

1 **Amendments to Chapter 806**  
2 **Purchases of Products and Services from People with Disabilities**  
3 **Policy Concept**

4 ***Implementation of Senate Bill 753***

5 **Background**

6 Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019), amended Human  
7 Resources Code, Chapter 122, relating to the Purchasing from People with Disabilities (PPD)  
8 program, by adding the following sections:

- 9 • Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that  
10 participate in the PPD program and that pay subminimum wage to develop, with the  
11 assistance of the Texas Workforce Commission (TWC), a Transition and Retention Plan  
12 (TRP) to increase the wages of their workers with disabilities to the federal minimum wage  
13 by September 1, 2022, and to address specifically how they will retain workers after the  
14 increase in wages to at least the federal minimum wage
- 15 • Section 122.0076, which requires all CRPs that participate in the PPD program to pay each  
16 worker with a disability at least the federal minimum wage

17 See the attachment, Chapter 806 Policy Concept Background Information, for additional  
18 information regarding SB 753.

19 **Issue 1: Requirements of the TRPs**

20 SB 753 requires TWC to assist CRPs in developing the TRP by providing workers with  
21 information about, and referrals to, Vocational Rehabilitation (VR) counselors to ensure that  
22 workers are informed of work incentives as well as the potential impact that the increase in  
23 wages may have on eligibility for federal and state benefit programs.

24 However, SB 753 does not specify requirements for the TRP regarding milestones,  
25 documentation, resources, or reports needed to demonstrate that the CRP is making progress  
26 toward meeting the minimum wage and staff retention requirements—a necessary component of  
27 granting extensions, as discussed in Issue 2. Currently, staff is preparing interim guidance for the  
28 TRPs, which includes recommendations to help ensure that the CRPs are making progress  
29 toward meeting the minimum wage and retention requirements of SB 753. The interim guidance  
30 will include the timelines for transition, including the transition goal that by January 1, 2022,  
31 CRPs should have full retention of workers with disabilities at the minimum wage or above the  
32 placement of workers in job training, or full assistance to workers in need of placement. CRPs  
33 not meeting this goal should consider requesting an extension.

34 Additionally, the requirements of the TRP issued through interim guidance should be included in  
35 rule to provide clear expectations for compliance with the TRP requirements.

36 **Decision Point**

37 Staff seeks direction on amending Chapter 806 to include:

- 38 • the requirements for the TRP;

- 1 • the goal of full transition by January 1, 2022; and
- 2 • expectations for compliance with the TRP.

3 **Issue 2: Extensions of the TRP Deadline and Withdrawals from the PPD Program**

4 SB 753 allows, but does not require, TWC to extend the deadline for compliance with the  
5 minimum wage requirements for no more than 12 months if the CRP requests the extension by  
6 March 1, 2022, and TWC approves by May 1, 2022. For TWC to grant an extension, SB 753  
7 requires that the CRP:

- 8 • has demonstrated to TWC that an extension would be in the best interest of the CRP’s  
9 employees with disabilities;
- 10 • has worked with TWC to develop a TRP and made make meaningful demonstrable progress  
11 toward meeting the minimum wage requirements; and
- 12 • has submitted a revised plan to TWC detailing how the extension will allow the CRP to meet  
13 the minimum wage requirements.

14 Additional considerations for granting an extension may include whether the CRP has met the  
15 interim goals and reporting requirements of the TRP as well as whether the CRP requested and  
16 received technical assistance before requesting an extension.

17 Extensions may not be for more than 12 months; therefore, TWC has the option to grant  
18 extensions of fewer than 12 months or grant extension dates specifically requested by a CRP. To  
19 ensure consistent implementation of TRPs, a standard 12-month extension from May 1, 2022, to  
20 April 30, 2023, may be granted to all CRPs requesting and meeting the requirements for an  
21 extension.

22 Additionally, if a CRP does not intend to meet the minimum wage requirements and determines  
23 that it will not seek any exemptions under §122.0076, if eligible, the CRP should notify TWC of  
24 its intent to withdraw from the PPD program no later than March 1, 2022. The effective date of  
25 the withdrawal will be September 1, 2022, which is the statutory deadline for CRPs to meet the  
26 minimum wage requirement. This time frame also allows for a transition period for transferring  
27 contracts under the PPD. Any CRP that has not withdrawn voluntarily from the program, does  
28 not have an extension or approved exemptions in place, and is not meeting the minimum wage  
29 requirements on September 1, 2022, or by the granted extension date, will be involuntarily  
30 removed through revocation of the CRP’s certification to participate in the program.

