

Appendix I, g.

By: Ratliff, West

S.B. No. 178

A BILL TO BE ENTITLED
AN ACT

13-23 SECTION 1.21. Subdivisions (2) and (3), Section 2161.001,
13-24 Government Code, are amended to read as follows:

13-25 (2) "Historically underutilized business" means an
13-26 entity with its principal place of business in this state that is:

14-1 (A) a corporation formed for the purpose of
14-2 making a profit in which 51 percent or more of all classes of the
14-3 shares of stock or other equitable securities are owned by one or
14-4 more economically [~~socially~~] disadvantaged persons who have a
14-5 proportionate interest and actively participate in the
14-6 corporation's control, operation, and management;

14-7 (B) a sole proprietorship created for the
14-8 purpose of making a profit that is completely owned, operated, and
14-9 controlled by an economically [~~a socially~~] disadvantaged person;

14-10 (C) a partnership formed for the purpose of
14-11 making a profit in which 51 percent or more of the assets and
14-12 interest in the partnership are owned by one or more economically
14-13 [~~socially~~] disadvantaged persons who have a proportionate interest
14-14 and actively participate in the partnership's control, operation,
14-15 and management;

14-16 (D) a joint venture in which each entity in the
14-17 venture is a historically underutilized business, as determined
14-18 under another paragraph of this subdivision; or

14-19 (E) a supplier contract between a historically
14-20 underutilized business as determined under another paragraph of
14-21 this subdivision and a prime contractor under which the
14-22 historically underutilized business is directly involved in the
14-23 manufacture or distribution of the goods or otherwise warehouses
14-24 and ships the goods.

14-25 (3) "Economically [~~Socially~~] disadvantaged person"
14-26 means a person who is economically [~~socially~~] disadvantaged because
15-1 of the person's identification as a member of a certain group,
15-2 including Black Americans, Hispanic Americans, women, Asian Pacific
15-3 Americans, and Native Americans, and who has suffered the effects
15-4 of discriminatory practices or other similar insidious
15-5 circumstances over which the person has no control.

15-6 SECTION 1.22. Section 2161.002, Government Code, is amended
15-7 by adding Subsection (c) to read as follows:

15-8 (c) In adopting rules to administer this chapter, the
15-9 commission shall adopt rules that are based on the results of the
15-10 "State of Texas Disparity Study, A Report to the Texas Legislature
15-11 as Mandated by H.B. 2626, 73rd Legislature, December 1994"
15-12 (prepared by National Economic Research Associates, Inc.). The
15-13 commission shall revise the rules in response to the findings of
15-14 any updates of the study that are prepared on behalf of the state.

15-15 SECTION 1.23. Subchapter A, Chapter 2161, Government Code,
15-16 is amended by adding Sections 2161.003, 2161.004, and 2161.005 to

15-17 read as follows:

15-18 Sec. 2161.003. AGENCY RULES. A state agency, including an
 15-19 institution of higher education, shall adopt the commission's rules
 15-20 under Section 2161.002 as the agency's or institution's own rules.
 15-21 Those rules apply to the agency's construction projects and
 15-22 purchases of goods and services paid for with appropriated money
 15-23 without regard to whether a project or purchase is otherwise
 15-24 subject to this subtitle.

15-25 Sec. 2161.004. APPLICABILITY; INTENT. (a) This chapter and
 15-26 rules adopted by the commission under this chapter apply to state
 16-1 agency construction projects and purchases of goods and services
 16-2 that are paid for with appropriated money and made under the
 16-3 authority of this subtitle or other law.

16-4 (b) The legislature intends that all qualified businesses
 16-5 have access to compete for business from the state.

16-6 (c) Section 2161.003 and Subsections (a) and (b) of this
 16-7 section do not apply to a project or contract subject to Section
 16-8 201.702, Transportation Code.

16-9 Sec. 2161.005. TRANSFER OF FUNDS FOR PURCHASING. If the
 16-10 state auditor reports to the commission under Section 2161.123(d)
 16-11 that a state agency is not complying with Section 2161.123, the
 16-12 commission shall report that fact to the Legislative Budget Board.
 16-13 If the Legislative Budget Board determines that, one year after the
 16-14 date of the state auditor's report to the commission, the agency is
 16-15 still not complying with Section 2161.123, the budget board may,
 16-16 under Section 69, Article XVI, Texas Constitution, direct the
 16-17 emergency transfer of the agency's appropriated funds for making
 16-18 purchases under purchasing authority delegated under Section
 16-19 2155.131 or 2155.133 to the appropriate state agency. The amount
 16-20 transferred from the agency's funds to the appropriate agency shall
 16-21 be an amount determined by the Legislative Budget Board.

