Sunset Advisory Commission

Staff Report

Texas Council for Developmental Disabilities

Governor's Committee on People with Disabilities

Texas Council on Purchasing from People with Disabilities

October 2014

Sunset Advisory Commission

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Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators' offices and committee rooms. Photo Credit: Janet Wood

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Summary

Summary

While Texas spends millions of federal and state dollars providing direct services for people with disabilities, such as vocational rehabilitation, the state has long recognized the need to provide additional supports outside of the direct service-delivery system. Efforts to create specific programs to advance the rights of people with disabilities stem from policymakers' recognition of the difficulty large, direct-service programs have in fostering innovation. These efforts are also a corrective response to government's long history of relying on state-run institutions to serve people with disabilities and how such institutionalization often leads to the isolation, neglect, and abuse of this population. This report focuses on three disability-related agencies that operate outside of the state's health and human services enterprise — Texas Council for Developmental Disabilities (TCDD), Governor's Committee on People with Disabilities (committee), and Texas Council on Purchasing from People with Disabilities (TCPPD).

While consolidation is unfeasible, these agencies need refocusing and restructuring.

The Sunset review of these agencies began with the most logical question, "Why does the state need these three small, semi-independent agencies to help serve people with disabilities?" Ultimately, the review found that while all three agencies operate to advance the independence and improve the quality of life of Texans with disabilities, that is where most of the similarities end. The agencies serve distinct roles and vary greatly in funding and operations. Further, the review discovered that full consolidation was unfeasible due to federal restrictions, would not result in significant efficiencies, and could jeopardize the needed functions these agencies perform. The review concluded that while many of these agencies' functions continue to be needed, the agencies themselves need some refocusing and restructuring to strengthen their effectiveness and accountability, and improve how the State serves people with disabilities beyond the central health and human services system.

Texas Council for Developmental Disabilities. While Texas needs a state council on developmental disabilities to continue to receive federal funds, TCDD does not set clear expectations for or track the sustainability and ongoing impact of its grant-funded projects after grant funding ends. Without this information, whether grants have been effective and the overall impact of TCDD's work is unclear.

Governor's Committee on People with Disabilities. Being a trusteed program within the Office of the Governor elevates the committee's status in serving as a central source of information. However, several of the committee's statutory requirements extend beyond what it can realistically accomplish with its current resources, particularly since the committee has operated with significantly less funds than it has been appropriated for several years.

Texas Council on Purchasing from People with Disabilities. Finally, Sunset staff determined that TCPPD lacks the expertise and resources needed to effectively oversee the State Use Program. Despite the evolution of federal and state standards for employment services for people with disabilities, little has changed since TCPPD last underwent Sunset review in 2002. TCPPD has not set meaningful goals or performance measures for the program and does not measure how people with disabilities actually benefit from the program. Without this information, it is unclear whether the supposed benefits the State Use Program provides outweigh the additional costs of the program to the State.

The following material summarizes Sunset staff's recommendations on the Texas Council for Developmental Disabilities, Governor's Committee on People with Disabilities, and Texas Council on Purchasing from People with Disabilities.

Issues and Recommendations

Texas Council for Developmental Disabilities

Issue 1

The Texas Council for Developmental Disabilities Should be Continued, but Should Better Track the Outcomes of Its $4 Million Grant Program.

The federal government established state councils for developmental disabilities to explore a broader range of services beyond institutionalization, and to provide people with disabilities and their families access to the decision-making process on these services. Texas needs a state council on developmental disabilities to continue to receive federal funds of about $5 million annually to identify the most pressing needs of Texans with developmental disabilities and advance public policy and systems change to allow them to gain more control over their lives. Federal restrictions discourage consolidation of TCDD and its functions. To avoid any potential conflict of interest, federal law prohibits TCDD from being administratively attached to and supported by an agency that provides or pays for services to individuals with developmental disabilities and state council staff cannot perform any unrelated activities.

TCDD's primary activity is awarding grants for projects intended to foster innovation in services provided to people with developmental disabilities and expand state capacity within these services. However, TCDD does not set clear expectations for or track the sustainability and ongoing impact of grant projects designed to continue beyond the funding period. Without this information, TCDD and others cannot know whether these grants have been effective or the overall impact of TCDD's work. Identifying and tracking the sustainability and success of funded grant projects would help TCDD increase the effectiveness of its grant program and ultimately improve the long-term impacts of the services offered to people with developmental disabilities.

Key Recommendations

- Continue the Texas Council for Developmental Disabilities for 12 years.
- Direct TCDD to track the five-year outcomes of grant projects designed to continue beyond the TCDD funding period and compare actual outcomes to intended outcomes.

Governor's Committee on People with Disabilities

Issue 1

The Statutory Duties of the Governor's Committee on People with Disabilities Do Not Align With Its Current Resources and Capabilities.

The Governor's Committee on People with Disabilities aims to further opportunities and full participation for Texans with disabilities. While the committee does not provide direct services, it has a limited but important role serving as a central source of information on a wide array of disability-related issues. The committee functions to influence state policy, educate people on disability-related laws, and raise awareness of the achievements of and barriers faced by people with disabilities, with the intention of enabling people with disabilities to achieve success and full integration into society.

Several of the committee's statutory requirements do not align with its primary purpose, duplicate the work of other governmental entities, are no longer necessary, or extend beyond what the committee can realistically accomplish. Removing these provisions would allow the committee to focus on the duties it can realistically accomplish, such as analyzing and identifying gaps in the state's various long-term plans for people with disabilities and providing needed information about disability-related services and where to access them in a clear and user-friendly way. The committee also needs to ensure that it has the necessary resources to carry out its operations since it has operated with significantly less funds than the Legislature has appropriated it for several years, resulting in a large unexpended balance.

Key Recommendations

- Continue the Governor's Committee on People with Disabilities for 12 years.
- Remove provisions from the Committee's statute that do not align with the Committee's purpose and resources.
- Require the Committee to maintain and analyze information provided in the State's various long-range plans for people with disabilities.
- Direct the Governor's Office and the committee to work together to re-evaluate the amount of funding necessary for the committee to carry out its functions, and to ensure its legislative appropriations request and budget reflect the actual fiscal needs of the committee.
- The Senate Finance and House Appropriations Committees should consider using the committee's large unexpended balance as a method of finance for a portion of the committee's appropriations for fiscal years 2016–2017.

Texas Council on Purchasing from People with Disabilities

Issue 1

The Texas Council on Purchasing from People with Disabilities Does Not Ensure that the State Use Program Most Effectively Serves People With Disabilities.

The goal of the State Use Program is to assist people with disabilities in achieving maximum independence through useful and productive employment activities, while providing state agencies a method for complying with the statutory purchasing preference the Legislature granted to goods and services provided by people with disabilities. TCPPD, which oversees the program, does not adequately gather, analyze, and use meaningful outcome data to assess how well the program serves people with disabilities. Despite the evolution in standards and expectations for employment services for people with disabilities that occurred since TCPPD's last Sunset review in 2002, TCPPD has not implemented changes to the State Use Program that would modernize the program and advance the State's standards on employment services for people with disabilities. TCPPD has also failed to fully define the intended benefits of the program. In addition, TCPPD, a part-time, voluntary council, duplicates many of the product pricing and contract oversight functions housed at the Office of the Comptroller.

Transferring TCPPD's functions to the comptroller would establish clear performance outcomes for the State Use Program related to the employment of people with disabilities and improve contract oversight of the program's administration, thereby better ensuring the State Use Program benefits people with disabilities and ultimately, the State. Establishing an advisory committee would enable people with disabilities and their advocates to serve a role in the development of the State Use Program's direction and objectives and provide needed expertise to the comptroller in overseeing this program. Finally, studying the cost of continuing to administer the State Use Program would enable the Legislature to effectively determine if the program merits continued investment or whether other programs for employment of people with disabilities could provide greater impact and value.

Key Recommendations

- Place oversight and administration of the State Use Program at the comptroller's office and abolish the Texas Council on Purchasing from People with Disabilities.
- Require the comptroller's office to establish an advisory committee to set goals for the State Use Program and standards for participating community rehabilitation program certification.
- Direct the comptroller's office to study the cost to the State of continuing to administer the State Use Program.

Fiscal Implication Summary

Texas Council for Developmental Disabilities

These recommendations would not have a fiscal impact to the State. If continued, TCDD would continue to receive federal funding from the Administration on Intellectual and Developmental Disabilities for its operations.

Governor's Committee on People with Disabilities

Recommendation 1.5 — Adjusting the committee's budget to reflect the actual fiscal needs of the committee could result in a small savings since the committee has operated with significantly less funds than it has been appropriated for several years.

Recommendation 1.6 — If the Legislature agrees to use the committee's unexpended balance as a method of finance for a portion of the committee's appropriation for fiscal years 2016–2017, it would result in a one-time savings of $641,600 to general revenue.

Governor's Committee on People with Disabilities

Fiscal Year	Savings to the General Revenue Fund
2016	$641,600
2017	$0
2018	$0
2019	$0
2020	$0

Texas Council on Purchasing from People with Disabilities

These recommendations would not have a fiscal impact to the State, but would result in an increase of two FTEs at the comptroller's office.

Recommendation 1.1 — The recommendation to abolish the Texas Council on Purchasing from People with Disabilities and transfer oversight of the State Use Program to the Comptroller of Public Accounts would not have a fiscal impact to the State. The central nonprofit agency would continue to reimburse the State for the costs to fully administer the State Use Program. The comptroller's office estimates that three full-time staff would be needed to conduct contract oversight of the central nonprofit agency, administer the request for proposal, oversee CRPs' compliance with standards, and conduct pricing research for products and services proposed for inclusion in the program. The one existing full-time staff position dedicated to administrative services for the council would no longer be needed.

TCDD at a Glance

TCDD at a Glance

To receive federal funding through the federal Developmental Disabilities Assistance and Bill of Rights Act (DD Act), states must establish and maintain a state council on developmental disabilities.[1] In Texas, the Texas Council for Developmental Disabilities (TCDD) serves in this role. The federal government funds TCDD to engage in advocacy, capacity building, and systemic change activities that promote self-determination for people with developmental disabilities and their families. The textbox, *Definition of Developmental Disability*, provides the federal definition of developmental disability.[2]

TCDD's mission is to create change so that all people with developmental disabilities are fully included in their communities and exercise control over their own lives. Although TCDD does not provide any direct services, it carries out the following key activities to achieve its mission.

- Develops Texas' federally approved state plan that guides TCDD's advocacy, capacity building, and systemic change activities.
- Awards and monitors grants to state agencies, universities, nonprofit organizations, and for-profit businesses for projects that meet the TCDD State Plan goals.
- Provides input and recommendations to state agencies and legislators about ways to improve the services available to people with developmental disabilities.

Definition of Developmental Disability

A severe, chronic disability attributable to a mental or physical impairment or combination thereof; manifested before age 22; is likely to continue indefinitely; and resulting in substantial functional limitations in three or more of the following areas of major life activity:

- self-care,
- receptive and expressive language,
- learning,
- mobility,
- self-direction,
- capacity for independent living,
- economic self-sufficiency, and
- reflecting a need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

The DD Act also applies to any child from birth to age nine, who has a substantial, developmental delay or specific congenital or acquired condition, even if the child does not meet three or more of the criteria above, if the child has a high probability of meeting those criteria later in life without services and supports.

Key Facts

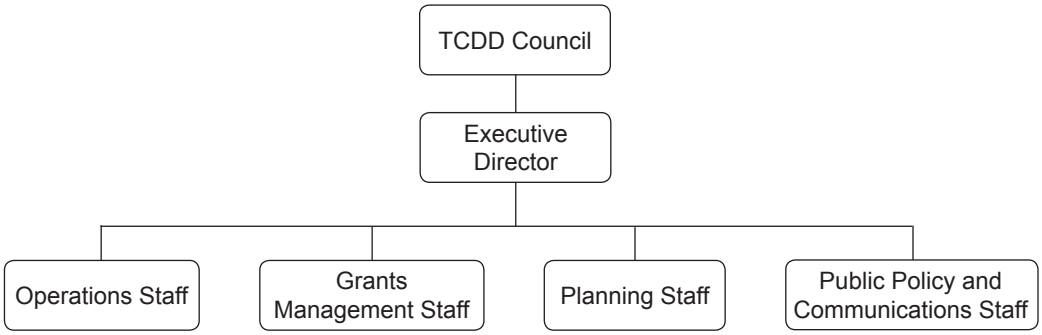
- **State Council**. Each state has discretion over the size of its state council on developmental disabilities, but federal law requires at least 60 percent of the members to be people with developmental disabilities, their parents or guardians, or their other immediate relatives. The remaining members must include representatives of state, local, and nonprofit entities that administer and are concerned with services for people with developmental disabilities.

  Texas' council has 27 members, including 12 relatives of people with developmental disabilities; six people with developmental disabilities; five state agency representatives from the Department of Aging and Disability Services, Department of Assistive and Rehabilitative Services, Department of State Health Services, Health and Human Services Commission, and Texas Education Agency; two representatives from the University Centers for Excellence in Developmental Disabilities; a

representative from Disability Rights Texas; and two local organization representatives. The governor appoints all of the council members who serve staggered, six-year terms; a member cannot serve more than two consecutive full terms. Appendix A details the current membership.

