership, including appointments and terms. The committee would have 13 members, including four representatives from CRPs that participated in the State Use Program, four representatives from organizations that advocate for persons with disabilities, one representative from a state agency that provides vocational rehabilitation services to persons with disabilities, and four persons with disabilities, of whom two would be employed by a community rehabilitation program that participates in the State Use Program. The committee would meet semiannually. The bill also would specify requirements for filling vacancies. TWC would have to appoint members to the advisory committee on or as soon as possible after September 1, 2015.

The advisory committee would be required to:

- establish specific objectives for the program;
- recommend criteria for certifying CRPs for participation in the

- program;
- develop performance measures that could be used by TWC to evaluate whether the program was meeting its objectives;
 - consider specified factors applicable to the program in developing the performance measures; and
 - provide input to TWC in adopting rules applicable to the program relating to specified employment-first policies.

The advisory committee could request administrative support from the TWC, which the commission would be required to provide.

The advisory committee would be subject to laws on open meetings and open records (Government Code, chapters 551 and 552), as well as requirements related to administrative procedures under Government Code, ch. 2001.

It would not be subject to Government Code, ch. 2110, which governs state agency advisory committees.

Management fee rate. TWC would be required to determine the best method to structure the maximum management fee rate charged by a central nonprofit agency for its services. The bill would remove language under current law specifying that the rate must be computed as a percentage of the selling price of the product or the contract price of a service. The percentage of the management fee paid to TWC would be set by the commission in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by both the comptroller and TWC in administering the State Use Program, including any costs associated with providing support to the advisory committee.

Certain sections of current law related to TCPPD would be repealed, including provisions regarding council composition, standards of conduct, member training, and the council's ability to employ staff.

The bill would take effect September 1, 2015.

SUPPORTERS
SAY:

CSSB 212 would strengthen oversight of the State Use Program by abolishing the Texas Council on Purchasing from People with Disabilities (TCPPD) and transferring responsibility for the program to the Texas Workforce Commission (TWC). These measures would help ensure that the program could meet its mission of increasing employment and wages and improving the lives of Texans with disabilities. The bill would address issues the Sunset Advisory Commission found with the TCPPD, including:

- a lack of specific goals or performance measures for State Use Program contractors;
- a decline in the number of people with disabilities employed or moved into competitive positions through the program;
- issues with the TCPPD contracting out the performance of its core functions; and
- conflicts of interest in the pricing of products.

The bill also would address issues with the lack of competitive bidding for contracts to administer the State Use Program. The TCPPD has followed state standards for submitting a request for proposal for this contract in the past, but for several years, TIBH Industries (the central nonprofit agency) was the only respondent, which meant that the contract was not competitively bid.

The bill would address perceived conflicts of interest related to the central nonprofit agency's involvement in the pricing of goods and services in the State Use Program. It would ensure that goods and services were priced fairly by requiring the comptroller's office to provide information and resources necessary for TWC to set the fair market price of all products and services for sale. It also would remove the requirement that the fee rate charged by a central nonprofit agency for its services be a percentage of the selling price of the product or contract price of a service. This would remove a conflict of interest that exists when the central nonprofit agency helps to set the price of products and thus determines its own management fee.

The TCPPD has had several chances to address the problems identified but has not implemented Sunset recommendations and proposals brought forward by the Legislature and the State Auditor's Office to improve the commission's oversight function. The bill would move the TCPPD's oversight functions to another agency with more experience with contracting to ensure that people with disabilities continued to benefit from the State Use Program.

By creating an advisory committee made up of representatives from organizations that advocate for persons with disabilities, a state agency that provides vocational rehabilitation, and individuals with disabilities, the bill would ensure that TWC had access to institutional knowledge about the importance of the State Use Program, as well as assistance in determining outcome measures.

OPPONENTS
SAY:

CSSB 212 could risk the success of the State Use Program by transferring its administration away from the TCPPD. The council has not had major problems and has been a successful volunteer oversight body that has many years of experience meeting the unique needs of people with disabilities in the workplace without receiving state appropriations. The TCPPD should be continued.

TWC and the comptroller's office do not have the same institutional expertise as the TCPPD in overseeing programs for people with disabilities and might not be as effective as the TCPPD in ensuring that people with disabilities had meaningful employment. When determining outcome measures, state agencies that are not familiar with people with disabilities might not understand the importance of measuring outcomes not only for people with visible disabilities but also for people with undiagnosed disabilities or mental illness. It would be unwise to significantly change the administration of a program that employs so many people with disabilities.

OTHER
OPPONENTS
SAY:

Responsibility for the State Use Program should be transferred to the comptroller's office, as recommended by the Sunset Commission, instead of being moved to TWC. The comptroller has more experience with state

contracts than TWC.

NOTES:

The House companion bill, HB 1989 by Burkett, was considered in a public hearing of the Human Services Committee on April 27 and left pending.

The House committee substitute differs from the Senate's engrossed version of the bill in that CSSB 212 would transfer all powers and duties of TCPPD to TWC rather than to the Comptroller of Public Accounts, among other provisions.