16-22 SECTION 1.24. Section 2161.122, Government Code, is amended
 16-23 by adding a new Subsection (c) and redesignating Subsections (c)
 16-24 and (d) as Subsections (d) and (e) to read as follows:

16-25 (c) Each state agency shall report to the commission in
 16-26 accordance with Section 2161.125 the following information with
 17-1 regard to the expenditure of both treasury and nontreasury funds:

17-2 (1) the total dollar amount of purchases and payments
 17-3 made under contracts awarded to historically underutilized
 17-4 businesses;

17-5 (2) the number of businesses participating in any
 17-6 issuance of state bonds by the agency;

17-7 (3) the number of contracts awarded to businesses with
 17-8 regard to the agency's acquisition, construction, or equipping of a
 17-9 facility or implementation of a program; and

17-10 (4) the number of bids, proposals, or other applicable
 17-11 expressions of interest made by historically underutilized
 17-12 businesses with regard to the agency's acquisition, construction,
 17-13 or equipping of a facility or implementation of a program.

17-14 (d) A state agency participating in a group purchasing
 17-15 program [~~described under Section 2155.139(b)~~] shall send to the
 17-16 commission in the agency's report under Section 2161.121 a separate
 17-17 list of purchases from historically underutilized businesses that
 17-18 are made through the group purchasing program, including the dollar
 17-19 amount of each purchase allocated to the reporting agency.

17-20 (e) [~~(d)~~] A state agency's report is a record of the
 17-21 agency's purchases for which the agency selected the vendor. If

17-22 the vendor was selected by the commission as part of its state
17-23 contract program, the commission shall include the purchase in the
17-24 commission's report of its own purchases unless the commission made
17-25 a sole source purchase for the agency under Section 2155.067. The
17-26 state agency for which the purchase was made shall report the
18-1 selection of the vendor on its report as if the agency selected the
18-2 vendor when the agency drew specifications for goods or services
18-3 that are proprietary to one vendor.

18-4 SECTION 1.25. Section 2161.123, Government Code, is amended
18-5 by adding Subsections (d), (e), and (f) to read as follows:

18-6 (d) The commission and the state auditor shall cooperate to
18-7 develop procedures to periodically monitor state agency compliance
18-8 with this section. The state auditor shall report to the
18-9 commission a state agency that is not complying with this section.
18-10 In determining whether a state agency is making a good faith effort
18-11 to comply, the state auditor shall consider whether the agency:

18-12 (1) has adopted rules under Section 2161.003;

18-13 (2) has used the commission's directory under Section
18-14 2161.064 and other resources to identify historically underutilized
18-15 businesses that are able and available to contract with the agency;

18-16 (3) made good faith, timely efforts to contact
18-17 identified historically underutilized businesses regarding
18-18 contracting opportunities; and

18-19 (4) conducted its procurement program in accordance
18-20 with the good faith effort methodology set out in commission rules.

18-21 (e) In conducting an audit of an agency's compliance with
18-22 this section or an agency's making of a good faith effort to
18-23 implement the plan adopted under this section, the state auditor
18-24 shall not consider the success or failure of the agency to contract
18-25 with historically underutilized businesses in any specific
18-26 quantity. The state auditor's review shall be restricted to the
19-1 agency's procedural compliance with Subsection (d).

19-2 (f) If the state auditor reports to the commission that a
19-3 state agency is not complying with this section, the commission
19-4 shall assist the agency in complying.

19-5 SECTION 1.26. Section 2161.181, Government Code, is amended
19-6 to read as follows:

19-7 Sec. 2161.181. GOALS FOR PURCHASES OF GOODS AND SERVICES. A
19-8 state agency, including the commission, shall make a good faith
19-9 effort to increase the [~~assist historically underutilized~~
19-10 ~~businesses to receive not less than 30 percent of the total value~~
19-11 ~~of all~~] contract awards for the purchase of goods or services that
19-12 the agency expects to make during a fiscal year to historically
19-13 underutilized businesses based on rules adopted by the commission
19-14 to implement the disparity study described by Section 2161.002(c).