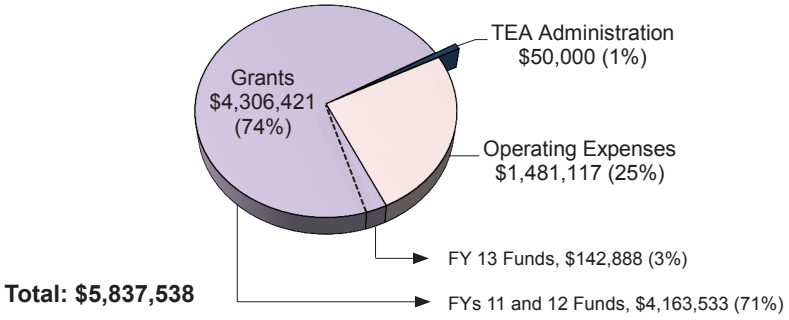
- **Staffing and Organization**. At the end of fiscal year 2013, TCDD employed 14 staff, although it has a cap of 18 employees. All staff members are state employees located in Austin, organized as shown in the *Texas Council for Developmental Disabilities Organizational Chart*. The DD Act allows the State to designate another state agency to provide administrative support to TCDD, but it cannot be an agency that provides or pays for services to people with developmental disabilities. The Texas Education Agency (TEA) has provided this support to TCDD since 2004.[3]

Texas Council for Developmental Disabilities Organizational Chart



- **Funding**. TCDD is almost entirely federally funded by the Administration on Intellectual and Developmental Disabilities. The amount of federal funding TCDD receives is based on the state's population and certain poverty factors. TCDD received about $4.8 million in fiscal year 2013 but, with the inclusion of funds carried forward from previous fiscal years, expended about $5.8 million. Of those funds, TCDD spent about $1.5 million on operating expenses such as salaries, information technology, and lease expenses. The balance of about $4.3 million was allocated to grant projects. TEA received $50,000 from the federal funds, the maximum allowable amount for administrative reimbursement. However, TEA's estimate of the actual cost of providing administrative support to TCDD was about $180,000.

Texas Council for Developmental Disabilities Expenditures – FY 2013



- **State Plan**. As required by the DD Act, TCDD develops a five-year strategic state plan that outlines the goals, objectives, and specific activities TCDD will implement each year. The textbox, *Summary of TCDD State Plan Goals*, summarizes the seven goals in the fiscal year TCDD 2012–2016 State Plan. These goals focus on supporting education, employment, and community capacity for people with developmental disabilities. The majority of the state plan goals and objectives are addressed through grant projects, discussed below.

Summary of TCDD State Plan Goals

1. Improving educational success for students with developmental disabilities.
2. Improving employment, income, and assets of people with developmental disabilities.
3. Conducting community education and outreach to promote inclusion of people with developmental disabilities.
4. Increasing the percentage of people with developmental disabilities' access to transportation.
5. Building community capacity to prevent unnecessary admissions to state supported living centers.
6. Providing leadership and advocacy skills training.
7. Conducting public policy activities, outreach, program development, grants monitoring, and general management.

- **Grants Management**. TCDD awards grants to projects that address one or more of the seven goals in the state plan, such as projects related to health and fitness, alternatives to guardianship, cultural competency, positive behavioral interventions and supports, and local advocacy networks. TCDD does not provide funding to projects whose primary goal is direct services.

  In fiscal year 2013, TCDD awarded 50 grants to 41 entities. Grant awards ranged from $10,000 to $250,000, averaging $75,000 each. The textbox, *State Plan Grant Example*, provides an example of a state plan goal, an associated objective, and one of three projects funded through a TCDD grant under this objective.

State Plan Grant Example

State Plan Goal 2: Establish at least two programs that assist Texans with developmental disabilities to gain competitive employment and/or to increase their personal income and assets, and that continue to operate after the completion of a maximum of three to five years of TCDD grant funding, by September 30, 2016.

Objective 1: Implement a program that provides supports and on-the-job learning opportunities to students with developmental disabilities in a post-secondary program that results in at least 80 percent of students who participate for two or more years in the program gaining jobs related to their desired careers within six months of completing their education, by March 31, 2016.

Activity 1: Continue to fund, monitor, and offer technical assistance to the selected grantee(s).

Grant: TCDD awarded a $225,000 grant to the Higher Education for People with Developmental Disabilities "Bridge to Career in Human Services" program at Texas A&M University to provide an inclusive postsecondary education that prepares people with intellectual and developmental disabilities for employment in health and human services through a year of training and field-based experience.

- **Advocacy and Public Information**. Federal law requires TCDD to train and promote people with developmental disabilities as self-advocates, with the end goal of creating social and governmental changes that enable all people with disabilities to participate fully in their communities and have control over their own lives. TCDD works with self-advocates and family members to formulate and

promote positions on state policies that affect people with developmental disabilities. For example, TCDD's position on employment is that the State should improve the system of employment services and income supports for people with developmental disabilities, including programs that help individuals develop assets and resources and help students with disabilities transition from school to work, by maximizing federal opportunities. TCDD also performs outreach and education to communities through trainings and public events on areas like best practices for serving people with developmental disabilities and leadership development that enables them to work within their communities to effect cultural and structural changes that lead to full inclusion of people with developmental disabilities. TCDD also shares information gathered from its grant projects with state agencies and the public to improve service delivery.

[1] 42 U.S.C.

[2] 42 U.S.C. Section 15002(8).

[3] Tex. Gov. Exec. Order No RP37, September 9, 2004 (20045692).

TCDD Issue

Issue 1

The Texas Council for Developmental Disabilities Should Be Continued, but Should Better Track the Outcomes of Its $4 Million Grant Program.

Background

Beginning in the 1960s, the federal government and, soon thereafter, state governments recognized that people with disabilities faced exclusion from many areas of public and private life because services at that time were predominantly oriented towards institutionalization. The federal government established state councils for developmental disabilities to explore a broader range of services beyond institutionalization, and to provide people with disabilities and their families access to the decision-making process on these services.

Today, Texas, like every U.S. state and territory, receives funding through the federal Developmental Disabilities Assistance and Bill of Rights Act (DD Act) to establish and maintain a state council on developmental disabilities. The mission of the Texas Council for Developmental Disabilities (TCDD) is to create change so that all people with developmental disabilities are fully included in their communities and exercise control over their own lives.

TCDD does not directly provide any services. Instead, TCDD develops a state plan to identify and address the need for and availability of services for people with developmental disabilities; grants funds to projects that address these needs or demonstrate different ways to provide services; and educates the public and policymakers about disability issues. State councils also serve as advocates for people with developmental disabilities to help ensure they receive the best services, benefit from best practice models, and participate in more inclusive state planning and policy processes.[1]

The DD Act requires designation of an agency to provide administrative support to the council, but prohibits that agency from being one that provides or funds services to people with developmental disabilities. As a result, TCDD is administratively attached to the Texas Education Agency (TEA), which provides TCDD's budgeting, payroll, accounting, human resource functions, and other administrative services.

Findings

The Texas Council for Developmental Disabilities and its functions are necessary to ensure the State meets the needs of Texans with developmental disabilities.

Texas needs a state council on developmental disabilities to receive funds provided through the DD Act to identify the most pressing needs of Texans with developmental disabilities and advance public policy and systems change to allow them to gain more control over their lives. The federal government provided TCDD about $4.8 million in fiscal year 2013. As of 2012, more than 475,000 people in Texas have a developmental disability, but only about 20 to 25 percent receive public developmental disabilities services.[2] Nationwide, the

More than 475,000 people in Texas have a developmental disability.

demand for publicly funded developmental disabilities services is outpacing population growth, particularly in Texas, where the long-term service delivery system struggles to keep pace with the state's rapidly increasing population.[3]

TCDD develops the federally required state plan that analyzes the need for and availability of services for people with developmental disabilities and their families.[4] The plan contains specific goals, objectives, and activities to address these needs, including improving educational success, gaining competitive employment, increasing access to healthcare and transportation services, and providing leadership development and advocacy for people with developmental disabilities.

TCDD grants are intended to foster innovation.

Each year, TCDD invests approximately 70 percent of its funds in grant projects intended to foster innovation in services provided to people with developmental disabilities and expand state capacity within these services. Examples of projects TCDD has funded include the creation of EveryChild Inc., a nonprofit organization that connects families in need with social services; training educators about Positive Behavioral Intervention and Supports for students with developmental disabilities; and the production of a video to instruct students with developmental disabilities about higher education. TCDD also funds self-advocacy training for people with developmental disabilities and their families to enhance their participation in the design of policies and services for Texans with developmental disabilities.

Federal restrictions discourage consolidation of TCDD and its functions within another agency.

To avoid any potential conflict of interest, federal law prohibits TCDD from being administratively attached to and supported by an agency that provides or pays for services to individuals with developmental disabilities. Additionally, the DD Act prohibits a state from assigning state council staff to perform any other activities.[5] These restrictions have resulted in most states establishing their state councils as separate entities rather than as part of a consolidated effort that might address related constituencies or issues. Of the 56 state and territorial councils on developmental disabilities, 46 receive administrative support from another state agency and 10 are established as separate, independent state agencies or entities, of which three are nonprofit organizations.

Consolidation of TCDD would not yield any savings to the State.

Consolidation would also not yield any savings to the State, as TCDD is federally funded specifically to carry out the duties expressed in the DD Act. Meanwhile, establishing TCDD as a stand-alone agency would raise its administrative costs and detract from its grant program. Due to TCDD's small size, TEA is able to provide administrative services in a cost-effective manner by absorbing TCDD's functions through TEA accounting, information technology, and other infrastructure. For TCDD to perform these functions itself would require hiring additional staff or contracting with a larger state agency for these services, which would reduce the amount of funding available for grants and advocacy activities.

TCDD does not set clear expectations for or track the sustainability and ongoing impact of grant projects after grant funding ends.

TCDD's primary activity is awarding grants for projects to meet the goals set in its state plan. In fiscal year 2013, TCDD obligated about $4.3 million to 41 grant recipients. Sunset staff evaluated how TCDD selects and monitors grant projects, and found the process to be thorough and fair. The textbox, *TCDD Grant Selection and Monitoring Activities*, lists some of these activities.

TCDD Grant Selection and Monitoring Activities

Evaluation

- Provide tutorials on the RFP process.
- Conduct two technical reviews of grant applications.
- Select an independent panel to review the applications and make funding recommendations.

Monitoring

- Determine needed monitoring activities of each project through a TCDD-developed risk assessment system.
- Provide grantees a monitoring orientation.
- Conduct initial on-site review.
- Require quarterly program reports from grantees.
- Provide technical assistance and budget analysis.

TCDD has not consistently established clear expectations for which aspects of projects are expected to be sustained, and TCDD's FY 2012–2016 State Plan marks the first time sustainability has been included as an expected outcome for some of its grant-funded projects. As a result, TCDD cannot accurately report what percentage of previous projects overall should have continued and whether they did or not. As described in the textbox on the following page, *Current State Plan Goals*, Goals 2 and 6 of the seven state plan goals expressly state that grant projects are intended to continue once TCDD funding has ended. However, TCDD does not have a mechanism to track the longevity or outcomes of projects designed to continue after grant funding ends. While TCDD maintains sufficient information about current efforts of funded grant projects, it has yet to develop a system to follow up on projects after funding ends to ensure their implementation continues to satisfy state plan requirements.

Without this information, TCDD and those affected by TCDD's work — people with disabilities, the Legislature, and service providers — cannot know whether TCDD's grants have been effective or the overall impact of TCDD's work. An unclear picture of the full impact of TCDD's grant projects prevents future grant applicants from learning from previous project successes and failures when designing their proposals and implementing their projects. TCDD's lack of a formalized mechanism to track and document project sustainability also hampers its ability to foster enhancements to service delivery and policies that pertain to people with developmental disabilities. Further, the Legislature and the agencies that serve people with developmental disabilities do not have documented evidence of the continuity of the funded projects to guide future decisions on investments in disability policies and services, and instead must rely on the institutional knowledge of TCDD's current staff.

TCDD does not track the longevity or outcomes of grant-funded projects.

Current State Plan Goals

Goal 1: Build collaborations within at least one geographic region served by an Education Service Center to demonstrate ways to create measurable improvement in at least two identified indicators of educational success for students with developmental disabilities by September 30, 2016.

Goal 2: Establish at least two programs that assist Texans with developmental disabilities to gain competitive employment and/or to increase their personal income and assets, and that continue to operate after the completion of a maximum of three to five years of TCDD funding, by September 30, 2016.

Goal 3: Conduct ongoing educational campaigns in collaboration with community leaders, organizations, and businesses to enable them to better support, include, and/or provide services to people with developmental disabilities by September 30, 2016.

Goal 4: In at least one Health and Human Service (HHS) region, increase by 1 percent the percentage of people with developmental disabilities surveyed who report they have access to the transportation they need to participate in their community in the manner they wish, by September 30, 2016.

Goal 5: Demonstrate how to prevent unnecessary admissions to State Supported Living Centers by supporting community organizations in at least one HHS region to increase their capacity to provide community-based services that support people with developmental disabilities to improve and maintain their health and to have access as needed to necessary healthcare, behavior supports, and/or respite, by September 30, 2016.

Goal 6: Work with others to double the number of identified leadership development and advocacy training programs that are able to provide culturally appropriate training for people with developmental disabilities without ongoing grant funding from TCDD, by September 30, 2016.

Goal 7: Each year the council and its committees receive staff and administrative support to effectively implement activities for at least 90 percent of all identified objectives noted under Goals 1–6, by September 30, 2016.

