

**CHAPTER 603**

**S.B. No. 118**

An Act relating to the continuation and operation of the Texas Rehabilitation Commission and to the administration of developmental disability services; amending the Human Resources Code by

adding Sections 111.0131, 111.025, 111.026, 112.021, Subdivisions (4), (5), and (6) to Section 112.001 and Subsection (f) to Section 112.018; amending Subdivision (5), Section 111.002, Subdivision (3), Section 112.001, Subsections (a) and (e), Section 132.002, and Sections 111.013, 111.014, 111.015, 111.016, 111.018, 111.021, 111.055, 112.002, 112.012, 112.016, 112.017, 112.019, 112.020, and 111.012; and repealing Subchapter C, Chapter 112.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 111.013, Human Resources Code, is amended to read as follows:

"Section 111.013. **COMPOSITION OF BOARD; APPOINTMENT; QUALIFICATIONS; TERMS.** (a) The board of the Texas Rehabilitation Commission is composed of six members appointed by the governor with the advice and consent of the senate. Members serve for staggered terms of six years with the terms of two members expiring every two years.

"(b) Appointees must be outstanding citizens of the state who *are members of the general public and have demonstrated a constructive interest in rehabilitation services. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. A person is not eligible for appointment as a board member if the person or the person's spouse: [No paid employee of an agency carrying on work for the commission is eligible for appointment, nor is a person who owns or is employed by an organization providing rehabilitation services or related services through the commission]*

"(1) is employed by or participates in the management of a business entity or other organization regulated by the agency or receiving funds from the commission;

"(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the agency or receiving funds from the commission; or

"(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

"(c) The governor shall designate one board member as presiding officer. *The presiding officer serves in that capacity at the will of the governor.*"

**SECTION 2.** Chapter 111, Human Resources Code, is amended by adding Section 111.0131 to read as follows:

"Section 111.0131. **REMOVAL OF BOARD MEMBERS.** (a) *It is a ground for removal from the board if a member:*

"(1) *does not have at the time of appointment the qualifications required by Subsection (b) of Section 111.013 of this code for appointment to the board;*

"(2) *does not maintain during the service on the board the qualifications required by Subsection (b) of Section 111.013 for appointment to the board;*

"(3) *violates a prohibition established by Section 111.025 of this code;*

"(4) *is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or*

"(5) *is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.*

"(b) *The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.*

"(c) *If the commissioner has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of the ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.*"

**SECTION 3.** Section 111.014, Human Resources Code, is amended to read as follows:

"Section 111.014. **MEETINGS.** (a) The board shall meet quarterly in regular session and on call by the presiding officer when necessary for the transaction of agency business.

"(b) *The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.*"

**SECTION 4.** Section 111.015, Human Resources Code, is amended to read as follows:

"Section 111.015. **PER DIEM AND EXPENSES.** (a) Board members [~~serve without compensation but~~] are entitled to reimbursement for actual and necessary expenses incurred in the discharge of their official duties *and the compensatory per diem authorized by the General Appropriations Act for each day at an official meeting as authorized by the board.*

"(b) *A member of the board who is disabled and who, because of the disability, requires special aids or travel attendants is entitled to reimbursement for the cost of the special aids or travel attendants.*"

**SECTION 5.** Section 111.016, Human Resources Code, is amended to read as follows:

“Section 111.016. **CONSUMER ADVISORY COMMITTEE** [~~COMMITTEES~~]. (a) The board shall ~~may~~ appoint a consumer ~~an~~ advisory committee to make recommendations for consideration by the board concerning any matter that the ~~advisory~~ committee believes to be pertinent to the purposes of this chapter or on any matter submitted to the committee by the board.

“(b) The board shall adopt rules providing for the appointment of the consumer advisory committee and establishing for the committee the number of members, geographical representation, duties, powers, procedures, and times and manner of making recommendations to the board. The rules shall provide for an equitable representation of the major disability groups served by the commission [~~The advisory committee is composed of nine members appointed by the board. Committee members serve for staggered terms of three years with the terms of three members expiring each year.~~].

“(c) The consumer advisory committee shall meet as provided by the rules of the board and ~~at least once in each calendar quarter and may meet~~ on call of the board.

