

BILL ANALYSIS

Senate Research Center
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S.B. 823
By: Shapleigh
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In the 78th Legislature, Regular Session, 2003, H.B. 2292 was passed into law with the intent of consolidating and streamlining the delivery of health and human services in Texas in order to create a more efficient network and save the state money. As part of this effort to make state government more cost-effective, H.B. 2292 included many new opportunities to privatize the delivery of certain services. Most notably, the law directs the Health and Human Services Commission (HHSC) to consider contracting with a private company to determine eligibility for public benefits through the use of call centers. H.B. 2292 also provided for the expansion of Medicaid managed care, the potential privatization of state schools and state hospitals, and more privatization of community mental retardation services, and paved the way for new contracts to manage the Medicaid prescription drug program and to test finger imaging as a means to reduce provider fraud in the Medicaid program. Some contracts have been awarded already as a result of these provisions while others are in the request for proposal or draft award stage. In the area of state schools and state hospitals and community mental retardation services, no contracts have been awarded, nor are any being considered at this time. In addition to the contracting opportunities created by H.B. 2292, the current legislature is considering full privatization of case management in Child Protective Services. Although the call center - "integrated eligibility" - contract has not been awarded yet, HHSC has adopted rules governing the use of call centers that explicitly prohibit the establishment of any call center operations outside of the state of Texas.

H.B. 2292, 78th Legislature, Regular Session, 2003, provided for the privatization of government functions only to the extent that contracting offers a more cost-effective way to provide services now administered by state employees. One of the major concerns is the loss of state employee jobs and the negative impact that this job loss will have on the state's economy. Proponents of privatization argue that this job loss will be minimal, since the winning bidder on these contracts will rehire the employees who are fired from state employment as a result of the contract.

S.B. 823 is intended to protect Texas workers and Texas jobs should the contracts provided for under H.B. 2292 be awarded. S.B. 823 prohibits companies that contract with health and human services agencies from using foreign workers to perform any work under the terms of their contract. S.B. 823 also prohibits their subcontractors from relying on foreign labor. Under S.B. 823, contractors and subcontractors are required to sign a statement that all work performed under the terms of the contract will be done by domestic workers, allowing this ban to be waived under limited circumstances, such as to protect the health and welfare of Texas citizens. S.B. 823 provides for the termination of a contract should a contractor or its subcontractor violate the terms of the contract relating to the use of foreign workers and requires the contractor to reimburse the agency for any work performed by a foreign worker. The intent of this legislation is to make the protection of Texas jobs - a concept set forth in HHSC call center rules - a statutory requirement for all new contracts awarded under H.B. 2292, 78th Regular Session, 2003.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle F, Title 10, Government Code, by adding Chapter 2264, as follows:

CHAPTER 2264. RESTRICTIONS ON USE OF FOREIGN WORKERS IN CERTAIN HEALTH AND HUMAN SERVICES CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. Defines "commission," "domestic worker," "foreign worker," and "public agency."

Sec. 2264.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only in relation to certain contracts.

[Reserves Sections 2264.003-2264.050 for expansion.]

SUBCHAPTER B. DOMESTIC WORKER REQUIREMENTS FOR SERVICE CONTRACTS

Sec. 2264.051. PROHIBITION ON CERTAIN HEALTH AND HUMAN SERVICES CONTRACTS THAT PROVIDE JOBS TO FOREIGN WORKERS. Prohibits a public agency from awarding a contract to a contractor or subcontractor that proposes to perform any portion of the contract with foreign workers.

Sec. 2264.052. STATEMENT IN CERTAIN BIDS FOR HEALTH AND HUMAN SERVICES CONTRACTS. Requires a contractor or subcontractor that submits a bid, proposal, or other offer to a public agency for a contract to include in the bid, proposal, or other offer a verified statement certifying that the work required by the contract and any subcontract performed under that contract will be performed only by domestic workers. Sets forth requirements for the contractor in submitting the required statement.

Sec. 2264.053. PROVISION IN CERTAIN HEALTH AND HUMAN SERVICES CONTRACTS. Requires a public agency that enters into a contract to include in the contract a provision stating that, in the event a contractor or subcontractor performs any part of the contract or a subcontract with foreign workers, the contract shall be terminated and the contractor or subcontractor shall be liable to the public agency in an amount equal to the amount paid by the public agency for the percentage of work that was performed with foreign workers.

[Reserves Sections 2264.054-2264.100 for expansion.]

SUBCHAPTER C. WAIVER OF DOMESTIC WORKER REQUIREMENTS FOR CERTAIN HEALTH AND HUMAN SERVICES CONTRACTS

Sec. 2264.101. AUTOMATIC WAIVER IN CERTAIN CIRCUMSTANCES. Provides that the requirements of Subchapter B are automatically waived in circumstances under which compliance would create a violation of the specific terms of the Agreement on Government Procurement of the World Trade Organization or any bilateral or regional free trade agreement with which the State of Texas must comply.

Sec. 2264.102. REQUEST FOR WAIVER IN CERTAIN CIRCUMSTANCES. Authorizes the Health and Human Services Commission (HHSC) to waive the requirements of Subchapter B for a particular contract or proposed contract for a specified period of time not to exceed one year. Sets forth requirements for a public agency in requesting a waiver under this section.

Sec. 2264.103. GRANT OF WAIVER. Provides that a waiver request submitted in accordance with Section 2264.102 is considered to be granted unless it is denied in writing by HHSC within 30 days after the date of HHSC's receipt of the request.

Sec. 2264.104. REJECTION OF WAIVER AFTER COMMENCEMENT OF CONTRACT. Requires that, if HHSC rejects a request for a waiver that is submitted in accordance with Section 2264.102 during the time the contract is being performed or after the contract has been completed, the contractor or subcontractor be liable to the public agency in an amount equal to the amount paid by the public agency for the percentage of work that was performed with foreign workers.

Sec. 2264.105. REPORT OF WAIVER REQUEST TO CERTAIN LEGISLATIVE COMMITTEES. Requires an agency, at the same time the public agency provides a written request for a waiver to HHSC under Section 2264.102, to provide a copy of that request to the House Committee on Human Services, the House Committee on Appropriations, the Senate Committee on Health and Human Services, and the Senate Committee on Finance.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.