Recommendations

Change in Statute

1.1 Continue the Texas Council for Developmental Disabilities for 12 years.

This recommendation would continue the Texas Council for Developmental Disabilities for 12 years until 2027. Under this recommendation, TCDD would be continued in state law to allow the State to continue to receive funding through the federal Developmental Disabilities Assistance and Bill of Rights Act. This recommendation would also ensure the State continues to identify the most pressing needs of Texans with developmental disabilities and to advance public policy and systems change so people with developmental disabilities maintain more control over their lives.

Management Action

1.2 Direct TCDD to track the five-year outcomes of grant projects designed to continue beyond the TCDD funding period and compare actual outcomes to intended outcomes.

Under this recommendation, TCDD would develop a process to track outcomes for its funded grant projects five years after project completion. During the request for proposal and project development process, TCDD should determine the desired outcomes of each project, including any outcomes beyond the end of grant funding. When applicable, the outcomes should relate to whether the project successfully achieved the intended state plan goals as well as the continuation of the project after the funding ended.

TCDD could require grant applicants to address sustainability as part of their proposal if applicable to the particular grant, and could require grantees to submit data to TCDD three years after grant funding has ended as part of the grant contract.

TCDD should conduct an exit interview with each grant recipient at the end of the project's timeline to establish if and how the project will continue, and should maintain contact with the grantee to further monitor the project's success. TCDD should also take a returning grantee's sustainability success or failure into consideration as part of any future grant application.

For grant projects or specific aspects of projects intended to continue, TCDD should compile information on their status and annually report this information to council members, including any projects that ended and the reasons why they ended. Whether a project or aspects of a project continue after funding ends is not the only measure TCDD would use to measure success, but tracking this information would enable TCDD to adapt its grant program to improve project sustainability. Grants not designed to continue beyond the TCDD funding period would not need to be monitored for five years, but could still be accounted for in the annual grant project report. Better identifying and tracking the sustainability and success of funded grant projects would help TCDD increase the effectiveness of this grant funding, and ultimately improve the long-term impacts on the services offered to people with developmental disabilities.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. Although TCDD may have to adjust how it internally allocates funding and employees, tracking grant projects for five years and periodically reporting the results of this tracking could be accomplished with existing staff and resources. If continued, TCDD would continue to receive federal funding from the Administration on Intellectual and Developmental Disabilities for its operations. In fiscal year 2013, this amount totaled about $4.8 million. The Texas Education agency would continue to receive $50,000 from those funds to provide administrative support to TCDD.

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1 42 U.S.C. Section 15025(5)(J).

2 Texas Council for Developmental Disabilities and Texas Office for the Prevention of Developmental Disabilities, *Texas Biennial Disability Report 2012*, accessed September 4, 2014, http://tcdd.texas.gov/wp-content/uploads/2012/12/2012_biennial_report.pdf.

3 Ibid.

4 42 U.S.C. Section 15022.

5 42 U.S.C. Section 15024(c)(5)(K).

Committee at a Glance

Committee at a Glance

The Governor's Committee on People with Disabilities (committee) is a trusteed program within the Office of the Governor that supports opportunities for people with disabilities to enjoy full and equal access to lives of independence, productivity, and self-determination. To achieve this mission, the committee carries out the following key activities.

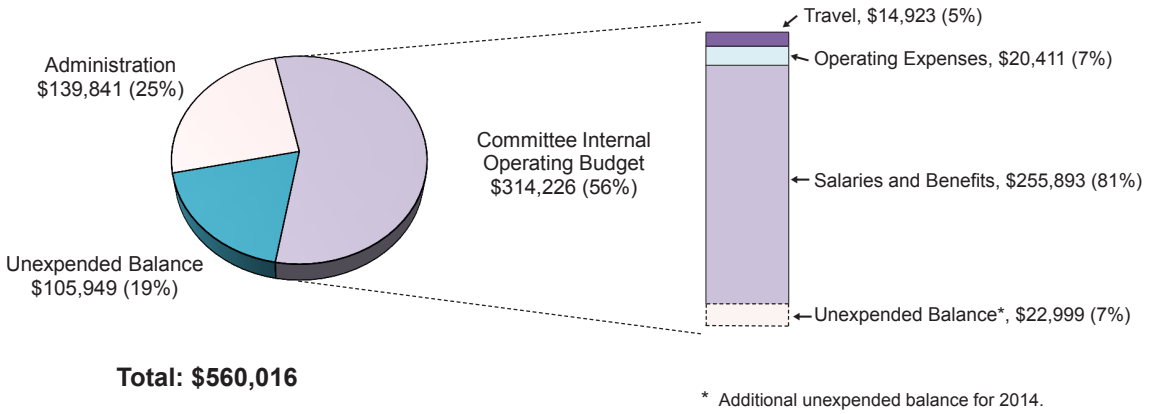
- Serve as a source of information and education on the abilities, rights, problems, and needs of people with disabilities.
- Advise the governor and Legislature on matters related to full participation of people with disabilities in all aspects of life, including developing policy recommendations.
- Provide technical assistance to stakeholders and the public on navigating services and laws related to people with disabilities.
- Collaborate with mayor's committees on people with disabilities; federal, state, and local entities; and public and private businesses on issues related to people with disabilities.
- Provide recognition of individuals and organizations that perform exemplary work in improving the quality of life for people with disabilities.

Key Facts

- **Governance**. The committee is composed of 12 governor-appointed members who serve staggered two-year terms, seven of whom must be people with disabilities. The chair is appointed by and serves at the pleasure of the governor. In addition, statute designates four ex officio members who represent state agencies that provide services to people with disabilities, and authorizes the governor to appoint additional ex officio members. The committee currently has seven ex officio members, including a representative from the Health and Human Services Commission, Department of Aging and Disability Services, Department of Assistive and Rehabilitative Services, Department of Family and Protective Services, Department of State Health Services, Texas Department of Licensing and Regulation, and Texas Workforce Commission. Appendix B details the current membership.
- **Funding and Staffing**. In fiscal year 2013, the Legislature appropriated $560,016 in general revenue to the committee. As a trusteed program within the Office of the Governor, $139,841 (25 percent) of the committee's legislative appropriation went to the Governor's Office to provide administrative support to the committee and the committee received $314,226 (56 percent) for its internal operating budget. About 90 percent of the committee's internal operating budget goes towards salaries and benefits for its five staff. The committee also had $105,949 in unbudgeted appropriations.

  The chart on the following page, *Governor's Committee on People with Disabilities Appropriations and Expenditures*, provides a breakdown of the committee's appropriations and expenditures for fiscal year 2013. The committee has the authority to carry forward its unexpended balance into the next biennium, which was $128,624 in fiscal year 2013.[1,2] In fiscal year 2014, the committee's unexpended balance had built up to $641,639.

Governor's Committee on People with Disabilities Appropriations and Expenditures – FY 2013



- **Information and Assistance**. The committee's primary function is to serve as a resource by providing information and education on the abilities, rights, concerns, and needs of Texans with disabilities. In fiscal year 2013, the committee staff sent more than 580,000 electronic bulletins, disseminating information on disability rights and resources and sent 16,430 emails to individuals on the committee's distribution list for local mayors' committees. The committee also provided information on various issues surrounding accessibility and disability rights on its website. Staff responded to over 1,800 requests for information and technical assistance from stakeholders.

  During each legislative session, committee staff monitors and provides updates on disability-related legislation as well as a summary of legislative outcomes to stakeholders. In fiscal year 2013, the committee members and staff also gave 19 presentations to a variety of groups on various disability-related topics.

- **Policy Recommendations**. Prior to each legislative session, the committee develops biennial policy recommendations related to Texans with disabilities' full inclusion in and access to community and work life. In 2013, the committee's 2013–2015 Policy Recommendations for the 83rd Legislative Session included 140 recommendations in 10 issue areas: access, communication, education, emergency management, health, housing, recreation, transportation, veterans, and workforce. The chart, *Examples of Policy Recommendations*, highlights some of the committee's recommendations.

Examples of Policy Recommendations

Issue Area	Policy Recommendation
Education	Utilize the existing Individualized Education Program process to address bullying prevention.
Transportation	Encourage local public transit programs to direct funding to improve accessible program design, including rural paratransit programs.
Workforce	Develop an educational campaign to improve employers' knowledge about the financial benefits of hiring and retaining employees with disabilities.

- **Recognition and Awards**. Each year the committee presents awards in three categories — journalism, business, and accessibility — as shown in the textbox, *Committee Award Programs*. The committee also holds an annual art competition and the winning artwork is used for the National Disability Employment Awareness Month poster in October.

Committee Award Programs

Award	Purpose	Award Categories	Number of Awards FY 2013
Barbara Jordan Media Awards	Recognizes journalists in all types of media that use their position to increase public understanding of people with disabilities, and what they have achieved and are capable of achieving.	6	11
Lex Frieden Employment Awards	Recognizes employers that hire and retain people with disabilities, and those that create inclusive work environments for people with disabilities.	7	7
Accessibility Award	The committee partners with the Accessibility Professionals Association to recognize businesses and organizations that go beyond legal requirements of both physical and service accessibility for people with disabilities.	1	3

[1] Rider 3, page 1-60, Article I (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (The General Appropriations Act).

[2] Section 53, (H.B. 1025), Acts of the 83rd Texas Legislature, Regular Session, 2013.

Committee Issue

Issue 1

The Statutory Duties of the Governor's Committee on People with Disabilities Do Not Align With Its Current Resources and Capabilities.

Background

In 1950, Governor Allan Shivers created the Governor's Committee on Employment for the Handicapped. Successive governors' executive orders continued the committee for four decades, and for much of that time, it was administratively attached to the Texas Rehabilitation Commission. In 1991, the Legislature established the committee in statute as the Governor's Committee on People with Disabilities and placed it within the Governor's Office. The committee's focus was also broadened from employment-related issues to all issues affecting people with any kind of disability. Today, the committee aims to further opportunities and full participation of people with disabilities by raising awareness and serving as a central source of information on issues that impact the lives of people with disabilities. The committee accomplishes this through several key activities as shown in the textbox, *Committee's Key Activities*.

Committee's Key Activities

Formulates policy recommendations addressing the needs of people with disabilities.

Provides subject matter expertise on disability-related issues to the governor, the Legislature, and stakeholders.

Provides technical assistance to stakeholders and the public on navigating services and laws related to people with disabilities.

Helps educate the public and others by providing information on a variety of disability-related topics.

Monitors and distributes disability-related legislative information.

Administers three awards programs recognizing those who employ people with disabilities, those who positively depict people with disabilities, and those that create accessible physical environments.

Findings

Texas has a continuing need for a state-level resource to raise awareness and provide information about the rights, needs, and abilities of people with disabilities.

Although several significant laws have been established to protect and promote the rights of people with disabilities, many of these individuals continue to experience barriers to full participation in society. While the exact number of people with disabilities in the state is unknown, estimates range from 2.9 million to 5 million Texans with some sort of disability.[1,2] While "people with disabilities" is a broad categorization of people with different needs requiring varying levels of support services, as a group, people with disabilities experience high levels of poverty and unemployment. The national unemployment rate for people with disabilities is two times the unemployment rate for people without disabilities, and 26 percent of adults with disabilities in Texas live below the federal poverty level.[3,4]

People with disabilities experience high levels of poverty and unemployment.

To address these disparities, governments at every level have set up various laws, services, and programs to address the social and physical barriers blocking the full participation of people with disabilities. The federal government prohibits discrimination and sets out a series of protections through the Americans with Disabilities Act (ADA). At the state level, many agencies provide direct services to address individual needs such as employment, housing, and long-term care. At the local-level, municipalities often have committees and programs to address the needs of people in the community with disabilities.

The committee has a limited but important role as a source of information on people with disabilities.

While the committee does not provide direct services, it has a limited but important role serving as a central source of information and increasing awareness of the rights, needs, and abilities of people with all disabilities. The committee focuses on providing information on issues concerning people with disabilities in 10 key issue areas: access, communication, education, emergency management, health, housing, recreation, transportation, veterans, and workforce. The information is intended to influence state policy, educate people on disability-related laws, highlight the achievements of and barriers faced by people with disabilities, and raise awareness of mechanisms for enabling people with disabilities to achieve success and full integration into society.

Also, being a trusteed program within the Office of the Governor elevates the committee's status and enables the committee to access and inform the governor and governor's staff on disability-related issues and policies. The committee also acts as a resource for the Legislature and has provided input on disability-related legislation.

State law charges the committee with several functions that extend beyond its capabilities and in some cases, duplicate those of other entities.

Statute directs the committee to perform 11 functions as shown in the textbox, *Summary of the Committee's Statutory Functions*. While the committee attempts to fulfill most of these responsibilities, several are redundant, no longer necessary, or extend beyond what the committee can realistically accomplish given its limited resources.

Several of the committee's statutory duties are redundant, no longer necessary, or unrealistic.

- **Long-range plan**. Although statutorily required, the committee has not developed a long-range state plan for people with disabilities and recommendations to implement the plan.[5] However, many other state entities are also required by state or federal law to produce long-range plans focused on a variety of topics affecting people with disabilities. For example, the Department of Aging and Disabilities Service is required to produce a plan on long-term care for people with intellectual and developmental disabilities and the State Independent Living Council is required to create a three-year plan for independent living services for people with disabilities.