“(d) The members of the consumer advisory committee ~~serve without compensation but~~ are entitled to compensatory per diem authorized by the General Appropriations Act for each day engaged in the performance of their duties as directed by the board and to reimbursement for actual and necessary expenses incurred in attending the official meetings of the consumer advisory committee.

“(e) A member of the consumer advisory committee who is disabled and who, because of the disability, requires special aids or travel attendants is entitled to reimbursement for the cost of the special aids or travel attendants.

“(f) To be eligible for appointment to the consumer advisory committee a person must have demonstrated an active and constructive interest in the rehabilitation of handicapped people.

“~~[(f) The board may also create from time to time additional technical advisory committees necessary to achieve the purposes of this chapter. The members of the committees serve without compensation unless compensation is specifically provided for by appropriation.]~~”

**SECTION 6.** Section 111.018, Human Resources Code, is amended to read as follows:

“Section 111.018. **ADMINISTRATIVE REGULATIONS AND POLICIES.** (a) In carrying out his or her duties under this chapter, the commissioner shall, with the approval of the board, make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purposes of this chapter.

“(b) The commissioner shall develop a career ladder program, one part of which must require the posting throughout the commission of all nonentry level positions concurrently with any public posting.

“(c) The commissioner shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for employees must be based on the system established under this subsection.

“(d) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

“(e) The board shall develop and implement policies that clearly separate the respective responsibilities of the board, the commissioner, and the other employees.

“(f) The commissioner shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

“(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

“(2) a comprehensive analysis of the commission’s work force that meets federal and state guidelines;

“(3) procedures by which a determination can be made of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

“(4) reasonable methods to address appropriately areas of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance.

*"(g) The policy statement required by Subsection (f) of this section shall be filed with the governor's office before November 1 of each year and shall cover the preceding annual period. The governor's office shall develop from the information submitted a biennial report to the legislature. The report may be made separately or as a part of other biennial reports made to the legislature."*

**SECTION 7.** Section 111.021, Human Resources Code, is amended to read as follows:

**"Section 111.021. REPORTS.** (a) The commissioner shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter [~~and, with the approval of the board, shall submit the reports to the governor and the legislature~~].

*"(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act."*

**SECTION 8.** Chapter 111, Human Resources Code, is amended by adding Section 111.025 to read as follows:

**"Section 111.025. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT.** (a) An officer, employee, or paid consultant of an organization that receives funds from the commission in payment for the provision of rehabilitation services may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of such an association be a member of the board or an employee of the board grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

*"(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a provider of rehabilitation services, may not serve as a member of the board or act as the general counsel to the board."*

**SECTION 9.** Chapter 111, Human Resources Code, is amended by adding Section 111.026 to read as follows:

**"Section 111.026. PUBLIC INTEREST INFORMATION; COMPLAINTS.** (a) The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

*"(b) The commission shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for the notification through inclusion of the information:*

*"(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through the commission;*

*"(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from or through the commission; or*

*"(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from or through the commission."*

**SECTION 10.** Section 111.055, Human Resources Code, is amended to read as follows:

**"Section 111.055. FINANCES.** (a) All money paid to the commission under this chapter shall be deposited in the State Treasury and may be used only for the administration of this chapter.

*"(b) The State Auditor shall audit the financial transactions of the commission at least once each biennium [The state treasurer may receive money appropriated by congress and allotted to Texas for carrying out the purposes of this chapter or authorized agreements, arrangements, or plans, and may make disbursements on the certification of the commissioner. All public money available to the commission must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements required by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the commission in local depositories to assure that nonpublic funds made available to the commission through gift or bequest, by local organizations desiring to participate in projects for the handicapped authorized in Article XVI, Section 6, Subsection (b), of the Texas Constitution, or by endowment or other means, are expended in a manner consistent*

with the purposes of this chapter. The commission shall comply with the reporting procedures prescribed by the state auditor for the commission's acceptance, holding, investment, and use of nonpublic funds.]”