31 Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an  
32 extension. TWC Chapter 823 Integrated Complaints, Hearings, and Appeals rules do not apply to  
33 the PPD program. However, TWC may establish a separate informal reconsideration process to  
34 grant a CRP additional time to demonstrate that an extension is warranted. This reconsideration  
35 process may include the following elements:

- 36 • PPD program staff approves or disapproves an extension request no later than April 1, 2022.
- 37 • The CRP requests that TWC reconsider a denial of an extension request no later than April  
38 10, 2022.
- 39 • TWC’s executive director or deputy executive director makes a final decision on extension  
40 requests by May 1, 2022.

1 **Decision Point**

2 Staff seeks direction on amending Chapter 806 to:

- 3 • allow CRPs to request by March 1, 2022, an extension through April 30, 2023, if the CRP  
4 has:
- 5 ➤ met the requirements for an extension, as specified in SB 753;
  - 6 ➤ met the TRP requirements; and
  - 7 ➤ requested technical assistance before requesting an extension;
- 8 • require CRPs to notify TWC no later than March 1, 2022, if the CRP intends to withdraw  
9 from the PPD program; and
- 10 • allow CRPs to appeal if TWC does not grant an extension.

11 **Issue 3: New CRPs during the TRP Period**

12 Section 122.0076(d) states that the requirement in §122.0076(a) that all CRPs pay at least the  
13 minimum wage does not apply to a CRP’s eligibility to participate in the PPD program before  
14 September 1, 2022, or to the extension date granted by TWC, whichever date is later. However,  
15 any entity applying for CRP certification before September 1, 2022, during the TRP period must  
16 either pay at or above the minimum wage or have a plan to pay at or above the minimum wage  
17 by September 1, 2022, unless the workers employed by the CRP are eligible for an exemption, as  
18 described in Issue 4. TWC proposes assisting CRPs currently paying subminimum wage with  
19 their TRPs, beginning in June 2020; CRPs should begin implementing their TRPs in July 2020.  
20 CRPs paying subminimum wage and entering the PPD program after the proposed  
21 implementation start date in July 2020 will have less time to transition and retain workers  
22 effectively to meet the September 1, 2022, statutory deadline.

23 Chapter 806 may be amended to require all entities that do not meet minimum wage  
24 requirements and that request CRP certification after the statutory date to request an extension—  
25 March 1, 2022—to meet the minimum wage requirements in §122.0076(a) by September 1,  
26 2022.

27 **Decision Point**

28 Staff seeks direction on amending Chapter 806 to require all entities that do not meet minimum  
29 wage requirements and that request CRP certification after the statutory date to request an  
30 extension—March 1, 2022—to meet the minimum wage requirements established in  
31 §122.0076(a) by September 1, 2022.

32 **Issue 4: Granting Exemptions from the Minimum Wage Requirements**

33 Section 122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a  
34 disability from the minimum wage requirements if TWC determines, based on the worker’s  
35 circumstances, that requiring the minimum wage would result in:

- 36 • the CRP not being able to retain the worker with a disability;
- 37 • the worker not being successful in obtaining work with a different employer; and
- 38 • the worker not being able to obtain employment at a higher wage than the CRP could pay.

1 The following may be considered when establishing an exemption option, beginning September  
2 1, 2022:

- 3 • The CRP’s efforts to date to retain the worker
- 4 • The CRP’s efforts to date to assist the worker in finding other employment, including other  
5 employment at a higher wage than the CRP will pay

6 Additionally, when determining whether to approve an exemption, TWC may consider the  
7 availability of employment services from other entities that help the worker obtain employment  
8 at or above minimum wage and the length of the requested exemption. Options for consideration  
9 are the following:

- 10 • Whether the exemption is temporary or long term
- 11 • Whether employment services provided by other entities serving individuals with significant  
12 intellectual or developmental disabilities are available and could help the worker obtain  
13 employment at or above minimum wage

14 **Decision Point**

15 Staff seeks direction on amending Chapter 806 to:

- 16 • allow exemptions to the minimum wage requirements of §122.0076; and
- 17 • establish the criteria and the process for granting exceptions to the minimum wage  
18 requirements.

