

SUBJECT: Continuing the Texas Council on Purchasing from People with Disabilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Uresti, Naishtat, McCall, Olivo, Reyna

0 nays

4 absent — Christian, Miller, Villarreal, Wohlgemuth

WITNESSES: For — Frank Curtis, Texas Association of Goodwill Industries

Against — None

On — Vanessa Gonzalez, Sunset Advisory Commission

BACKGROUND: The Texas Council on Purchasing from People with Disabilities (TCPPD) oversees the State Use Program (SUP), a set-aside purchasing program under which state agencies must buy SUP goods and services made by people with disabilities, as long as the items meet agency specifications and have a fair market price. Its purpose is to promote personal growth and independence for the disabled while providing state government with reasonably priced goods and services.

TCPPD sets the fair market price for goods and services sold in the SUP. Goods are produced by community rehabilitation programs (CRPs). The criteria for recognizing and approving a CRP's participation in the SUP include that the CRP must be a government or nonprofit organization whose primary purpose is to employ people with disabilities; may not serve as a front for an entity who does not share the same primary purpose; and must pay 35 percent of a good's or service's price in wages to disabled employees. In addition, agency rules require that at least 75 percent of a product's labor hours be performed by people with disabilities. SUP goods and services are exempt from competitive bidding requirements.

TCPPD contracts with a central nonprofit agency (CNA), TIBH Industries, to administer the program. TIBH acts as the interface between CRPs and state

agency purchasing personnel, markets SUP goods and services, and processes orders from state agencies. Each CRP pays the CNA a management fee for all goods and services it sells through the SUP. TCPPD sets the fee, which averages 6 percent, as a percentage of the revenue generated from the sale of a product or service.

TCPPD underwent sunset review for the first time in 2002. Its predecessor agency was reviewed in 1983, then replaced by TCPPD in 1995. The council has nine members appointed by the governor to serve staggered six-year terms. It has one employee but also receives legal assistance from the Texas Building and Procurement Commission (TBPC). TCPPD spent \$54,792 in fiscal 2002. Though it is authorized to spend up to \$112,500 in fiscal 2003, TCPPD has approved a budget of \$67,892. The council receives appropriated receipts from a portion of the sales revenue generated by the SUP. Unless continued by the Legislature, TCPPD will expire September 1, 2003.

DIGEST:

HB 677 would continue TCPPD until September 1, 2015. TCPPD would have to adopt rules by January 1, 2004, establishing a certification procedure for recognizing CRPs. The procedure would have to include a committee of three TCPPD members to review CRP applications and issue recommendations to the full council. TCPPD could delegate administration of this procedure to the CNA. TCPPD or the CNA could inspect a CRP for compliance with the certification criteria. The certification committee would have to review inspection results and make subsequent recommendations to TCPPD.

TBPC would have to report to TCPPD any agency found through audits to be noncompliant with purchasing laws. TBPC also would have to help TCPPD analyze information from agency exception reports to improve agencies' SUP compliance. The state auditor would have to audit agencies' compliance with SUP purchasing and would have to report to TCPPD any noncompliant agencies, and TCPPD would have to help the agency comply.

By January 1, 2004, TCPPD would have to develop a formal process for annual review of the CNA's management fee. TCPPD would have to give notice of the hearing, solicit public comment, and include documentation provided by the CNA supporting the proposed management fee change. It would have to consider public comments, CNA documentation, and CRP documentation in making its decision.

HB 677 would require TCPPD to develop procedures to promote the SUP. It also would revise standard sunset provisions regarding public membership on the board, council members' training, policies differentiating council from staff responsibilities, complaint records, negotiated rulemaking and alternative dispute resolution, and technology policy.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 677 would build upon last session's efforts to strengthen the SUP, to the benefit of disabled workers and of state agencies. The 77th Legislature enacted HB 1691 by Maxey to strengthen TCPPD's oversight of the SUP and to encourage agencies' compliance. Although the SUP has had problems in the past, the 77th Legislature addressed them comprehensively. All affected parties support HB 677 as a continuation of TCPPD's improved oversight of the SUP.

In 2001, TCPPD offered more than 125 goods and services for sale, generated more than \$62 million in revenue, and employed nearly 7,000 people affected with mental retardation, mental illness, and chemical disorders. These people, who earned almost \$24 million in wages in 2002, otherwise might depend on government assistance. They learn job skills and gain personal independence. The program has placed an additional 2,000 people with disabilities in private-sector positions. State agencies benefit from the SUP by paying fair prices for good products, and they save time and money by not having to conduct competitive bidding for SUP purchases.

Many agencies fail to comply with statutory requirements to buy from the SUP, limiting the program's ability to achieve its goal of employing the disabled. HB 677 would use the combined resources of TCPPD, TBPC, and the state auditor to promote the SUP and to ensure compliance with state purchasing laws, leading to a substantial increase in the percentage of agency purchases from the SUP. The state auditor already audits agencies' compliance with laws requiring purchases from historically underutilized businesses and easily could expand its audits to include SUP compliance without requiring additional resources.

TCPPD needs to exercise greater oversight of the CNA and the CRPs, and this bill would improve the council's ability do so. Currently, CRPs report

their information to TCPPD, which only may recognize and approve them for SUP participation. HB 677 would require CRPs to be certified and would authorize TCPPD or the CNA to inspect them for continued compliance, ensuring that disabled people would benefit from the SUP. The bill also would help prevent an ineligible entity from using an eligible entity as a front to obtain an exemption from competitive bidding without fear of being investigated. Greater oversight would benefit participating CRPs, because the sales of all CRPs would suffer if any doubt arose about the SUP's integrity. Increased oversight also would benefit vendors that do not participate in the SUP by assuring them that other firms could not obtain unfair competitive advantages by posing as CRPs.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 261 by Shapleigh, passed the Senate on the Local and Uncontested Calendar on March 13 and was reported favorably, without amendment, by the House Human Services Committee on April 10, making it eligible for consideration in lieu of HB 677.