Summary of the Committee's Statutory Functions [6]

(1) serve as a central information and education source and, as necessary, issue reports;

(2) provide information to advise the governor and governor's staff on full participation of persons with disabilities;

(3) submit to the governor and to the Legislature a biennial report that includes:

- (A) the status of the State's compliance with disabilities laws and recommendations to achieve further compliance, if necessary;
- (B) a long-range state plan for persons with disabilities and recommendations to implement that plan; and
- (C) any recommended changes in state laws relating to persons with disabilities;

(4) serve as the state's liaison to the office of Disability Employment Policy and other entities whose activities or concerns affect persons with disabilities;

(5) develop a statewide network of volunteer community-level committees to disseminate information about and implementation of disabilities laws;

(6) evaluate the State's compliance with ADA and other disabilities laws;

(7) provide information and technical assistance to promote and facilitate implementation of ADA and other disabilities laws;

(8) collect and evaluate data on employment of persons with disabilities by state agencies;

(9) work with legislative committees and with state agencies on laws and policies that affect persons with disabilities;

(10) promote the compilation and publication of state laws relating to persons with disabilities; and

(11) recognize persons and organizations for outstanding contributions to employment of persons with disabilities and awareness of issues impacting persons with disabilities.

Having numerous long-range state plans addressing the needs of people with disabilities spread across multiple agencies complicates the ability of policymakers, stakeholders, and the public to understand what the plans address and if gaps in planning exist. Continuing to require the committee to produce its long-range plan adds little value and detracts from the committee's main focus of being a resource. Rather, the state would benefit more from having a centralized repository for all state plans affecting people with disabilities, as well as a systematic review and analysis of them to get a complete picture of everything Texas is doing to address the needs of people with disabilities and to identify any gaps. The committee is well-positioned to perform such a task for the state, as it already serves as a central source of information about the rights, needs, and abilities of people with disabilities.

- **Evaluate compliance with federal and state disability-rights laws**. Statute directs the committee to evaluate the State's compliance with the ADA and other federal and state statutes related to the rights and opportunities of people with disabilities, and report on how well the State complies with these laws.[7] At the time the Legislature charged the committee with this function, the federal ADA law had just passed. Since this time, disability laws have evolved significantly and now address many aspects

of daily life such as employment, architecture, and housing. Evaluating the State's compliance with all of these laws is more than the committee can realistically accomplish.

- **Employment data**. Statute directs the committee to collect and evaluate data on employment of people with disabilities by state agencies.[8] However, numerous barriers prevent the committee from complying with this requirement. First, federal law protects a person's disability status. An employer can only obtain an employee's disability status if the employee volunteers the information, which renders employment data incomplete. Also, even if a person discloses his or her status, the law treats this information as confidential and requires stringent standards for its use and maintenance, which would impose significant administrative costs on state agencies and the committee.

Despite being a central source of information and education on disability-related issues, the committee's website lacks some basic, but much needed information on available disability services and how to access them.

The committee does not provide information about disability-related services in a user-friendly way.

State services for people with disabilities are often difficult to find and hard to navigate. While the committee's website enables the public to obtain information on key laws related to disability rights, it does not provide needed information about actual disability-related services and where to access them in a clear and user-friendly way. The committee provides a link to the Health and Human Services Commission's "Find Help in Texas" site and a link to the website for the nonprofit Texas Parent to Parent, but these links are not the most useful or straightforward way to find needed services for people with disabilities.

The committee's ex officio members, who represent agencies that provide services for people with disabilities, provide practical information about their services to the committee at its quarterly meetings. However, the committee does not provide or distribute this valuable information in way that is simple, direct, and easy to understand to those coming to the committee's website for help and information. For example, the committee could provide links and information on employment services provided through the State's vocational rehabilitation program.

The committee operates with significantly less funds than it has been appropriated for several years, resulting in a large unexpended balance.

In both fiscal years 2012 and 2013, the committee's internal operating budget and administrative support totaled about 80 percent of the amount the Legislature appropriated for its operations. In the 2014–2015 biennium, the difference is even more pronounced as the Legislature appropriated about $200,000 more to the committee each year, but the committee's internal operating budget

has remained relatively the same. In fiscal year 2014, the committee's budget represents only 54 percent of its legislative appropriation. While saving state funds can be appropriate, the committee and the Governor's Office are not meeting the legislative intent of this appropriation. The table, B*reakdown of Committee Appropriations*, provides a more detailed look at the gap between the committee's appropriations and its internal operating budget. This difference has led to an unexpended balance totaling over $641,600 as of fiscal year 2014. The committee's legislative appropriations request for fiscal years 2016 and 2017 is $767,583 for each year, despite not spending similar appropriations for the last several years.

The committee's operating budget represents only 54 percent of its appropriation.

Breakdown of Committee Appropriations

	FY 2012	FY 2013	FY 2014	FY 2015 (Budgeted)
Legislative Appropriations	$560,016	$560,016	$756,337	$756,337
Committee's Internal Operating Budget	($309,385)	($314,226)	($328,954)	($350,000)
Administrative Support	($139,841)	($139,841)	($81,190)	($81,190)
Unexpended Balance	$110,790	$105,949	$346,193	$325,147

Additionally, as a trusteed program, the committee pays the Governor's Office for administrative services, such as processing travel vouchers, providing payroll for the committee's five staff, and maintaining the committee's website. While this is a common and acceptable practice, the amount the committee pays for these basic administrative services seems high. In fiscal year 2013, about 25 percent of the committee's appropriation went towards administrative support. Although the amount decreased significantly in 2014 to only 11 percent, the committee did not receive this extra funding. Instead, most of this funding ended up in the committee's unexpended balance.

No significant benefits exist to justify consolidating or transferring the committee or its functions to another agency.

Transferring the committee could jeopardize its impact and visibility.

Sunset staff considered consolidating the committee with another entity that serves people with disabilities, including the Department of State Health Services, Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, and Texas Council for Developmental Disabilities. However, each of these agencies has its own particular focus and specific responsibilities relating to assisting people with disabilities. None serve as a central source of information and assistance for all issues affecting people with any kind of disability. Sunset staff found that transferring the committee to another agency would remove its direct ties to the governor, potentially undermining the impact and visibility of the committee's work. Additionally, consolidation would yield little savings to the State as much of the approximately $410,000 to perform the committee's functions would continue to be needed.

Recommendations

Change in Statute

1.1 Continue the Governor's Committee on People with Disabilities for 12 years.

This recommendation would continue the Governor's Committee on People with Disabilities for 12 years as a trusteed program within the Office of the Governor until 2027. The committee would continue to serve as a central source of information and resource for the governor, stakeholders, and the public on disability-related issues and services.

1.2 Remove provisions from the committee's statute that do not align with the committee's purpose and resources.

Under this recommendation, the committee would no longer be required to:

- collect data and provide reports on the State's compliance with the ADA and other federal and state statutes related to the rights and opportunities of people with disabilities;
- create a long-range state plan for persons with disabilities and recommendations to implement the plan; and
- collect and evaluate data on employment of persons with disabilities by state agencies.

Removing these provisions would more clearly define the committee's actual purpose and responsibilities in statute, and allow the committee to focus on the duties it can realistically accomplish.

1.3 Require the committee to maintain and analyze information provided in the State's various long-range plans for people with disabilities.

This recommendation would require the committee to collect and publish the links to all long-range plans for people with disabilities created by state agencies and their associated committees. The committee would also be required to review the long-range plans to identify any gaps in state laws and services for people with disabilities. The committee would not approve or enforce any of the plans, but would use the information gathered through the analysis to inform its biennial policy recommendations.

Management Action

1.4 Direct the committee to provide information on disability-related services on its website.

This recommendation would direct the committee to include on its website information related to disability-related services, including links to those services. Compiling information on all disability-related services in the state may be unrealistic, but the committee should at a minimum provide information on services offered by the agencies represented on the committee. The committee should rely on its ex officio members to provide information on services, but should post the information on its website in categories that can be easily understood by the public.

1.5 Direct the Governor's Office and the committee to work together to re-evaluate the amount of funding necessary for the committee to carry out its functions, and to ensure its legislative appropriations request and budget reflect the actual fiscal needs of the committee.

Under this recommendation, the Governor's Office and the committee should work together to better evaluate the committee's fiscal needs based on its actual duties and operations, as well as its past expenditures. As part of this evaluation, the amount the committee pays the Governor's Office for administrative services should be adjusted so that it is commensurate with the level of services provided. This evaluation should also take into account the committee's unexpended balance and any changes to the committee's responsibilities as recommended in this issue. The results of this re-evaluation should be used to develop the committee's legislative appropriations request as well as its operating budget. This re-evaluation should ensure that the committee has the funds necessary to fulfill its statutory charges without creating a large unexpended balance each fiscal year.

Change in Appropriations

1.6 The Senate Finance and House Appropriations Committees should consider using the committee's large unexpended balance as a method of finance for a portion of the committee's appropriations for fiscal years 2016–2017.

This recommendation would provide for the committee to use past appropriations for their originally intended purpose.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the State, but Recommendation 1.5 could result in a small savings. Under recommendation 1.5, the amount appropriated to the committee could likely decrease since the committee has operated with significantly less funds than it has been appropriated for several years, resulting in a small savings to the State. Recommendation 1.6 would allow for $641,600 in previously appropriated funds to be put to their originally intended purpose.

Governor's Committee on People with Disabilities

Fiscal Year	Savings to the General Revenue Fund
2016	$641,600
2017	$0
2018	$0
2019	$0
2020	$0

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[1] Texas Workforce Investment Council, *People with Disabilities*: *A Texas Profile*, (Austin: Texas Workforce Investment Council, 2013), p. 15.

[2] U.S. Department of Commerce: Economics and Statistics Administration, *Americans with Disabilities*:2010, accessed September 18, 2014, http://www.census.gov/prod/2012pubs/p70-131.pdf.

[3] "Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted," Bureau of Labor Statistics, U.S. Department of Labor, last modified August 18, 2014, http://www.bls.gov/news.release/empsit.t06.htm.

[4] Cornell University Employment and Disability Institute, *Disability Statistics from the 2012 American Community Survey*, accessed August 18, 2014, www.disabilitystatistics.org.

[5] Section 115.009 (3)(B), Texas Human Resources Code.

[6] Section 115.009, Texas Human Resources Code.

[7] Section 115.009 (3)(A) and (6), Texas Human Resources Code.

[8] Section 115.009 (8), Texas Human Resources Code.

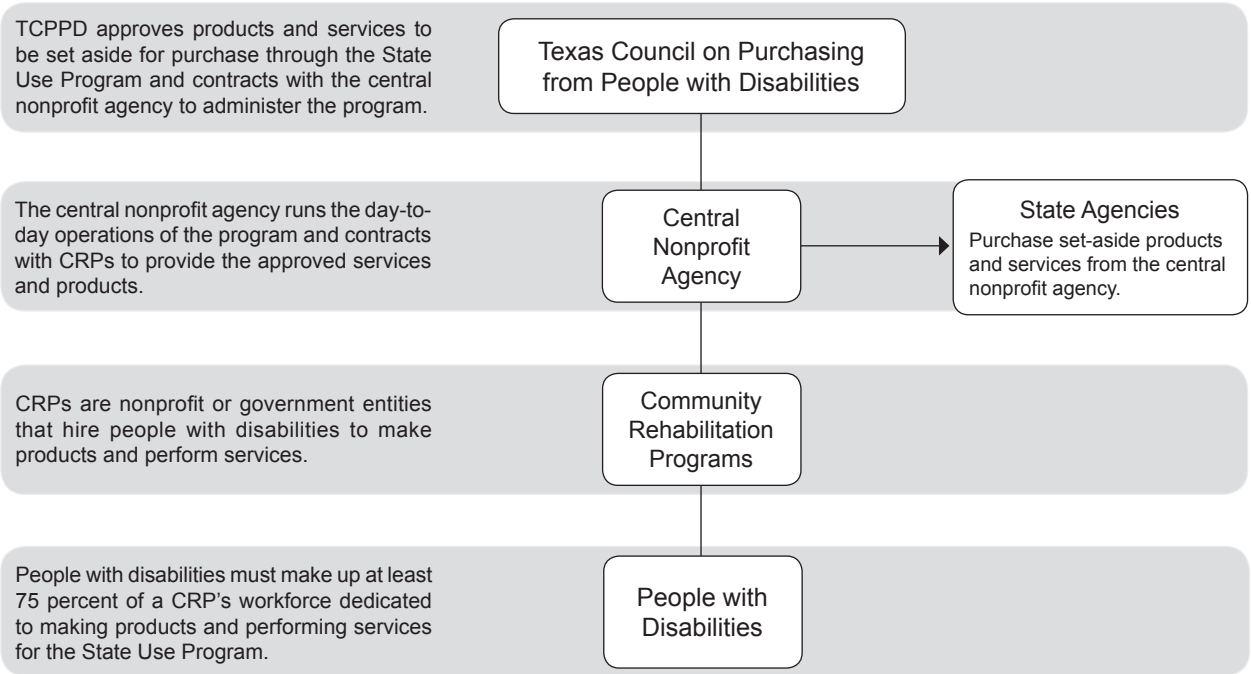
TCPPD at a Glance

TCPPD at a Glance

The Texas Council on Purchasing from People with Disabilities (TCPPD) oversees the State Use Program, a statutory mandate that requires state agencies to purchase, on a noncompetitive basis, products and services provided by people with disabilities.[1] Products available through the State Use Program range from office supplies, such as pens and copy paper, to food items, such as salsa and fried pies, to more specialized items like drug test and vaccination kits. Examples of services offered include temporary employment services, landscaping and park maintenance services, janitorial services, and document imaging services.