19 ***Program Clarification and Improvement Opportunities***

20 **Issue 5: Workforce Innovation and Opportunity Act Referrals to CRPs**

21 Section 122.013(c)(3) of the Human Resources Code requires TWC to establish, by rule, the  
22 minimum percentage of employees with disabilities that an organization must employ to be  
23 considered a CRP for the PPD program. Section 806.53 requires CRPs to certify compliance  
24 with the requirement that, for each contract, individuals with disabilities perform 75 percent of  
25 each CRP’s total hours of direct labor that are necessary to deliver services and products.  
26 However, §806.53 also allows TWC to establish a percentage different from 75 percent based on  
27 factors, including, but not limited to:

- 28 • how practices in a particular area were conducted previously;
- 29 • whether other CRPs providing the same or similar services have achieved the 75 percent  
30 requirement; and
- 31 • whether TWC’s three-member Commission (Commission) has established a policy goal to  
32 encourage employment of individuals with disabilities in a particular field.

33 Section 806.41(f)(9) also allows CRPs to seek a waiver from the 75 percent requirement.

34 The Workforce Innovation and Opportunity Act (WIOA) of 2014 and its implementing  
35 regulations established that employment outcomes in the VR program must be in competitive  
36 integrated employment (CIE). The components of a CIE setting are defined further in 34 CFR  
37 §361. Successful employment outcomes that are reported by state VR agencies under WIOA  
38 must meet the definition of CIE.

1 Based on these WIOA provisions, an employer that must meet a requirement that 75 percent of  
2 its direct labor hours be performed by individuals with disabilities will have difficulty meeting  
3 the integrated location criteria in WIOA. The VR program may not refer customers to PPD CRPs  
4 for employment opportunities unless the opportunities meet WIOA requirements.

5 Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to  
6 workers with disabilities who wish to work in an integrated setting.

7 **Decision Point**

8 Staff seeks direction on amending Chapter 806 to allow TWC to establish a percentage different  
9 from 75 percent for a CRP that proposes to participate in the PPD program and offer  
10 employment opportunities for individuals with disabilities that meet the WIOA definition of  
11 competitive integrated employment.

12 **Issue 6: Compliance with State Law**

13 Neither Chapter 122 of the Human Resources Code nor TWC Chapter 806 rules requires that  
14 CRPs comply with other state laws, regulations, or agency requirements. Specifically, there is no  
15 requirement that CRPs must comply with Unemployment Insurance (UI) taxes, be clear of wage  
16 claim debts by TWC, or meet the statutory or regulatory requirements imposed by other state  
17 agencies applicable to the CRP's business.

18 **Decision Point**

19 Staff seeks direction on amending Chapter 806 to require that CRPs participating in the PPD  
20 program:

- 21 • be clear of any debts related to Unemployment Insurance (UI) taxes or wage claims; and
- 22 • meet the state licensing, regulatory, and tax requirements applicable to the CRP.

23 A CRP that does not meet these requirements will be involuntarily removed by revocation of the  
24 CRP's certification to participate in the program.

25 **Issue 7: PPD Advisory Committee**

26 Section 806.21 addresses the role of the PPD Advisory Committee. The rule does not currently  
27 address how the advisory Committee's advice, activity, or recommendations that result from its  
28 meetings will be communicated to the Commission. Staff seeks to establish in rule the method by  
29 which the advisory committee will report its advice, activity, or recommendations to the  
30 Commission. Amending Chapter 806 may also provide the manner of communication and  
31 criteria of an annual report of the advisory committee activities to the Commission.

32 **Decision Point**

33 Staff seeks direction on amending Chapter 806 to clarify the method of communicating advice,  
34 activities, and/or recommendations of the advisory committee to the Commission.

1 **Issue 8: Commission Approval of Products and Services**

2 There is no requirement in Chapter 122 of the Human Resources Code that the Commission  
3 approve a CRP’s products and services. However, §806.53 requires approval from the  
4 Commission for CRPs to sell products and services through the PPD program.

5 The Commission considers approval of products and services during regular Commission  
6 meetings. If the Commission were to provide guidance on approval of products and services and  
7 then delegate approval to the executive director or deputy executive director, the process may be  
8 streamlined to shorten the period for review and approval, which would support timelier  
9 deployment of a CRP’s products and services.

10 **Decision Point**

11 Staff seeks direction on amending Chapter 806 to allow that the review and approval of products  
12 and services be conducted by TWC’s executive director or deputy executive director rather than  
13 the Commission.

