

SUBJECT: Requiring minimum wage for workers with disabilities in state program

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 7 ayes — Anchia, Frullo, Blanco, Larson, Metcalf, Perez, Raney

0 nays

2 absent — Cain, Romero

WITNESSES: For — Jean Langendorf, Disability Rights Texas; Ricky Broussard, Brooke Hohfeld, and Kendra Kerbow, Texas Advocates; Norine Gill and Kyle Piccola, The Arc of Texas; and six individuals; (*Registered, but did not testify*: Mark Cundall, ADAPT of Texas; Jacquie Benestante, Autism Society of Texas; Dennis Borel, Coalition of Texans with Disabilities; Michelle Dooley, Community Now!; Amy Litzinger, Easterseals Central Texas; Christine Broughal, Texans For Special Education Reform; Rene Lara, Texas AFL-CIO; Lee Johnson, Texas Council of Community Centers; Linda Litzinger, Texas Parent to Parent; Jan Bond; Sandra Bond; Wilson Pruitt; Alexa Schoeman)

Against — Dena Walts, Expanco, Inc.; David Toogood, Work Services Corporation; (*Registered, but did not testify*: Mason Campbell, Work Services Corporation)

On — Lauren Gerken, The Arc of Texas; Ashley Ford, Texas Council for Developmental Disabilities; Edward Serna, Texas Workforce Commission

BACKGROUND: 29 U.S.C. sec. 214(c) allows an employer to obtain a certificate from the U.S. Department of Labor authorizing the employer to pay less than the federal minimum wage to workers with disabilities. The process of obtaining such a certificate entails documentation and calculations relating to workers' productivity, which must be shown to be below that of other employees performing work of essentially the same type and quality for other employers in the same vicinity. An employer also has the burden of

demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

Human Resources Code ch. 122 establishes the Purchasing from People with Disabilities program, which allows state agencies and political subdivisions to procure products or services from nonprofit community rehabilitation programs (CRPs) that employ persons with severe disabilities. The program is overseen by the Texas Workforce Commission (TWC), in cooperation with the comptroller.

The purpose of the program is to encourage and assist persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities. In addition, the program provides governmental entities with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

DIGEST:

CSHB 885 would bar community rehabilitation programs (CRPs) from participating in the Purchasing from People with Disabilities program unless each worker with a disability employed by the CRPs was paid at least the federal minimum wage.

The bill would provide a transitional period during which the Texas Workforce Commission would assist CRPs in developing plans to increase the wages of all of their sub-minimum wage workers not later than September 1, 2022. After that date, all CRPs participating in the Purchasing from People with Disabilities program would be subject to federal minimum wage requirements.

To the greatest extent possible, each CRP in the program would need to ensure continued employment of affected workers after the wage increases mandated by the bill, in accordance with the plan developed with the commission.

If a CRP was unable to ensure continued employment of these workers after making the requisite wage increases, the CRP would be required to

work with the commission and any other governmental entity to seek for and obtain job training and employment services suitable for the former employees. At the request of a worker not retained, the commission also could assist the worker directly in finding new employment that pays at least the federal minimum wage.

The bill would authorize TWC to exempt a CRP from the federal minimum wage requirement with respect to a worker if the commission determined that the CRP would not be able to retain the worker at the federal minimum wage and the worker would not have success obtaining higher-paid work with a different employer.

CSHB 885 would allow the commission, on request of a CRP, to extend the compliance deadline for participation in the Purchasing from People with Disabilities program by up to one year. To obtain an extension, a CRP would need to request it by March 1, 2022, demonstrate that an extension would be in the best interest of the program's employees with disabilities, and submit a revised transition plan.

The bill also would require TWC to provide workers with information about benefits counselors who could counsel them about work incentives and the potential impact wage increases would have on the workers' eligibility for federal or state benefits programs. TWC would be required to make a referral to a benefits counselor to any worker with a disability who requested a referral.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 885 would promote the dignity and well-being of Texans with disabilities by removing taxpayer funding from organizations that paid workers with disabilities less than the federal minimum wage. The state should not be subsidizing a business model that runs counter to the intended purposes of the Purchasing from People with Disabilities program.

The vast majority of organizations that receive state contracts through the

Purchasing from People with Disabilities program already pay their employees with disabilities at least minimum wage, so this bill would affect relatively few organizations. TWC would work with those organizations to ensure continued employment for affected workers.

Current arrangements allowing workers in the Purchasing from People with Disabilities program to earn less than minimum wage leave these workers too vulnerable to manipulation and exploitation.

**OPPONENTS
SAY:**

CSHB 885 would eliminate the business case for employing persons with the most severe disabilities by requiring nonprofits to pay these workers full wages for only partial productivity. Nonprofits that employ such workers would need to make hard decisions about whether to cut jobs, reduce workers' hours, or absorb the new wage costs in some other way. The bill could lead to an increase in the number of unpaid volunteers at CRPs.

Some CRP employees who earn less than the federal minimum wage are satisfied where they are, enjoy their work environment, and would rather not choose a competitive, integrated work environment. Current statute allows these workers to work at their own pace without the pressure of having to meet certain productivity targets.