The purpose of the State Use Program is to enable people with disabilities to achieve maximum independence through useful and productive employment.[2] TCPPD's mission is to provide leadership and direction for the State Use Program. The flowchart below provides a general overview of the State Use Program. To achieve its mission, TCPPD is responsible for the following key activities.

- Design, execute, and oversee a contract with a central nonprofit agency, currently TIBH Industries, to administer the State Use Program.
- Establish criteria for and certify all community rehabilitation programs (CRPs) that participate in the State Use Program.
- Approve products and services to be set aside for noncompetitive purchase through the State Use Program.
- Determine the fair market price and value-added of all products and services provided through the State Use Program.



Key Facts

- **Governance**. The Council on Purchasing from People with Disabilities is the nine-member, governor-appointed policymaking body that oversees the State Use Program. Council members serve six-year staggered terms. Three members 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. Three other members must represent CRPs, state agencies that purchase from the State Use Program, and people with disabilities, respectively. The remaining three members must be chosen from any of the previously mentioned categories and the Governor must attempt to ensure that the categories are equally represented. The *Texas Council on Purchasing from People with Disabilities Members* chart details the current membership.

Texas Council on Purchasing from People with Disabilities Members

Council Member	Term	Qualification
John W. Luna, Chair	2009–2015	CRP Representative
Wanda Stovall, Vice Chair	2009–2015	Private Citizen
Jack Dan Bremer	2013–2019	State Agency Purchaser
Kevin Cloud	2012–2017	CRP Representative
Glenn Hagler	2012–2017	State Agency Purchaser
Kevin Jackson	2013–2019	Person with a Disability
Beverly Jackson-Loss	2013–2019	Private Citizen
Alfred Matson	2013–2019	CRP Representative
Dietrich M. von Biedenfeld	2012–2017	Private Citizen

TCPPD has three subcommittees. The Pricing Subcommittee reviews data on the fair market price for products and services submitted by the central nonprofit agency; the Certification Subcommittee reviews CRP certification applications submitted by the central nonprofit agency; and the Performance Subcommittee conducts an annual review of the central nonprofit agency and drafts TCPPD rules.

- **Staffing**. In fiscal year 2013, TCPPD employed one staff member to provide administrative support to the council, including serving as the council's liaison. The comptroller provides legal and other support to TCPPD, including providing State Use Program information to state agencies' State Use Program coordinators and access to state use products and temporary employment services through the state purchasing portal. The comptroller also compiles and posts agency exception reports online that explain the reasons for procurements made outside the State Use Program.

- **State Use Program Administration**. TCPPD oversees the State Use Program but contracts with a central nonprofit agency, TIBH Industries, to administer it. TCPPD's oversight role includes approving products sold through the program, including their fair market price, and setting the standards for CRP certification.

TIBH recruits and assists CRPs in developing suitable products and services for the State Use Program. TIBH presents these products and services to TCPPD, which approves the fair market price and value-added statement of each product and service. For service contracts, TIBH, CRPs, and customer agencies typically negotiate prices before presenting the services to the council. TIBH then contracts with CRPs to provide these products and services.

CRPs recruit and hire people with disabilities to provide the products and services offered through the State Use Program. In fiscal year 2013, 121 certified CRPs employing 6,424 people with disabilities participated in the State Use Program, including Goodwill Industries of Central Texas, West Texas Lighthouse for the Blind, and Austin State Supported Living Center. Although three-fourths of the CRPs' workforce dedicated to State Use Program goods and services must consist of people with disabilities, many CRPs hire people without disabilities as well to fill administrative duties or supervisory roles.

TCPPD sets basic standards CRPs must meet to be certified to participate in the program, including registering with the IRS as a nonprofit entity and maintaining a current fire inspection. CRPs must recertify every three years. The textbox, *State Use Program Employment and Wage Data*, provides additional information. Many CRPs also sell goods and services to entities outside of the State Use Program, such as the federal government. Although there may be some overlap in providers, these CRPs are specific to the State Use Program and do not relate to community rehabilitation programs certified through the Department of Assistive and Rehabilitative Services.

State Use Program Employment and Wage Data – FY 2013

Number of people with disabilities employed by the program	6,424
Number of people without disabilities employed by the program	1,550
Average hourly earnings paid to people with disabilities	$9.93
Average annual earnings paid to people with disabilities	$5,679
Number of people employed by CRPs paid less than minimum wage on average	684

- **State Use Program Funding**. TCPPD does not receive a State appropriation. Instead, TCPPD is funded annually by the central nonprofit agency from a portion of the management fee collected on the sales of goods and services through the State Use Program. In fiscal year 2013, TCPPD spent a total of $96,042, including $69,434 on salaries and personnel costs, $22,788 on travel expenditures for council members, and $3,820 on other operating expenditures.

  Both TCPPD and TIBH Industries are funded entirely from the management fees TIBH charges participating CRPs, as shown in the textbox, *Management Fees*. TCPPD sets the management fees and reviews them annually with input from CRPs and the public. CRPs include the management fees in the prices of their products and services and pay TIBH either 5 or 6 percent of the sales revenue generated by the State Use Program. For example, state agencies may buy a product from the State Use Program for $100. CRPs receive $94 to cover their costs and pay the salaries of the people with disabilities who produced the product. TIBH receives $6 to cover its cost to administer the program through which the product was sold as well as TCPPD's cost to oversee the program.

Management Fees 2013

Products: 6 percent

Services: 6 percent

Temporary Employment Services: 5 percent

In fiscal year 2013, state agencies and political subdivisions paid $7.5 million in management fees when purchasing $40.8 million in products and $93.6 million in services from the State Use Program. Less than 1 percent of TIBH's total revenue from the management fees paid for TCPPD's total costs.

- **State Agencies and Other Purchasing Entities**. In fiscal year 2013, 128 state agencies and 78 political subdivisions purchased products or services through the State Use Program. Statute requires state agencies to purchase products and services offered through the State Use Program that meet the reasonable requirements of the agency. Statute allows but does not require political subdivisions, such as cities and independent school districts, to purchase products and services through the State Use Program without going through a competitive bidding process. The table, *Top 10 Entities Purchasing From and Contracting With the State Use Program*, lists the State Use Program's 10 biggest consumers in fiscal year 2013 and the total amount spent by each entity on products and services procured through the program.

Top 10 Entities Purchasing From and Contracting With the State Use Program – FY 2013

Entity	Amount
Texas Department of Transportation	$41,878,854
Health and Human Services Commission	$19,822,255
Texas Department of Criminal Justice	$16,534,463
Office of the Attorney General	$9,594,215
Texas Department of Public Safety	$5,702,059
City of Houston	$5,341,204
Texas Commission on Environmental Quality	$2,571,239
City of Austin	$2,556,221
City of El Paso	$2,474,920
Texas Parks and Wildlife Department	$1,426,367

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[1] Sections 2155.138 and 2155.441, Texas Government Code and Section 122.008, Texas Human Resources Code.

[2] For this program, a disability is defined as "a mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment." Section 122.002, Texas Human Resources Code.

TCPPD Issue

Issue 1

The Texas Council on Purchasing from People with Disabilities Does Not Ensure That the State Use Program Most Effectively Serves People With Disabilities.

Background

The State Use Program represents a partnership between government and private nonprofit entities to promote employment opportunities for Texans with disabilities. The goal of the State Use Program is to assist people with disabilities in achieving maximum independence through useful and productive employment activities, while providing state agencies a method for complying with the purchasing preference the Legislature granted to goods and services provided by people with disabilities.[1] The Texas Council on Purchasing from People with Disabilities (TCPPD) serves as the oversight and policymaking body for the State Use Program and contracts with a central nonprofit agency, currently TIBH Industries, to administer it. TIBH contracts with local community rehabilitation programs (CRPs) that hire people with disabilities to provide goods and services for purchase through the program. Although there may be some overlap in providers, these CRPs are specific to the State Use Program and do not relate to community rehabilitation programs certified through the Department of Assistive and Rehabilitative Services.

Texas' State Use Program is modeled after the federal Javits Wagner-O'Day Program, enacted in 1938. The State first gave purchasing preference to goods produced by people with disabilities in 1957, but the legislation did not remove the products from competition. In 1975, the Legislature established the State Use Program in statute and established a procedure to set aside products made and services provided by people with disabilities for state agencies to purchase noncompetitively. Including Texas, 24 states have active state use programs.

The function of TCPPD has not changed much since its inception. TCPPD sets the fair market price for products set aside by the program, establishes the criteria for and approves participation of CRPs in the program, and contracts with a central nonprofit agency to run the day-to-day operations of the program. TIBH has been the central nonprofit agency since the program began. TCPPD specifically designated TIBH as the central nonprofit agency from 1978 until 2002, after state law changed in 2001 to require TCPPD to competitively contract out the role of the central nonprofit agency. TCPPD employs one staff to administratively support the council and the Comptroller of Public Accounts provides additional administrative and legal support for the program.

Findings

TCPPD has not set meaningful goals or objectives for the State Use Program and therefore cannot assess the program's overall success in serving people with disabilities.

The creation of the State Use Program clearly established the State's commitment to assisting people with disabilities achieve independence through productive employment. As such, the mission of TCPPD is to "further the state's policy

of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities."[2]

TCPPD requires TIBH to collect and report basic output measures, including the number of people with disabilities employed by the program, the wages paid to people with disabilities, and the number of people placed in competitive employment positions outside of the State Use Program. However, TCPPD does not formally use this data to assess the performance of the central nonprofit agency or the CRPs, nor does it use the data to measure the overall success of the State Use Program. TCPPD reports this data annually as a snapshot in time, which does not show how the program has performed over time, preventing TCPPD and others from identifying needed changes to the program.

The State has no yardstick by which to determine the success of the State Use Program.

Beyond the singular goal of securing paid employment, TCPPD has not set specific goals or performance measures in its rules, strategic plan, or contract with TIBH that allow for an evaluation of how well the program actually serves people with disabilities. Without clear goals and related *outcome* measures, the State has no yardstick by which to determine the success of the State Use Program.

- **Lack of performance information**. Information does not exist to determine whether or not the benefits the State Use Program provides people with disabilities outweigh the costs of the program to state agencies and the State overall. How much the State is spending on the State Use Program by requiring state agencies to purchase goods and services set aside from the competitive bidding process is unclear. Because the program removes products and services from the competitive market in perpetuity and allows TCPPD to set the market price without routine verification, the comptroller and state agency purchasers are unable to estimate the total cost or savings of purchasing products and services through the program, as opposed to through the free market. The table, *State Use Program Pricing Examples*, shows selected products and services recently added to the program, which TCPPD priced higher or lower than the competitive bid price.[3] However, this type of current price comparison data is not

State Use Program Pricing Examples

Product	TCPPD Price	Competitive Price
Bottle and industrial trigger sprayer	$20.23	$30.40
Screen cleaner kit	$7.52	$7.79
Light bar	$1,353.34	$1,230.00
Gift pack[4]	$292.80	$226.08
Janitorial service at state agency office location	$15,992.76 annually	$8,636.28 annually

available for all of the existing products and services available through the program. Without the calculation of the cost of the program to the State, it is unclear whether or not the program's benefits to people with disabilities outweigh this potential additional cost.

Without more specificity about the program's benefits, beyond simply employing people with disabilities, the Legislature cannot compare the program to other state services tasked with increasing the independence of people with disabilities. If, for instance, an overall goal of the program is to reduce reliance on other government services, not enough data exists to demonstrate whether vocational rehabilitation services or other employment services for people with disabilities provide comparable benefits to people with disabilities for a similar or lower cost to the State.

Not enough data exists to determine whether the benefits of the State Use Program outweigh the costs.

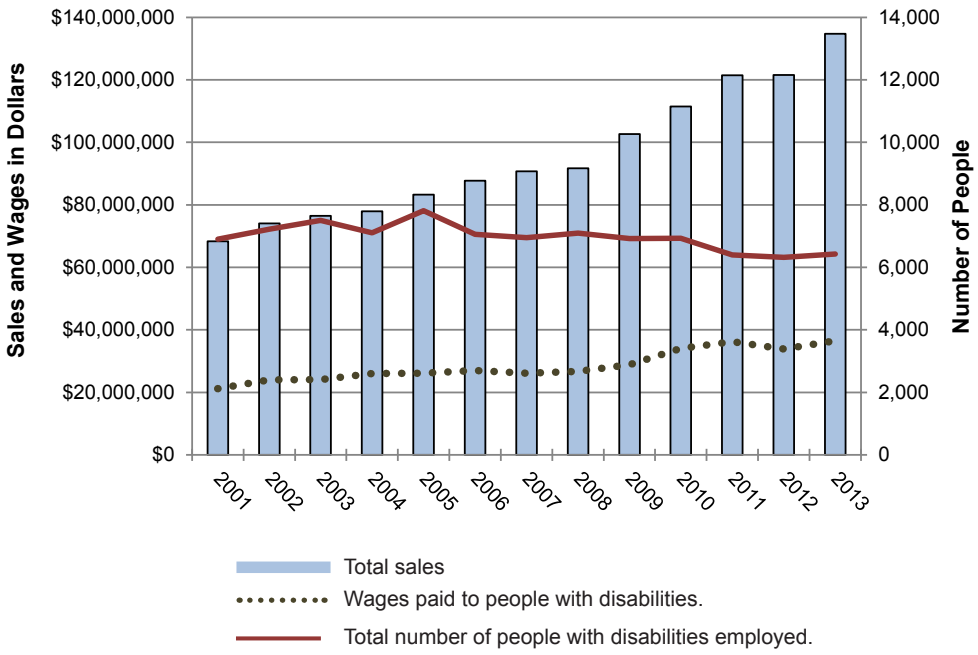
TCPPD also does not measure how people with disabilities actually benefit from the program. TCPPD states that employing people with disabilities results in benefits, such as increasing self-esteem, learning job skills, and earning wages that translate into benefits for the State, such as reduced reliance on government assistance and increased tax revenues. However, TCPPD does not measure these benefits, leaving no data to compare to other state programs. Beyond obtaining employment, nothing in state law or TCPPD's rules defines how people with disabilities should benefit from the program; thereby obscuring whether the program's costs are justifiable.