19-15 SECTION 1.27. Subsection (a), Section 2161.182, Government
19-16 Code, is amended to read as follows:

19-17 (a) A state agency that contracts for a construction
19-18 project, including a project under Section 2166.003, shall make a
19-19 good faith effort to increase the construction contract awards
19-20 [~~assist historically underutilized businesses to receive not less~~
19-21 ~~than 30 percent of the total value of each construction contract~~
19-22 ~~award~~] that the agency expects to make during a fiscal year to
19-23 historically underutilized businesses based on rules adopted by the
19-24 commission to implement the disparity study described by Section
19-25 2161.002(c).

SECTION 44. This section provides, for information purposes only, a derivation table for the provisions of the General Appropriations Act that are codified in general law by other sections of this Act. The first column identifies the codified law; all references are to the Government Code unless otherwise noted. The second column identifies for each codified law the applicable source provision in Article IX of the General Appropriations Act for the fiscal biennium ending August 31, 1999 (Chapter 1452, Acts of the 75th Legislature, Regular Session, 1997).

	<u>Codified Law</u>	<u>Source Provision</u>
31-17		
31-18	Sec. 101.027(a), Civil Practice	Sec. 61
31-19	and Remedies Code	
31-20	Sec. 106.001(c), Civil Practice	Sec. 124.11
31-21	and Remedies Code	
31-22	Sec. 306.007	Sec. 40.2
31-23	Sec. 321.013(c)	Sec. 176, 124.8 (part)
31-24	Sec. 321.014(c)	Sec. 91
31-25	Sec. 325.011(9)(b)	Sec. 124.10
31-26	Sec. 403.097	Sec. 32.2
32-1	Sec. 403.245(b)	Sec. 126
32-2	Sec. 771.008(d)	Sec. 78
32-3	Sec. 811.001(7)	Sec. 181, last sent.
32-4	Sec. 2001.039	Sec. 167
32-5	Sec. 2052.304	Sec. 40.3
32-6	Sec. 2054.003(6)	Sec. 43.1.a
32-7	Sec. 2054.121	Sec. 43.5
32-8	Sec. 2054.122	Sec. 156
32-9	Sec. 2101.0377	Sec. 70
32-10	Sec. 2155.084	Sec. 135, 1st 2 par.
32-11	Sec. 2155.132(a)	Sec. 90
32-12	Sec. 2155.268	Sec. 56
32-13	Sec. 2155.4441	Sec. 53
32-14	Sec. 2158.0031	Sec. 20.3, 1st sent.
32-15	Sec. 2161.002(c)	Sec. 124.5
32-16	Sec. 2161.122(c)	Sec. 124.6, 124.7
32-17	Sec. 2161.123(d)-(g)	Sec. 124.8, 124.9
32-18	Sec. 2165.104(c)	Sec. 154, except last sent.
32-19	Sec. 2170.009	Sec. 111 (most)
32-20	Sec. 2170.010	Sec. 141
32-21	Secs. 2170.051(c), (d)	Sec. 140
32-22	Sec. 2170.057(b)	Sec. 139, 2nd par.
32-23	Sec. 2201.002(c)	Sec. 150.2
32-24	Sec. 2203.004	Sec. 149
32-25	Sec. 2203.005	Sec. 110 (most)
32-26	Sec. 2204.002	Sec. 135, 3rd par., 1st sent.
33-1		
33-2	Sec. 2204.003	Sec. 135, 3rd par., 2nd sent.
33-3		
33-4	Sec. 2251.030	Sec. 79
33-5	Sec. 2252.901	Sec. 52
33-6	Sec. 2254.0031	Sec. 51
33-7	Sec. 205.019, Labor Code	Sec. 80 (part)
33-8	Sec. 506.002, Labor Code	Sec. 81 (part)
33-9	Sec. 11.0791, Natural Resources Code	Sec. 148, 1st par.

33-10 Sec. 11.083, Natural Resources Code Sec. 147
33-11 Sec. 31.401, Natural Resources Code Sec. 144 (part)
33-12 SECTION 45. This Act takes effect September 1, 1999.
33-13 SECTION 46. The importance of this legislation and the
33-14 crowded condition of the calendars in both houses create an
33-15 emergency and an imperative public necessity that the
33-16 constitutional rule requiring bills to be read on three several
33-17 days in each house be suspended, and this rule is hereby suspended.