SECTION 11. Subdivision (3), Section 112.001, Human Resources Code, is amended to read as follows:

“(3) ‘Developmental disability’ means a severe, chronic disability *as defined by applicable federal developmental disability laws* [that:

“[(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

“[(B) is manifested before the person attains age 22;

“[(C) is likely to continue indefinitely;

“[(D) results in substantial functional limitations in three or more of the following areas of major life activity:

“[(i) self/care;

“[(ii) receptive and expressive language;

“[(iii) learning;

“[(iv) mobility;

“[(v) self/direction;

“[(vi) capacity for independent living; or

“[(vii) economic sufficiency; and

“[(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration, and are individually planned and coordinated].”

SECTION 12. Section 112.001, Human Resources Code, is amended by adding Subdivisions (4), (5), and (6) to read as follows:

“(4) ‘Applicable federal developmental disability laws’ refers to the various Acts of congress providing for assistance and services to the developmentally disabled and codified as 42 USCA, Chapter 75, Section 6000 *et seq.*

“(5) ‘Facility for persons with developmental disabilities’ means a facility, or a specified portion of a facility, that is designed primarily for the delivery of one or more services to persons with one or more developmental disabilities, as those terms are defined in the applicable federal developmental disabilities laws.

“(6) ‘Protection and advocacy system’ means the system established in this state under the applicable federal developmental disabilities laws for the purpose of advocating for and protecting the rights of persons with developmental disabilities.”

SECTION 13. Section 112.002, Human Resources Code, is amended to read as follows: “Section 112.002. PURPOSE AND LEGISLATIVE FINDINGS. (a) The purpose of this chapter is to establish a developmental disabilities program that[:

“[(1) promotes a system of effective and efficient services for persons with developmental disabilities that plans, coordinates, monitors, tests, and evaluates those services;

“[(2) assists the state in assuring that persons with developmental disabilities receive the care, treatment, and services necessary to enable them to achieve their maximum potential; and

“[(3) assures compliance with applicable federal developmental disability laws [the Developmental Disabilities Services and Facilities Construction Act (Pub.L. No. 01/517), the Developmentally Disabled Assistance and Bill of Rights Act (Pub.L. No. 04/103), and the Developmental Disabilities Assistance and Bill of Rights Act (Pub.L. No. 07/35), and all amendments to those Acts, as long as those Acts are effective].

“(b) The legislature finds that persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for their disabilities within the funds available for those purposes and that the treatment, services, and habilitation for a person with developmental disabilities must be designed to maximize the developmental potential of the person and must be provided in the setting that is least restrictive of the person's personal liberty.”

SECTION 14. Section 112.012, Human Resources Code, is amended to read as follows:

“Section 112.012. MEMBERS. The members of the council shall be appointed by the governor in accordance with applicable federal developmental disability laws.

“[(a) The council is composed of 25 members, each of whom must be a Texas resident:

"[(b) The commissioner or executive director of each of the following agencies serves as a voting ex officio member of the council, and from time to time may designate an employee from the commissioner's or executive director's agency to represent him on the council:

- "[(1) the Texas Department of Mental Health and Mental Retardation;
- "[(2) the Texas Department of Human Resources;
- "[(3) the Texas Department of Health;
- "[(4) the Central Education Agency;
- "[(5) the Texas Rehabilitation Commission;
- "[(6) the State Commission for the Blind; and
- "[(7) the Texas Commission for the Deaf.

"[(c) The governor shall appoint the following members to serve on the council:

- "[(1) a representative from a higher education training facility;
- "[(2) a representative from an agency of local government;
- "[(3) a representative from a nongovernmental agency concerned with services to the handicapped; and
- "[(4) a representative from a citizen group concerned with services to the handicapped.

"[(d) The governor shall appoint 14 consumer members to serve on the council. At least five of the consumer members must be persons with developmental disabilities; five must be parents or guardians of a person with a mentally impairing developmental disability; and one must be the parent or guardian of a person with developmental disabilities who is living in an institution. The remaining consumer members may be parents or guardians of persons with developmental disabilities; may be appointed from one of the above categories; or may be other interested persons:

"[(e) A consumer member may not be:

- "[(1) an employee of a state agency that receives funds under the developmental disabilities program established by this chapter and federal law;
- "[(2) a managing employee of any other entity that receives funds under the developmental disabilities program; or
- "[(3) a person with an ownership or control interest in an entity that receives funds under the developmental disabilities program.]"