TCPPD requires TIBH to gather and report information about the program, but allows TIBH to set its own performance measures, ceding a key mechanism for ensuring the program successfully provides meaningful and productive employment to people with disabilities.[5] In this arrangement, TCPPD receives and reviews information about the program, but does not analyze it to discern trends that demonstrate how well the program is serving people with disabilities. Sunset staff's analysis of the limited data TIBH does collect shows that while wages paid to people with disabilities in the program has increased since 2001 as expected, the number of people with disabilities employed through the program, the amount of wages earned by people with disabilities as a percentage of total sales, and the number of people with disabilities advancing to competitive employment positions have not. Overall, the measure that has increased most significantly over time is the sales revenue of the program and TIBH, as discussed below.

While sales have doubled in the past 12 years, jobs created decreased by 7 percent.

Despite a 97 percent growth in sales revenue fiscal year 2001 to fiscal year 2013, the number of jobs created and maintained for people with disabilities through the program decreased 7 percent overall. The graph on the following page, *State Use Program Total Sales Revenue, Wages Paid to People With Disabilities, and Number of People With Disabilities Employed*, illustrates this trend.

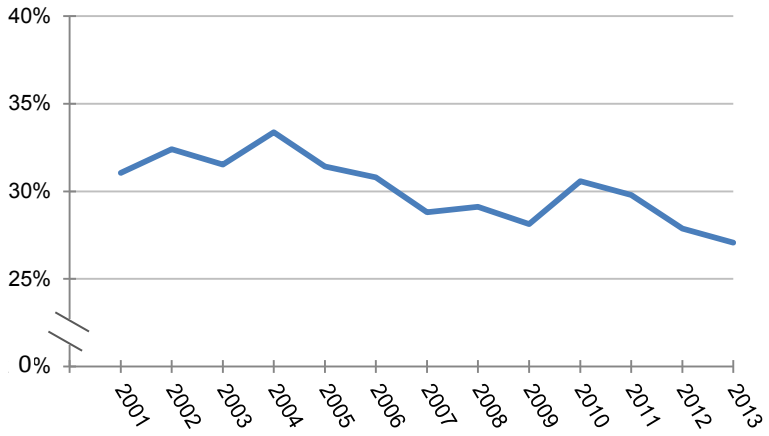
State Use Program Total Sales Revenue, Wages Paid to People With Disabilities, and Number of People With Disabilities Employed



Wages paid to people with disabilities have not tracked increases in sales.

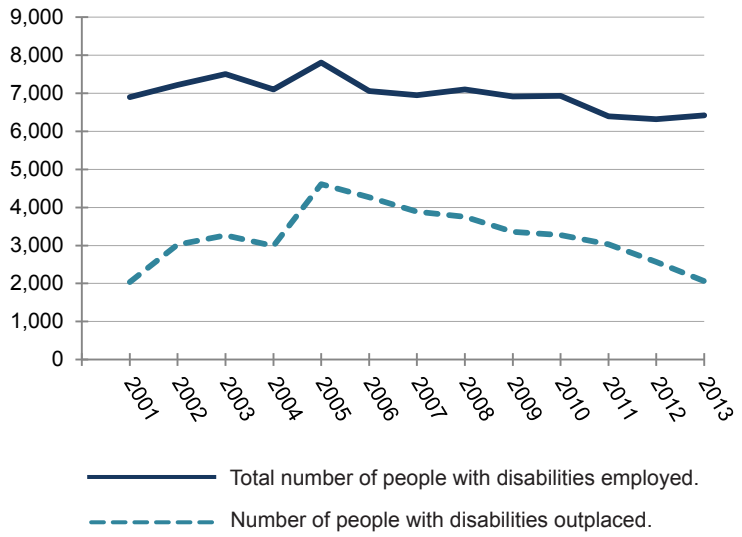
The overall percentage of sales revenue paid to people with disabilities employed through the program has decreased. Although the total annual wages paid to people with disabilities employed through the program increased 72 percent from 2001 to 2013, the total wages paid to people with disabilities as a percentage of total sales revenue decreased from 31 percent to 27 percent during this time. The graph, *Total Wages Paid to People With Disabilities as a Percentage of Total Sales Revenue*, highlights the disparity between the growth in the sales of the program and wages received by people with disabilities employed through the program.

Total Wages Paid to People With Disabilities as a Percentage of Total Sales Revenue



The number of people with disabilities employed by the program has decreased over time and the number of people with disabilities moved out of the program into positions of competitive employment (outplaced) decreased at an even higher rate. Although there has been significant variation in the number and percentage of people outplaced, the number of people with disabilities outplaced by the program has not increased since 2001, and decreased by 55 percent from 2005 to 2013. The graph, *Number of People With Disabilities Employed by and Outplaced From the Program*, illustrates this trend.

Number of People With Disabilities Employed by and Outplaced From the Program



- **Central nonprofit agency performance**. TCPPD does not require TIBH to demonstrate success in serving people with disabilities through the program. TCPPD sets specific requirements and performance standards for the central nonprofit agency, currently TIBH, in the central nonprofit agency contract and in rule. However, the majority of these relate to standard business and accounting practices, not the performance of TIBH in furthering the mission of the State Use Program. The textbox, *Performance Standards for the Central Nonprofit Agency,* lists some examples of the performance standards set by TCPPD. Appendix C details other requirements of the central nonprofit agency as established in statute, rule, and the central nonprofit agency request for proposal. While having good business practices is important to the success of the program, only one standard mentions a measurable output directly related to the mission of the program. This standard requires TIBH to "strive to increase employment for persons with disabilities by 10 percent per

Performance Standards for the Central Nonprofit Agency

- Demonstrate compliance with state and federal tax laws and payroll laws.
- Maintain a system in accordance with generally accepted accounting principles.
- Conduct business ethically.
- Maintain knowledge of governmental contracting and procurement processes and laws.

year."[6] However, in the 12 years that TIBH has held the contract, it has never met this standard and TCPPD has never acknowledged this deficiency in its annual evaluation of TIBH.

- **Community rehabilitation program performance**. TCPPD also does not require CRPs to demonstrate success in serving people with disabilities through the program. TCPPD must certify each CRP to participate in the program and reviews their compliance with its certification standards quarterly. The textbox, *Requirements for Certified State Use Community Rehabilitation Programs*, lists the current standards.[7] TCPPD has not set standards directly related to the amount of job training, professional development, and outplacement into competitive employment expected of CRPs.

TCPPD does not require CRPs to demonstrate success in serving people with disabilities.

Requirements for Certified State Use Community Rehabilitation Programs

- Be a nonprofit organization certified by the IRS as a 501(c)(3) whose mission is employing people with disabilities for compensation or a government entity.
- Show approved documentation that employees who produce products are people with disabilities.
- Agree to maintain compliance with the requirement that at least 75 percent of the total hours of direct labor necessary to perform services or produce products will be performed by people with documented disabilities.
- Maintain records in accordance with generally accepted accounting principles.
- Have current liability and workers compensation insurance coverage.
- Have an annual fire inspection certificate.
- Have an up-to-date building inspection certificate or certificate of occupancy.
- Provide a copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to employees with disabilities and a statement of explanation of circumstances requiring sub-minimum wages.
- Submit quarterly wage and hour reports to the central nonprofit agency.

TCPPD cannot adequately oversee this $135 million program, relying instead on its contractor.

The council itself lacks the expertise and resources needed to effectively oversee the State Use Program.

Since the State Use Program operates outside of the competitive bidding process, it requires heightened oversight to ensure the program is administered fairly and for the purpose of providing and improving employment opportunities for people with disabilities. TCPPD is responsible for providing this oversight, but as a voluntary council of nine members with only one administrative employee, TCPPD cannot adequately oversee this $135 million program. With its limited resources, TCPPD has become increasingly reliant on TIBH. Since the Legislature began requiring TCPPD to contract out for the central nonprofit agency functions, TCPPD has issued a request for proposal three times. In 2002, TCPPD received three responses and awarded the contract to TIBH. In 2007 and 2012, TIBH was the only respondent. Without a truly

competitive bidding process, TCPPD has no assurance that TIBH is the best service provider available.

More concerning is that, in addition to contracting out the day-to-day administration of the program to TIBH, TCPPD also contracts out most of its program oversight functions to TIBH, rather than using other resources available to it.

- **Community rehabilitation program oversight**. TCPPD relies on TIBH to maintain and oversee individual contracts with each participating CRP, monitor CRP compliance with State Use Program standards, recruit and train CRPs on participation in the program, conduct market price research on goods and services sold through the program, and set performance measures for the State Use Program annually.

TCPPD contracts out most of its oversight functions.

- **Fair market price and quality**. TCPPD also relies heavily on TIBH in the determination of the fair market price of products set aside for sale through the State Use Program. TCPPD submits the pricing information received from TIBH to the comptroller's office for review and comment. However, the comptroller lacks the legal authority to reject prices. Since TCPPD is not required to incorporate the comptroller's pricing recommendations, it does not always do so.

  TCPPD's Pricing Subcommittee rarely rejects a price submitted by TIBH. In fact, in the four pricing subcommittee meetings from June of 2013 to March of 2014, TCPPD did not reject a single new product or product's price. When setting fair market price, the Legislature requires that TCPPD consider the amount paid by the State in any recent purchase of similar products or services and what a similarly-sized company would pay for a similar product.[8] While the general direction is clear, TCPPD approves prices for products that are higher than the amount paid by the State in recent purchases of similar products. TCPPD does not set clear guidelines for its Pricing Subcommittee regarding when higher prices are appropriate or acceptable.

  When surveyed about the State Use Program, only one-third of the responding 177 certified state purchasers agreed or strongly agreed that the products purchased from the program were priced fairly. More than 40 percent of the responding certified state purchasers indicated that the quality of products from the State Use Program was lower than products respondents could purchase on the competitive market place for the same price.

TCPPD has repeatedly failed to implement recommended changes to improve its oversight.

- **Continuing concerns**. TCPPD has repeatedly failed to implement recommended changes to improve its oversight of the State Use Program. Amid a 1998–2001 controversy about TCPPD's lax oversight of TIBH and investigations conducted by the State Auditor's Office, the House Committee on General Investigating, and the Senate Committee on State Affairs, the Legislature enacted changes designed to strengthen TCPPD's oversight authority in 2001 and 2003.[9] One of the key components of the

legislation authorized TCPPD to hire two full-time employees to provide management oversight, policy guidance, and administrative support.[10] As the 2002 Sunset report on TCPPD highlighted, "the council has only filled one position and has no plans to fill the second," which continued to be the council's position during this review until just prior to publication of this report.[11] TCPPD's staff member provides administrative support to the council, but does not formally conduct any oversight functions like contract oversight, compliance monitoring, or fair market pricing research.

TCPPD chose not to create the recommended advisory committee to evaluate program effectiveness.

The Legislature also authorized TCPPD to establish an advisory committee to give the council needed expertise to evaluate the effectiveness of the program, but TCPPD has never created it. The advisory committee is not mandatory, but statute does indicate members should include representatives from disability service providers, disability advocacy groups, and people with disabilities, among others.[12] Statute also specifically directs the advisory committee to provide recommendations on how to create higher skilled and higher paying employment opportunities for people with disabilities. TCPPD's failure to establish and use this advisory committee to improve oversight of the program was also noted in the 2002 Sunset Staff Report on TCPPD, with the council indicating it had no need for it.[13]

The 2002 Sunset review also recommended that TCPPD seek assistance in developing appropriate performance measures to "better assess the effectiveness of program functions, including those assigned to the central nonprofit, emphasizing results and outcomes."[14] As mentioned previously, TCPPD relies on mostly operational standards as performance measures for the central nonprofit agency and does not set clear outcomes to determine how successfully it maximizes useful and productive employment for people with disabilities through the program.

Contracting out all of the components of the program creates perceived conflicts of interest related to the pricing of goods and services as well as the oversight of CRPs.

TCPPD relies on its contractor to do all fair market pricing research.

- **Pricing**. TIBH's management fee is computed as a percentage of the selling price of a product or the contract price of a service. Although TCPPD approves all prices for products and services, TCPPD relies on TIBH to conduct all fair market pricing research. Once TCPPD approves the price, state agencies must purchase the set-aside product or service at that price. This creates a perceived incentive for TIBH to propose higher prices, since it relies on the revenue generated by the sale of products and services to fund its operations. Additionally, TIBH employees' salaries and bonuses are based on performance and sales of the products and services. Rather than directing its staff member to verify the competitive price of each item, TCPPD allows the comptroller to review the pricing research. As previously mentioned, the comptroller lacks clear legal authority to reject a price proposed by TIBH, since TCPPD is the entity responsible for setting the fair market price, and therefore rarely objects to a proposed price.