14 **Issue 9: Determination of a Worker with a Disability**

15 Section 122.002 of the Human Resources Code and TWC Chapter 806 rules define “disability”  
16 for the PPD program as “a mental or physical impairment, including blindness, that impedes a  
17 person who is seeking, entering, or maintaining gainful employment.” Section 806.41(e)(2)  
18 requires CRPs to provide documentation of approved disability determinations. However,  
19 Chapter 806 does not address the qualifications of individuals who make the determination that a  
20 worker has a disability. As a result, standards are inconsistent among the CRPs regarding the  
21 determination of an individual who qualifies as a worker with a disability. Additionally, some  
22 CRPs make their own determination of whether an individual meets the definition of a worker  
23 with a disability.

24 Chapter 806 may be amended to require that a determination that a worker has a disability be  
25 made by an independent, non-CRP entity or individual, including a medical professional, a VR  
26 counselor, or another individual who has expertise in diagnosing or providing services to  
27 individuals with disabilities.

28 **Decision Point**

29 Staff seeks direction on amending Chapter 806 to further clarify disability determination  
30 requirements by the effective date of Chapter 122 to include the following:

- 31 • the qualifications for individuals or entities that determine and document whether an  
32 individual meets the definition of a worker with a disability; and
- 33 • the requirement that an individual or entity making the determinations be an independent,  
34 non-CRP entity.

35 **Issue 10: Use of Contract Labor**

36 Section 806.41(e)(1) requires that certified CRPs maintain payroll, human resource functions,  
37 accounting, and all other relevant documentation showing that employees who produce products  
38 or perform services under the PPD program are individuals with disabilities. However, Chapter  
39 806 has no specific requirement that the CRP is the employing unit of all workers with  
40 disabilities who produce products or perform services in the PPD program. As a result, some

1 CRPs hire individuals with disabilities as contract labor and issue 1099s instead of hiring  
2 individuals with disabilities as their employees.

3 **Decision Point**

4 Staff seeks direction on amending Chapter 806 to require that the CRP or an entity designated by  
5 the CRP to be the employing unit of the workers with disabilities who are counted toward the  
6 CRP’s certification for the PPD program.

7 **Issue 11: Clarifying Appreciable Contribution and Value Added by Individuals with**  
8 **Disabilities**

9 Section 806.2(1) defines appreciable contribution as “...the substantial work effort contributed  
10 by individuals with disabilities in the reforming of raw materials, assembly of components, or  
11 packaging of bulk products in more saleable quantities, by which value is added into the final  
12 product offered for sale or through which the individuals with disabilities develop new job skills  
13 that have not been previously attained through other jobs.”

14 Section 806.2(11) defines value added as “The labor of individuals with disabilities applied to  
15 raw materials, components, goods purchased in bulk form resulting in a change in the  
16 composition or marketability of component materials, packaging operations, and/or the servicing  
17 tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a  
18 packaging label to a commodity does not qualify.”

19 Section 806.53(b)(2) states that “appreciable contribution and value added to the product by  
20 individuals with disabilities must be determined to be substantial on a product-by-product basis,  
21 based on requested documentation provided to the Agency upon application for a product to be  
22 approved for the state use program.”

23 Current rules do not define or describe how the agency determines whether the work effort and  
24 applied labor of individuals qualify as substantial, thereby meeting the requirements of  
25 appreciable contribution and value added. A clarification of the rule would help the agency and  
26 CRPs ensure consistent application and compliance.

27 **Decision Point**

28 Staff seeks direction on amending Chapter 806 to provide criteria for determining if duties  
29 performed by individuals with disabilities qualify as value added. For example, consideration of  
30 value added may afford some flexibility regarding labor market conditions relative to the  
31 proposed good or service and the degree to which the duties and tasks performed by individuals  
32 with disabilities employed by CRPs are transferrable to the labor market.

33 **Issue 12: Rule Review of Chapter 806**

34 Texas Government Code §2001.039 requires that every four years each state agency review and  
35 consider for reoption, revision, or repeal each rule adopted by that agency. The issues outlined  
36 in this Policy Concept result from a review of Chapter 806 consistent with the requirements of  
37 the Texas Government Code.

38 **Decision Point**

1 Staff seeks direction on including in the preamble of the rule amendments to Chapter 806  
2 outlined in this Policy Concept a statement that the rules have been reviewed in pursuant to  
3 Texas Government Code §2001.039.