**SECTION 15.** Section 112.016, Human Resources Code, is amended to read as follows:

"Section 112.016. OFFICERS. (a) *The governor shall designate a member of the council to be the presiding officer [At the regular meeting in March, members of the council shall elect a chair and a vice-chair to serve terms of one year beginning immediately on election].*

"(b) *The presiding officer serves in that capacity at the will of the governor [A council member may not serve in any one office more than two consecutive terms].*

"(c) A representative of a state agency may not serve as chair or vice-chair.

"(d) The council shall meet quarterly in regular session and on call by the chair when necessary for the transaction of council business."

**SECTION 16.** Section 112.017, Human Resources Code, is amended to read as follows:

"Section 112.017. BYLAWS. The council may adopt bylaws *and[or] policies* consistent with this chapter and applicable state or federal law. [~~The bylaws or policies may include duties of officers, process for nominations or vacancies for officers, duties of committees, quorum requirements for committees, provisions for special or ad hoc committees, and policies for council staff.~~]"

**SECTION 17.** Section 112.018, Human Resources Code, is amended by adding Subsection (f) to read as follows:

"(f) *The administering agency may adopt rules necessary for the operation of this chapter and for compliance and implementation of applicable federal developmental disability laws.*"

**SECTION 18.** Section 112.019, Human Resources Code, is amended to read as follows:

"Section 112.019. STATE PLAN FOR DEVELOPMENTAL DISABILITIES. [(a)] The council shall develop *jointly with the administering agency* the state plan for persons with developmental disabilities. The plan must conform to applicable federal developmental disability laws [:]

- "[(1) specify programs, services, and resources available to assist developmentally disabled persons;

"[(2)] describe the allocation of funds available to assist developmentally disabled persons;

"[(3)] specify objectives relating to developmentally disabled persons to be attained under the state plan; and

"[(4)] include any other provision required by the council and applicable state or federal law.

"[(b)] At least annually, the council shall review and evaluate the implementation of the state plan and submit modifications to the state plan as necessary.

"[(c)] In reviewing and evaluating implementation of the state plan, the council shall:

"[(1)] analyze state services systems with respect to services for developmentally disabled persons and analyze public and private programs that are currently or potentially capable of providing services to developmentally disabled persons;

"[(2)] assess the needs and problems of developmentally disabled persons;

"[(3)] identify gaps and barriers within the service delivery system;

"[(4)] establish priorities, goals, and measurable objectives for formulating the state plan, for allocating developmental disabilities funds, and for operating the developmental disabilities program;

"[(5)] review and comment on all state plans in Texas that relate to programs affecting developmentally disabled persons; and

"[(6)] review and comment on laws, policies, procedures, and practices relating to the rights of and services to developmentally disabled persons]."

SECTION 19. Section 112.020, Human Resources Code, is amended to read as follows:

"Section 112.020. ADDITIONAL COUNCIL POWERS AND DUTIES. *In addition to powers and duties derived by the council from applicable federal developmental disability laws, the council shall:*

"(1) [The council shall establish a developmental disabilities program. In administering that program, the council shall:

"[(1)] engage in and support activities that coordinate and strengthen services for developmentally disabled persons, and that safeguard the rights of persons who are faced with developmental disabilities;

"[(2)] foster cooperation and communication among state, county, municipal, voluntary, and private agencies providing services to developmentally disabled persons to assure that the services are delivered effectively, economically, and without duplication;

"[(3)] promote public awareness of the needs and problems of developmentally disabled persons;

"[(4)] cooperate with and support consumers and consumer organizations that advocate the rights of developmentally disabled persons and the delivery of effective services to developmentally disabled persons;

"[(5)] promote the establishment of community-based programs, especially model service delivery and service coordination programs, that hold promise of expanding or otherwise improving services to developmentally disabled persons;

"[(6)] encourage and support training programs to prepare professionals and paraprofessionals to work effectively with developmentally disabled persons;