- **Compliance**. The Legislature requires TCPPD to set standards for CRP certification to participate in the State Use Program and ensure that CRPs comply with these standards. TCPPD contracts out to TIBH to monitor CRPs for compliance. Although Sunset staff uncovered no evidence of wrongdoing, contractually requiring TIBH to enforce compliance standards among CRPs presents another potential conflict of interest for the central nonprofit agency, as TCPPD ties TIBH's success in administering the State Use Program to CRPs' success. In other words, if TIBH found an issue with a CRP's compliance, a decision by TCPPD to suspend the CRP or not recertify the CRP to continue to participate in the program would result in a revenue loss for TIBH.

  TCPPD requires that CRPs recertify every three years but does not require that TIBH conduct systematic, random reviews of compliance with value-added statements to ensure people with disabilities employed by CRPs are indeed performing productive and useful work. TCPPD does require TIBH to document CRP compliance with standards for percentage of direct labor contributed by people with disabilities, but does not dictate how TIBH should conduct these reviews. TIBH conducts random reviews only at TCPPD or customer request, which is infrequent. The textbox, *Key Elements of CRP Compliance Standards,* defines value-added statements and direct labor for the State Use Program.

Key Elements of CRP Compliance Standards

Value-added statement: CRP description of the labor applied by people with disabilities to raw materials, components, or goods that results in a change to the composition or marketability of the component materials.

Direct labor: All work performed for preparation, processing, or packaging a product, except supervision, administration, inspection, or shipping of products.

Unlike most other programs that assist people with disabilities in achieving employment, the State Use Program has not advanced to focus on positive employment outcomes for people with disabilities.

Texas' State Use Program does not fit within the broader spectrum of employment initiatives for people with disabilities on the federal or state level. Since the creation of the program, the focus on employment for people with disabilities has shifted from centering on whether or not people with disabilities can work to ensuring that people with disabilities achieve their preferred employment outcome through employment in the general workforce. This shift is reflected in both federal and state law. Federal law now requires vocational rehabilitation programs for people with disabilities to find competitive or supported employment opportunities in integrated work environments that pay a competitive wage.[15] While TCPPD is not primarily a vocational rehabilitation program, state legislation also specifies that "it is the policy of the state that earning a living wage through competitive employment in the general workforce is the priority and preferred outcome for working-age individuals with disabilities who receive public benefits."[16] State law guides services for employing people with disabilities, not just vocational rehabilitation

Texas' State Use Program does not fit within the boarder spectrum of employment initiatives for people with disabilities.

programs, to focus on ensuring that people with disabilities earn living wages and competitive positions in an integrated workforce.

However, TCPPD continues to operate as if this policy paradigm shift never took place, as evidenced in how the State Use Program continues to have non-integrated work settings, repetitive labor that can hardly qualify as meaningful, and sub-minimum wages for some of the work people with disabilities perform.

- **No clear measure of productive and useful labor**. State law dictates that the work performed by people with disabilities in the State Use Program is to be productive and useful, but 26 percent of product sales were for products that the only value added by people with disabilities was repackaging in fiscal year 2013. While statute allows for the repackaging of commodities in the program, TCPPD does not stipulate what level of repackaging is acceptable as productive or useful labor. The textbox, *Example of Approved Value-Added Statement*, provides an example of an approved value-added statement that describes repackaging activities that do not alter the product or add clear value to the product.[17] Rather than establishing measurable outcomes, TCPPD reviews the products and their value-added statements on a case-by-case basis, which does not guarantee that the jobs created by the State Use Program qualify as productive and useful labor.

Example of Approved Value-Added Statement

Product name: Soda cans – 100 case minimum order

Value-added statement:

1. Sodas come in 100 cases per pallet.
2. Pallets are broken down.
3. Pallets sent down the production line to be shrink-wrapped.
4. Quality control check on shrink-wrap.
5. Labeled with Original Equipment Manufacturer number.
6. Sodas are replaced on pallet and wrapped for shipping.

TIBH selling price: $9.45 per case

Free market price: $7.88 per case at regional grocer

- **Continued support of sheltered workshops**. Federal law allows CRPs to pay people with disabilities less than minimum wage if the U.S. Department of Labor Wage and Hour Division issues an authorizing certificate to the CRP. However, while paying subminimum wage is permissible by federal law, state policy on employment clearly establishes a living wage in competitive employment as a state priority. One out of every 10 people with disabilities employed by the State Use Program works in a set of CRPs that pays an average wage of $3.94 per hour. In fiscal year 2013, nine CRPs paid a total of 684 people with disabilities $484,322 for 123,042 hours of work. The average hourly pay per person with a disability in these CRPs ranged from 61 cents per hour to just below the current Texas minimum wage of $7.25 per hour. While legally permissible, paying people with disabilities less than minimum wage is not in line with the employment-first policy the State has established to guide employment services for people with disabilities. Further, TCPPD does not collect or report the number of people employed who are paid less than minimum wage and has neglected to determine the acceptable level of sheltered work that should be allowable under and endorsed by the State Use Program.

The comptroller's office has the needed expertise to better administer and oversee the State Use Program.

The Comptroller of Public Accounts purchases over $1 billion in contracts for services and commodities annually. Statutorily required to award contracts based on best value, the comptroller often considers a number of factors when determining the best value including the lowest bid price, quality of goods and services, vendor performance, and anticipated economic impact to the State. To continually ensure best value for state agencies, the comptroller oversees more than 1,100 vendors through 902 contracts. On average, the comptroller issues about 305 RFPs and negotiates 350 contracts annually.

The comptroller's pricing and contract oversight expertise is the reason for TCPPD's administrative attachment to the comptroller's office. Under current law, however, the comptroller only provides administrative and legal support to TCPPD, and does not have authority to provide formal oversight of the program's pricing or contract monitoring. In contrast, other states with active state use programs — such as New Jersey, Oklahoma, Oregon, and Pennsylvania — have eliminated duplication of these efforts by tasking their state purchasing agencies with oversight of the programs.

Recommendations

Change in Statute

1.1 Place oversight and administration of the State Use Program at the comptroller's office and abolish the Texas Council on Purchasing from People with Disabilities.

This recommendation would make the Procurement and Support Services Division of the Comptroller of Public Accounts responsible for the administration and oversight of the State Use Program. TCPPD's statutory duties would be transferred to the comptroller, including the following key duties.

- Determine the fair market price of all products and services manufactured or provided by people with disabilities and offered for sale to the various agencies and departments of the State and its political subdivisions by a community rehabilitation program.
- Ensure the products and services offered for sale provide the best value for the state or a political subdivision.
- Select and contract with one or more central nonprofit agencies through a request for proposal to administer the program and promote greater participation of CRPs.
- Define the terms "value-added" and "direct labor" for products manufactured and services provided that are offered for sale through the State Use Program.
- Adopt rules to establish a formal certification procedure for recognition and approval of community rehabilitation programs.
- Report annually to the Legislature the status of the State Use Program and employment opportunities developed through the program.

Transferring TCPPD's functions to the comptroller would further unify the State's purchasing activities to better ensure active oversight of the State Use Program and that the program benefits people with disabilities. The comptroller has greater expertise to ensure the contracted central nonprofit agency meets performance expectations and to monitor CRP compliance with state certification standards that provide direction and measurable outcomes for program. The comptroller's contracting experience would allow for the request for proposal for the central nonprofit agency to be written more generally to help ensure a greater number of responses. Additionally, the comptroller's pricing expertise would provide better oversight of the products and services set-aside from the competitive state purchasing marketplace. This recommendation would also remove the provision in statute that establishes how the management fee is to be structured, giving the comptroller full authority to determine the best way to compensate the central nonprofit agency. The State Use Program would be subject to Sunset review as part of the Procurement and Support Services Division's regularly scheduled Sunset review in 2021.

1.2 Require the comptroller's office to establish an advisory committee to set goals for the State Use Program and standards for participating community rehabilitation program certification.

This recommendation would require the comptroller to establish an advisory committee to help set the performance goals for the program and standards for CRP certification to participate in the State Use Program. This committee would consider the State Use Program as one component of the array of employment services the State offers Texans with disabilities, and would be required to provide input on the rules the comptroller establishes to guide the program in accordance with the policies established by the Employment-First Task Force.[18]

The committee would consist of nine members appointed by the comptroller to four-year staggered terms, with a maximum of two terms. Committee members would include two representatives from participating CRPs, three representatives from advocacy groups for people with disabilities, one representative from the health and human services agency that provides vocational rehabilitation services to people with disabilities, and at least three people with disabilities, one of whom is employed by a CRP that participates in the State Use Program. The comptroller would designate a presiding officer. After the initial development of specific program objectives, performance measures, and CRP certification standards, the advisory committee would meet once a fiscal year to review the performance of the State Use Program and recommend adjustments to the program objectives, performance measures, and CRP certification standards if needed. Performance measures for the program should relate to the following areas, in addition to any other performance measures deemed necessary by the advisory committee and the comptroller.

- Percentage of total sales revenue paid in wages to people with disabilities.
- Percentage of total sales revenue spent on direct training and professional development services provided to people with disabilities employed by the program.
- Average hourly wage for people with disabilities employed.
- Average annual salary for people with disabilities employed.
- Number of people paid less than minimum wage.
- Average number of hours worked weekly by people with disabilities employed.

- Percentage of people with disabilities employed by the program that are outplaced into competitive positions, including competitive management or administrative positions within the certified CRPs.
- Percentage of work performed by people with disabilities that is purely repackaging labor.

This committee would ensure people with disabilities and their advocates serve a role in the development of the State Use Program's direction and objectives. Establishing the committee would also provide the comptroller with additional input and expertise necessary to administer the State Use Program in accordance with updated state and national standards for disability employment services. The balancing of the comptroller's experience in contract oversight and fair market pricing with the advisory committee's perspective on employment for people with disabilities would provide the State Use Program needed direction and oversight to improve the program.

Management Action

1.3 Direct the comptroller's office to reevaluate the process for conducting community rehabilitation program compliance monitoring.

This recommendation would direct the comptroller to assess alternatives to the CRP compliance monitoring arrangement established in the current central nonprofit agency contract. The comptroller could contract out for the compliance review of the CRPs, but should establish clear requirements for monitoring CRPs. These requirements should ensure:

- each CRP's certification standards are current;
- the percentage of direct labor provided by people with disabilities on set-aside products and services is equal or above the established percentage;
- any value-added activities reported by CRPs are accurate; and
- wage and benefit reports are accurate and within established standards.

Monitoring CRP compliance based on these and other standards would allow the compliance checks to be conducted randomly and through sampling as necessary. The comptroller should keep consistent records of compliance checks to ensure reviews are done systematically and thoroughly.

1.4 Direct the comptroller's office to study the cost to the State of continuing to administer the State Use Program.

This recommendation would direct the comptroller to conduct a study of the indirect and direct costs to the State in administering the State Use Program. Costs would include the amount state agencies spend on products and services purchased through the program compared to the amount they would spend if not purchased through the program. Other costs would include administration costs for the comptroller and State Auditor's Office to oversee the program, as well as indirect costs to state agencies to ensure compliance with the program, such as the statutory requirement that each state agency designate a specific staff member to ensure compliance with the State Use Program.[19] The comptroller would report the results of this study to the Legislature by September 1, 2019, prior to the Sunset review of the Procurement and Support Services Division of the Comptroller of Public Accounts, including the State Use Program, in 2021.

This study would provide the Legislature the information needed to determine whether the State Use Program requires further statutory direction to achieve the best outcomes for people with disabilities, while

keeping in line with the State's policy on employment initiatives for this population. Such information would also enable the Legislature to effectively weigh the costs and benefits of the program to make an informed decision about whether the program merits continued investment or whether other programs for employment of people with disabilities could provide greater impact and value.

Fiscal Implication

Recommendation 1.1 to place oversight of the State Use Program at the comptroller's office and abolish the Texas Council on Purchasing from People with Disabilities would not have a fiscal impact to the State. The central nonprofit agency would continue to reimburse the State for the costs to fully administer the State Use Program. The comptroller would negotiate the program's management fee with the central nonprofit agency to incorporate and cover any additional costs of the administration and oversight of the program as well as any costs associated with the advisory committee. The comptroller's office estimates three full-time staff would be needed to conduct contract oversight of the central nonprofit agency, administer the request for proposal, oversee CRPs' compliance, and conduct pricing research for products and services proposed for inclusion in the program. The one existing full-time staff position dedicated to administrative services for the council would no longer be needed.

Recommendation 1.3 would not have a cost, as the comptroller would renegotiate the management fee with the central nonprofit agency to cover the cost of CRP compliance and oversight. Recommendation 1.4 would not have a fiscal impact to the State.

Comptroller of Public Accounts

Fiscal Year	Loss to the General Revenue Fund	Change in the Number of FTEs From 2015
2016	$0	+2
2017	$0	+2
2018	$0	+2
2019	$0	+2
2020	$0	+2

……..

[1] Section 122.001, Texas Human Resources Code.

[2] 40 T.A.C. Section 189.1.

[3] Product pricing information from March 7, 2014 TCPPD Pricing Subcommittee Meeting. Service contract pricing information from a single state agency office location contracting for competitive janitorial services in FY 2014 and State Use Program janitorial services in FY 2015, without a significant change in service specifications.

[4] The gift pack was developed by TIBH in collaboration with the Texas Department of Criminal Justice to provide snack items available for purchase in its commissaries. A gift pack includes two 12-packs of the following: nuts (12oz.), pretzels (12oz.), snack mixes (1lb.), candies (2oz.), and meat snacks (summer sausage, beef jerky, or beef stick), with a minimum of 5,004 (417 cases) per selection. TIBH has not received any orders for this item as of September 7, 2014.