4



**Attachment**  
**Chapter 806 Policy Concept**  
**Background Information**

**Senate Bill 753**

Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019), amended the Human Resources Code, Chapter 122, relating to the Purchasing from People with Disabilities (PPD) program by adding the following sections:

- Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that participate in the PPD program and that pay subminimum wage to develop, with the assistance of the Texas Workforce Commission (TWC), a Transition and Retention Plan (TRP) to increase the wages of their workers with disabilities to at least the federal minimum wage by September 1, 2022, and to address specifically how they will retain workers after the increase in wages
- Section 122.0076, which requires all CRPs that participate in the PPWD program to pay each worker with a disability at least the federal minimum wage

**TRPs**

Section 122.0075 requires TWC to assist CRPs that currently pay subminimum wage in developing their TRPs and to provide:

- information about certified benefits counselors to ensure that workers are informed of work incentives and the potential impact that the increase in wages may have on a worker's eligibility for pertinent federal or state benefit programs; and
- a referral to a certified benefits counselor to any worker with a disability who requests a referral.

Section 122.0075 requires the TRP to ensure, to the fullest extent possible, that each worker with a disability is retained by the CRP after the program increases wages to at least the federal minimum wage. This section also requires CRPs that cannot retain all workers with a disability after the wage increase to work with TWC and other relevant governmental entities to obtain job training and employment services to help the workers find other employment that pays at least the federal minimum wage. This section further allows TWC, at the worker's request, to help the worker who is not retained by the CRP to secure employment that pays at least the federal minimum wage.

Additionally, §122.0075(f) allows, but does not require, TWC to extend the period for compliance with the minimum-wage requirements in §122.0076 for not more than 12 months if the CRP:

- requests the extension by March 1, 2022;
- has demonstrated to TWC that an extension would be in the best interest of the CRP's employees with disabilities;
- has worked with TWC to develop a TRP and made meaningful progress toward meeting the minimum-wage requirements; and

- 1 • submits a revised plan to TWC detailing how the extension will allow the CRP to meet the  
2 minimum-wage requirements.

3 TWC must decide on the request for an extension no later than May 1, 2022.

4 The requirements of §122.0075 expire on September 1, 2023.

5 **CRP Minimum-Wage Requirements**

6 Section 122.0076(a) requires all CRPs participating in the PPWD program to pay each worker  
7 with a disability at least the federal minimum wage for any work relating to products or services  
8 purchased by the CRP through the PPWD program. Section 122.076(d) states that the minimum-  
9 wage requirement does not apply to a CRP’s eligibility before the later of:

- 10 • September 1, 2022; or
- 11 • the date of the extension granted by TWC under §122.0075(f).

12 Section 122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a  
13 disability from the minimum-wage requirements if TWC determines, based on the worker’s  
14 circumstances, that requiring the minimum wage would result in:

- 15 • the CRP not being able to retain the worker with a disability;
- 16 • the worker not being successful in obtaining work with a different employer; and
- 17 • the worker not being able to obtain employment at a higher wage than the CRP could pay.

18 **CRP TRP Timeline**

19 Currently, ~~three~~ two CRPs pay subminimum wages and will be required to develop a TRP.

20 Below is the proposed timeline regarding the TRP, including allowable extensions by TWC.

Milestone	Description	Due Date
Reviews of CRP Progress on TRP Implementation	TWC reviews CRP progress on TRP implementation, including achievement of performance goals, based on intervals set by TWC plan guidance.	1/1/2021 and ongoing
CRPs Fully Transitioned Goal Date and Review*	TWC’s goal for full transition, including full retention of workers, placement of workers in job training, and fully assisting workers in need of placement.  CRPs not fully transitioned and not on target for the 9/1/2022 date may make an extension request beginning 1/1/2022.	1/1/22
CRP Extension Requests	Statutory deadline for CRPs to request an extension of no more than one year to meet the minimum-wage requirements.	3/1/22
TWC CRP Extension Requests Decision	Statutory deadline for TWC to grant the extension.	5/1/22
Minimum Wage Required	Statutory deadline for CRPs paying subminimum wage to pay at least the minimum wage (unless granted a 12-month extension).	9/1/22

Milestone	Description	Due Date
Extensions Expire*	Deadline for final one-year extensions to expire.	4/30/23

1 \*Pending decision points in Issues 1–3 of the policy concept

2