"[(7)] encourage and support pertinent research efforts and preventive measures relating to developmentally disabled persons;

"[(8)] provide technical assistance where appropriate to achieve effective implementation of the state plan;

"[(9)] develop, with the administering agency, applications for special project grants and submit comments on the applications to the governor, the United States Secretary of Health and Human Services, and appropriate state agencies;

"[(10)] negotiate a management agreement with the administering agency to assure that the council is adequately staffed to perform its duties;

"[(11)] undertake at the request of the governor and the legislature activities appropriate to the achievement of legislative and executive functions relating to persons with developmental disabilities or other handicapping conditions; and

"(2) [(12)] submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance; and

"[(13)] assure that the State of Texas is in compliance with the Developmental Disabilities Services and Facilities Construction Act (Pub.L. No. 91/517); the Developmentally Disabled Assistance and Bill of Rights Act (Pub.L. No. 94/103); and

the Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. No. 97/35), and all amendments to those Acts, as long as those Acts are effective].”

**SECTION 20.** Chapter 112, Human Resources Code, is amended by adding Section 112.021 to read as follows:

“Section 112.021. **PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.** The protection and advocacy system shall have access to records as required by the provisions of the applicable federal disability laws.”

**SECTION 21.** Subchapter C, Chapter 112, Human Resources Code, is repealed.

**SECTION 22.** Section 111.012, Human Resources Code, is amended to read as follows:

“Section 111.012. **APPLICATION OF SUNSET ACT.** The Texas Rehabilitation Commission is subject to the Texas Sunset Act (Art. 5429k, Vernon’s Texas Civil Statutes). ~~Unless [; and unless]~~ continued in existence as provided by that Act, the commission is abolished and this chapter expires ~~[effective]~~ September 1, 1997 ~~[1985]~~.”

**SECTION 23.** Subdivision (5), Section 111.002, Human Resources Code, is amended to read as follows:

“(5) ‘Rehabilitation services’ means any equipment, supplies, goods, or services necessary to enable a handicapped individual to engage in a gainful occupation or to achieve maximum personal independence. To enable a handicapped individual to engage in a gainful occupation or achieve maximum personal independence the commission may engage in or contract for ~~[the following]~~ activities, including but not limited to:

“(A) evaluation of rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for services and the nature and scope of services to be provided;

“(B) counseling and guidance;

“(C) physical and mental restoration services necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive;

“(D) training;

“(E) maintenance covering a handicapped individual’s basic living expenses, including food, shelter, clothing, and other subsistence expenses necessary to support and derive the full benefit of the other rehabilitation services being provided;

“(F) transportation;

“(G) placement in a suitable employment;

“(H) postemployment services necessary to maintain suitable employment;

“(I) obtaining occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or small business, and providing tools, equipment, initial stocks, goods, and supplies; and

“(J) providing other equipment, supplies, services, or goods that can reasonably be expected to benefit a handicapped individual in terms of employment in a gainful occupation or achievement of maximum personal independence.”

**SECTION 24.** Subsections (a) and (e), Section 132.002, Human Resources Code, are amended to read as follows:

“(a) The council on disabilities is established and is composed of 23 ~~[24]~~ members.”

“(e) The governing board of each of the following agencies shall appoint one person to represent that agency on the council:

“(1) the Texas Department of Human Resources;

“(2) the Texas Department of Mental Health and Mental Retardation;

“(3) the Texas Department of Health;

“(4) the Central Education Agency;

“(5) the Texas Rehabilitation Commission;

“(6) the Texas Commission for the Deaf;

“(7) the State Commission for the Blind;

“(8) the Texas Department on Aging; ~~[and]~~

“(9) the Texas Commission on Alcoholism;

“(10) the Texas School for the Deaf; and

“(11) the Texas Employment Commission.”

**SECTION 25.** This Act takes effect September 1, 1985.



**SECTION 26.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on January 31, 1985, by a viva-voce vote; Senate concurred in House amendments on May 26, 1985, by a viva-voce vote; passed the House, with amendments, on May 25, 1985, by a non-record vote.

Approved: June 14, 1985

Effective: September 1, 1985