

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1828
By: Shapiro
State Affairs
5/2/1999
Committee Report (Substituted)

DIGEST

Currently, the statute outlining the duties and responsibilities of the Texas Council On Purchasing From People With Disabilities (council) is located in the Human Resources Code. Also, the current composition of the council and the description of their duties and powers is unclear and often construed as conflicting with the general mission of the council. C.S.S.B. 1828 transfers the Chapter from the Human Resources Code to the Government Code and clearly defines the responsibilities of the council in dealing with the purchasing of supplies.

PURPOSE

As proposed, C.S.S.B. 1828 regulates government purchasing from people with disabilities.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 122, Human Resources Code, to transfer to Title 10D, Government Code, redesignated as Chapter 2163, Government Code, as follows:

CHAPTER 2163. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

Sec. 2163.001. PURPOSE. Sets forth the purpose of the chapter. Deletes text regarding conformity with requirements of nondiscrimination and affirmative action. Redesignated from Section 122.001.

Sec. 2163.002. DEFINITIONS. Redefines “central nonprofit agency,” and defines “committee.” Makes a conforming change.

Sec. 2163.003. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES. Requires the Texas Council on Purchasing from People with Disabilities (council) to appoint certain members. Provides that appointed members of the council serve staggered terms of six years with the terms of one member, rather than three members expiring on January 31 of each odd-numbered year. Deletes text regarding certain representatives. Sets forth certain persons not eligible for appointment to the council. Deletes text authorizing the council to establish certain criteria. Makes conforming changes.

Sec. 2163.004. INFORMATION RELATING TO STANDARDS OF CONDUCT. Makes a conforming change.

Sec. 2163.005. MEMBER TRAINING. Requires the member to complete at least one course of the training program established under this section, before an appointed member, rather than a member, of the council may assume the member’s duties and before the member may be confirmed by the senate. Requires a training program established under this section to provide certain information to the member. Makes conforming changes.

Sec. 2163.006. SUNSET PROVISION. Makes conforming changes.

Sec. 2163.007. New heading: GENERAL DUTIES OF COUNCIL. Requires the central

nonprofit agency, rather than a subcommittee composed of three council members appointed by the presiding officer, to review the data used to determine fair market price. Requires the council to provide for the expansion and promotion of employment opportunities for people with disabilities. Authorizes the council to provide for receiving independent legal advice. Makes a conforming change.

Sec. 2163.008. GENERAL PURCHASING PROCEDURES; MANDATORY PROCUREMENT AT DETERMINED PRICE. Requires the General Services Commission (commission) to make awards under this section based on proposed goods and services meeting formal state specifications, if applicable, developed by the commission or the procuring agency or meeting commercial specifications, if applicable, approved by the commission of the procuring agency. Provides that requisitions for products and services required by state agencies are processed by the commission or by the procuring state agency, as applicable, according to rules established by the commission. Requires a suitable product or service that meets certain specifications to be procured from the central nonprofit agency, rather than a community rehabilitation program at the price determined by the council to be fair market price. Makes a conforming change

Sec. 2163.009. RECORDS. Provides that the council is subject to Chapter 552. Requires the inspection of the records of the council to be conducted with due regard to the privacy rights of persons with disabilities. Deletes text regarding records of the council and certain documents. Makes conforming changes.

Sec. 2163.010. COOPERATION WITH DEPARTMENT OF CRIMINAL JUSTICE. Makes a conforming change.

Sec. 2163.011. CORRELATION WITH RELATED FEDERAL PROGRAMS. Makes a conforming change.

Sec. 2163.012. New heading: DUTIES OF COMMISSION; INDEPENDENT MANAGEMENT. Requires the commission to provide clerical, administrative, and other necessary logistical support to the council and the committee. Prohibits the commission, the council, the Committee of Community Rehabilitation Programs (committee), or a state agency from assuming the marketing or fiscal responsibility of the central nonprofit agency for the expenses of marketing the products and services of persons with disabilities under the program or manage the daily operations of the central nonprofit agency. Deletes text regarding the operation of the program. Makes conforming changes.

Sec. 2163.013. RULES. Deletes text requiring the commission to provide legal support. Makes a conforming change.

Sec. 2163.014. PRODUCT SPECIFICATIONS. Requires a product manufactured for sale either through the commission or directly to any office, department, institution, or agency of the state under this chapter to be manufactured or produced according to specifications developed by the commission or other agency, if specifications are required for the product. Requires the production to be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state, if the commission or other agency has not adopted specifications for a particular product and specifications are required for the product. Makes conforming changes.

Sec. 2163.015. DETERMINATIONS OF FAIR MARKET VALUE. Provides that the fair market value of a service that may be acquired through negotiation is the negotiated price. Deletes text regarding the subcommittee. Deletes text regarding the cost of manufacturing a product. Makes a conforming change.

Sec. 2163.016. DEVELOPMENT OF SPECIFICATIONS. Prohibits certain offices from evading the intent of this section by slight variations from standards adopted by the commission, when the product or services produced or provided by persons with disabilities, in accordance with established commission standards, are reasonably adapted to the actual needs of the office. Deletes text regarding certain exceptions from the operation of the mandatory provisions. Deletes text regarding a certain list of items. Makes a conforming change.

Sec. 2163.017. **PROCUREMENT FOR POLITICAL SUBDIVISIONS.** Requires a product manufactured for sale to a political subdivision of this state or an office or department of a political subdivision, to be manufactured or produced according to specifications developed by the purchaser, if specifications are required. Authorizes political subdivision of this state, without requesting competitive bids or proposals from any person, substitute equivalent products or services produced by persons with disabilities under the provisions of this chapter. Deletes text regarding a nonprofit agency. Deletes text excluding certain political subdivisions. Makes conforming changes.