[5] 40 T.A.C. Section 189.7(m).

[6] 40 T.A.C. Section 189.12(b).

[7] 40 T.A.C. Section 189.6.

[8] Section 122.015, Texas Human Resources Code.

[9] State Auditor's Office, *An Audit Report on The State Use Program*; Texas Senate, *Report to the 77th Legislature – Charge 10, State Use Program*; Texas House of Representatives, *Report to House of Representatives 77th Legislature*, pp. 4.1–4.15; H.B. 1691, 77th Texas Legislature, Regular Session, 2001.

[10] Sunset Advisory Commission, *Staff Report on Texas Council on Purchasing from People with Disabilitie*s (Austin: Sunset Advisory Commission, 2002).

[11] Ibid.

[12] Section 122.0057, Texas Human Resources Code.

[13] Sunset Advisory Commission, *Staff Report on Texas Council on Purchasing from People with Disabilities* (2002).

[14] Ibid.

[15] 29 U.S.C. Chapter 16.

[16] Section 531.02447(a), Texas Government Code.

[17] Example from June 2014 Pricing Subcommittee meeting.

[18] Section 531.02448, Texas Government Code.

[19] Section 122.0095, Texas Human Resources Code.

Appendices

Appendix A

Texas Council for Developmental Disabilities

Council Member (including alternates)	Term	Qualification
Mary Durheim, Chair	2nd Term 2005–2011	Public member, parent of a child with a developmental disability
Rebecca Hunter Adkins	1st Term 2009–2015	Public member, person with a developmental disability
Kimberly Blackmon	1st Term 2009–2015	Public member, person with a developmental disability
Kristine Clark	2nd Term 2011–2017	Public member, parent of a child with a developmental disability
Gladys Cortez	1st Term 2011–2017	Public member, family member of a child with a developmental disability
Kristen Cox	1st Term 2009–2015	Public member, parent of a child with a developmental disability
Andrew Crim	1st Term 2008–2013	Public member, parent of a child with a developmental disability
Mateo Delgado	1st Term 2009–2013	Public member, person with a developmental disability
Stephen Gersuk	1st Term 2012–2013	Public member, parent of a child with a developmental disability
Cindy Johnston	2nd Term 2008–2013	Public member, person with a developmental disability
Diana Kern	2nd Term 2009–2015	Public member, person with a developmental disability
Scott McAvoy	1st Term 2012–2015	Local non-governmental organization
John Morris	2nd Term 2009–2013	Public member, person with a developmental disability
Dana Perry	2nd Term 2009–2015	Public member, parent of a child with a developmental disability
David Taylor	1st Term 2012–2017	Public member, parent of a child with a developmental disability
Lora Trainer Taylor	1st Term 2008–2013	Public member, parent of a child with a developmental disability
Richard A. Tisch	2nd Term 2009–2015	Public member, parent of a child with a developmental disability

Appendix A

Council Member (including alternates)	Term	Qualification
Susan Vardell	2nd Term 2008–2013	Public member, parent of a child with a developmental disability
Vacant		
Mary Faithful	Appointed in 2001 to represent Disability Rights Texas	Represents the state Developmental Disabilities Protection and Advocacy System
Penny Seay	Appointed in 2002 to represent the Center for Disability Studies at UT-Austin	Represents the Developmental Disabilities University Center for Excellence in Developmental Disabilities
Mike Benz Amy Sharp (alternate)	Appointed in 2005 to represent the Center for Disability and Development at Texas A&M	Represents the Developmental Disabilities University Center for Excellence in Developmental Disabilities
Nancy Walker April Young (alternate)	Appointed in 2014 by the Executive Commissioner of the Health and Human Services Commission	Represents the state agency that administers funds provided under Title XIX of the Social Security Act
Penny Larkin	Appointed in 2014 by the Commissioner of the Department of Aging and Disability Services	Represents the state operating agency for funds provided under Title XIX of the Social Security Act and funds provided under the federal Older American's Act
Manda Hall, M.D. Ivy Goldstein (alternate)	Appointed in 2012 by the Commissioner of the Department of State Health Services	Represents the state operating agency for funds provided under Title V of the Social Security Act
Cindy Swain Barbara Kaatz (alternate)	Appointed in 2011 by the Commissioner of the Texas Education Agency	Represents the state agency that administers funds provided under the federal Individuals with Disabilities Education Act
Sara Kendall	Appointed in 2010 by the Commissioner of the Department of Assistive and Rehabilitative Services	Represents the state agency that administers funds provided under the federal Rehabilitation Act

Appendix B

Governor's Committee on People with Disabilities

Committee Member	Term[1]	Qualification
Joe Bontke, Chair	2014–2015	Member*
Aaron E. Bangor, Ph.D., Vice Chair	2014–2016	Member*
Rodolfo Becerra, Jr.	2014–2016	Member*
Heather C. Griffith-Dhanjal	2014–2016	Member*
Marilou Fowler	2014–2015	Member
Rames Gonzalez, Jr.	2014–2015	Member*
Phoene "Faye" Kuo	2014–2016	Member*
Margaret M. Larsen	2014–2016	Member
Linda Millstone	2014–2015	Member
David G. Ondich	2014–2015	Member*
Shawn P. Saladin, Ph.D., CRC, CPM	2014–2015	Member*
Marco A. Trevino, Sr.	2014–2016	Member
Executive Commissioner Kyle Janek, M.D.	Ex officio	Health and Human Services Commission
Commissioner Jon Weizenbaum	Ex officio	Department of Aging and Disability Services
Commissioner Veronda Durden	Ex officio	Department of Assistive and Rehabilitative Services
Commissioner John Specia	Ex officio	Department of Family and Protective Services
Commissioner David Lakey, M.D.	Ex officio	Department of State Health Services
Executive Director William Kuntz	Ex officio	Texas Department of Licensing and Regulation
Chairman Andres Alcantar	Ex officio	Texas Workforce Commission

* Denotes member with a disability.

[1] In 2014, six of the committee's 12 members were only appointed for a year as their reappointment came almost a year after their term had expired. By reappointing these members for a year, the committee will continue to have member terms staggered over two years as provided by Section 115.002(b) of the Texas Human Resources Code.

Appendix C

Current Requirements for the Central Nonprofit Agency (CNA)

General Category	Requirements
General Administration	• Meet performance standards in carrying out the terms and conditions of the contract. • Manage and coordinate the day-to-day operations of the State Use Program. • Provide general administration of the State Use Program with performance criteria and timely submission of reports. • Maintain consistent and effective communication with the council and community rehabilitation programs (CRPs). • Maintain all necessary records for audit purposes in accordance with the law and directives set forth by the council. • Submit any or all records requested by the council within three weeks of the request. Disclosure of any and all records of a CNA is subject to the Public Information Act. • Report to and perform other duties designated by the council.
Program Performance Goals	Annually establish performance goals for the next fiscal year in support of council objectives, which must include, but are not limited to: • sales of products or services; • wages paid to people with disabilities; • hours worked by people with disabilities; • response time to customer inquiries and/or complaints; and • quality standards and delivery goals for CRP program operations.
Expectations Relating to People with Disabilities	• Strive to increase employment for people with disabilities by 10 percent per year by researching new products, services, and markets; improving existing products and services; and reporting to the council on a quarterly basis the status of these activities. • Promote and train for outplacement/supported employment for increased opportunities for people with disabilities.
Community Rehabilitation Program (CRP) Recruitment and Assistance	• Recruit and assist CRPs in developing and submitting applications for the selection of suitable products and services that are responsive to client agency needs. • Recruit and assist qualified nonprofit organizations managed by members of racial minorities, women, or people with disabilities and in the process of qualifying as CRPs. • Facilitate distribution of service and product orders among the various CRPs. • Educate potential and current CRPs about the requirements for certification and recertification to participate in the State Use Program. • Resolve contract issues and/or problems as they arise between CRPs, CNA, and/or customers, referring those that cannot be resolved to the council, and submit quarterly status reports on issues and referrals. • Conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA. • Assist CRPs in soliciting and negotiating contracts. • Provide quarterly regional training programs to CRPs on State Use Program requirements, governmental contracting, and procurement procedures and laws.

Appendix C

General Category	Requirements
CRP Compliance	• Monitor CRPs to ensure compliance with State Use Program requirements.
CRP Performance	Annually provide the council: • collective executive summary of CRPs' annual State Use Program evaluations; • number of people with disabilities employed by type of disability and the number of workers without disabilities employed by CRPs or who are employed by businesses or workshops that receive supportive employment from CRPs; • amount of annual wages and the average and range of weekly earnings for workers with and without disabilities who are employed by CRPs; • summary of sale of CRPs' products; • list of CRPs' products and/or services; • geographic distribution of CRPs; • a report of all CRPs that have not met state use criteria; and • for each CRP, data on individual outplacement or supported employment, including: – number of individuals in outplacement employed; – hourly wage range; – range of hours worked; and – number of people with disabilities employed by primary type of disability.
Customer Relations and Consumer Satisfaction	Provide superior customer relations by: • monitoring customer satisfaction with products and services, • responding to customer complaints within one business day or less, and • reporting to the council on a quarterly basis the level of consumer satisfaction for each CRP based on complaints as to products or services provided by each CRP, with a goal of incurring no more than five complaints per year that have not been resolved to the customer's satisfaction.
Marketing and Public Relations	• Directly market State Use Program products and services to existing and potential customers. • Research and develop products and services. • Provide public relations activities to promote the program. • Create database of state agency and political subdivision purchases to promote sales of State Use Program products and services. • Provide quarterly regional information workshops to promote the State Use Program.
Sales Information	• Create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the council regarding delivery turnaround times and contract performance for each CRP. • Respond to inquiries about individual sales and/or total sales within five business days or sooner, and submit quarterly reports regarding number of inquiries and average response time.

Appendix C

General Category	Requirements
Financial Information	• Provide sufficient financial resources and/or the ability to maintain a line of credit to pay the CRPs within 30 days. • Maintain capability to meet interim payroll for six weeks on a continual basis. • Provide the council: – quarterly reports for each calendar quarter of contract of product/service sales and wages paid and hours worked by people with disabilities for CRPs; – quarterly reports for each calendar quarter listing CRPs that do not meet State Use Program criteria and reasons each CRP does not meet criteria; – at least once a year, and prior to any review and/or re-negotiation of contract: ▪ updated marketing plan; ▪ proposed annual budget with estimated sales, commissions, and expenses; ▪ program budget with details on how expected revenue and expenses will be allocated to directly support and expand State Use Program and other programs that expand direct services and/or the enhancement of employment opportunities for people with disabilities; and ▪ audited annual financial statement which should include information on FDIC coverage of all cash balances, earnings attributed to management fee, accounts receivable, cash reserves, line of credit borrowings, interest payments, bad debt, administrative overhead, and any detailed supporting documentation requested by the council. – quarterly reports of categories of expenditures; – records for audit purposes; and – any other information the council requests.
Accounting Systems and Services	• Demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the comptroller and the IRS. • Maintain system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices, and payments to each CRP to prepare and submit annual report. • Provide accounting services related to purchase orders, invoices, and payments to CRPs.
Management Fee	• Maximum management fee rate must be: – computed as a percentage of the selling price of the product or the contract price of a service; and – included in the selling price or contract price. • Must pay percentage of management fee set by council to reimburse the comptroller for administrative costs.

Appendix C

General Category	Requirements
Annual Report	• Provide an annual report that includes: – audited financial statements of CNA, – updated strategic plan, and – updated projected schedule of expenses that details how management fee is being allocated to directly support the State Use Program, amount of funds devoted to expanding direct services to programs that enhance the people with disabilities, and percentage of funds used for administrative overhead.
Laws and Legislation	• Track legislation, keep abreast of changing factors that could impact the State Use Program, and inform the council of such factors. • Maintain knowledge of governmental contracting and procurement processes and laws.
Agency Coordination	• Have a representative at all council meetings. • Designate a staff member to act as a liaison with the Texas Procurement and Support Services Division at the comptroller's office.
Cooperation with New Contractor	If a new CNA takes over contract, the prior CNA has to cooperate fully and assist the take-over as soon as possible, with minimal disruption to program operations. Such cooperation and assistance includes turning over the prior CNA's records, including: • marketing plan, • list of CRPs in the State Use Program, • copies of all contracts with CRPs, • list of state agencies that purchase State Use Program products and services, • program funding requirements, and • job descriptions for staffing a CNA to perform its duties under its contract with the council.

Appendix D

Staff Review Activities

During the reviews of the Texas Council for Developmental Disabilities, Texas Council on Purchasing from People with Disabilities, and Governor's Committee on People with Disabilities, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended the agencies' governing board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to these agencies.

- Attended an overview and tour of the State Use Program for state purchasers and visited TIBH's central store.
- Toured and met with employees of three community rehabilitation programs participating in the State Use Program.
- Conducted surveys of certified community rehabilitation programs, state agency purchasers, grant applicants, and other stakeholders.
- Solicited and received input from procurement officials from other states as well as representatives of managing entities of other states' state use programs.
- Met with organizations that advocate for the rights of people with disabilities.
- Interviewed staff from the Governor's Office, Comptroller of Public Accounts, Employees Retirement System of Texas, Texas Education Agency, Texas Department of Criminal Justice, and Department of Assistive and Rehabilitative Services.

Sunset Staff Review of the

Texas Council for Developmental Disabilities

Governor's Committee on People with Disabilities

Texas Council on Purchasing from People with Disabilities

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