Sec. 2163.018. **CENTRAL NONPROFIT AGENCY.** Requires the council to enter into an agreement, rather than contract with a central nonprofit agency to take certain actions. Requires, rather than authorizes, the services of a central nonprofit agency to include certain necessary marketing and marketing support services. Requires the council to review services provided by the central nonprofit agency and renegotiate the agreement with the central nonprofit agency, at least once during each five-year period. Requires the renegotiated agreement to include the additional duties that the council requests from the central nonprofit agency. Requires the council to publish notice of the proposed agreement in the Texas Register, not later than the 60th day before the date the council renews an agreement. Requires the maximum management fee rate charged by the central nonprofit agency for its services to be computed as a percentage of the selling price of the product or the contract price of a service, to be paid at the time of the sale and may not exceed six percent unless approved by the council. Requires the percentage to be set by the council in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the commission and council in administering duties under this chapter. Authorizes the council to select an alternate central nonprofit agency to manage the program, while preserving the property rights of the former central nonprofit agency in its established business, contracts records, and programs, if the established central nonprofit agency ceases operations under this chapter or breaches the agreement. Authorizes the alternate central nonprofit agency to be chosen through an competitive application process, such as through the use of competitive sealed proposals, under which the council considers the qualifications of each applicant to perform the required duties. Deletes text requiring the council to promote increased supported employment opportunities for persons with disabilities. Deletes text regarding certain revenue. Makes conforming changes.

Sec. 2163.019. **CONSUMER INFORMATION; COMPLAINTS.** Requires the council or central nonprofit agency to prepare certain information. Requires the council and central nonprofit agency to keep an information file about each complaint file with the entity, rather than council relating to a product or service offered by a community. Makes a conforming change.

Sec. 2163.020. **PUBLIC TESTIMONY AND ACCESS.** Makes a conforming change.

Sec. 2163.021. **REPORTS.** Requires the council to file with certain persons a complete and detailed written report accounting for all sales of goods and services under this chapter and all wages paid to people with disabilities under this chapter, during the preceding state fiscal year. Deletes text regarding the annual report. Requires the central nonprofit agency to collect and provide to the council information needed for the report. Makes a conforming change.

Sec. 2163.022. **COUNCIL FUNDS.** Makes a conforming change.

Sec. 2163.023. **STRATEGIC PLAN; FINAL OPERATING PLAN.** Makes a conforming change.

Sec. 2163.024. **OPEN MEETINGS; ADMINISTRATIVE PROCEDURE.** Makes a conforming change.

Sec. 2163.025. **APPLICATION OF OTHER LAW.** Makes a conforming change.

Sec. 2163.026. **COMMITTEE OF COMMUNITY REHABILITATION PROGRAMS.** Requires the governor with the advice and consent of the senate to appoint a committee to assist the council and the central nonprofit agency in expanding and promoting employment opportunities for people with disabilities. Sets forth the appointment of the committee. Provides that the members of the committee serve staggered three-year terms expiring February 1 of every third year. Prohibits members of the committee from receiving compensation for service on the committee but entitles them to reimbursement for reasonable and necessary expenses incurred in

performing duties as a member of the committee. Provides that Chapter 2110 does not apply to the size, composition or duration of the committee. Requires the committee to advise the council and the central nonprofit agency regarding their duties under this chapter. Requires the committee to take certain actions.

SECTION 2. Provides that the terms on the council of the representatives that represent different disability groups and different state agencies or political subdivisions under the former Section 122.003(a)(2), Human Resources Code, expire on the effective date of this Act. Requires the governor to appoint the members of the committee in accordance with Section 2163.026, Government Code, as added by this Act, as soon as possible after the effective date of this Act. Requires the governor to appoint two members for terms expiring February 1, 2000, two members for terms expiring February 1, 2001, and two members for terms expiring February 1, 2002. Provides that the change in law made by this Act do not affect a contract between the council and the central nonprofit agency in existence immediately before the effective date of this Act for the terms of the contract. Provides that the entity serving as the central nonprofit agency immediately before the effective date of this Act continues as the central nonprofit agency unless and until another central nonprofit agency is chosen in accordance with Chapter 2163, Government Code, as amended by this Act.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 2163.003, Government Code, to set forth certain persons not eligible for appointment to the council.

Amends Section 2163.007, Government Code, to require the central nonprofit agency, rather than the committee composed of three council members appointed by the presiding officer, to review the data used to determine fair market price.

Amends Section 2163.018, Government Code, to require the maximum management fee rate charged by the central nonprofit agency for its services to be computed as a percentage of the selling price of the product or the contract price of a service, to be paid at the time of the sale and may not exceed six percent unless approved by the council. Authorizes the alternate central nonprofit agency to be chosen through an competitive application process, such as through the use of competitive sealed proposals, under which the council considers the qualifications of each applicant to perform the required duties.

Amends Section 2163.021, Government Code, to require the council to file with certain persons a complete and detailed written report accounting for all sales of goods and services under this chapter and all wages paid to people with disabilities under this chapter, during the preceding state fiscal year. Requires the central nonprofit agency to collect and provide to the council information needed for the report.

SECTION 2.

Adds Subsections (c) and (d), to provide that the changes in law made by this Act do not affect a contract between the council and the central nonprofit agency in existence immediately before the effective date of this Act for the terms of the contract. Provides that the entity serving as the central nonprofit agency immediately before the effective date of this Act continues as the central nonprofit agency unless and until another central nonprofit agency is chosen in accordance with Chapter 2163, Government Code, as amended by this Act.