

By: Tepper

H.B. No. 167

A BILL TO BE ENTITLED

AN ACT

relating to the implementation of diversity, equity, and inclusion initiatives and certain prohibited considerations in contracting by governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TITLE

SECTION 1.01. This Act may be cited as the Ending Institutional Racism Act.

ARTICLE 2. PROHIBITED DIVERSITY, EQUITY, AND INCLUSION INITIATIVES
BY GOVERNMENTAL ENTITIES

SECTION 2.01. Subtitle A, Title 6, Government Code, is amended by adding Chapter 621 to read as follows:

CHAPTER 621. PROHIBITION ON CERTAIN DIVERSITY, EQUITY, AND
INCLUSION INITIATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 621.001. DEFINITIONS. In this chapter:

(1) "Diversity, equity, and inclusion office" means an office, division, or other unit of a governmental entity established for the purpose of:

(A) influencing hiring or employment practices at the entity with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

1 (B) promoting differential treatment or
2 providing special benefits to individuals on the basis of race,
3 sex, color, or ethnicity;

4 (C) promoting policies or procedures designed or
5 implemented in reference to race, color, or ethnicity, other than
6 policies or procedures implemented for the purpose of ensuring
7 compliance with any applicable federal law; or

8 (D) conducting trainings, programs, or
9 activities designed or implemented in reference to race, color,
10 ethnicity, gender identity, or sexual orientation, other than
11 trainings, programs, or activities conducted for the purpose of
12 ensuring compliance with any applicable court order or state or
13 federal law.

14 (2) "Governmental entity" means:

15 (A) a department, commission, board, office, or
16 other agency that is in the executive branch of state government and
17 that was created by the constitution or a statute, other than an
18 institution of higher education as defined by Section 61.003,
19 Education Code;

20 (B) the legislature or a legislative state
21 agency;

22 (C) the supreme court, the court of criminal
23 appeals, a court of appeals, a district court, or the Texas Judicial
24 Council or another agency in the judicial branch of state
25 government;

26 (D) a county, municipality, special purpose
27 district, including a school district, or any other political

1 subdivision of this state; or

2 (E) an open-enrollment charter school
3 established under Subchapter D, Chapter 12, Education Code.

4 SUBCHAPTER B. DIVERSITY, EQUITY, AND INCLUSION INITIATIVES

5 Sec. 621.051. RESPONSIBILITY OF GOVERNMENTAL ENTITY
6 REGARDING DIVERSITY, EQUITY, AND INCLUSION INITIATIVES. (a) A
7 governmental entity shall ensure that each unit of the entity:

8 (1) does not, except as required by federal law:

9 (A) establish or maintain a diversity, equity,
10 and inclusion office;

11 (B) hire or assign an employee of the entity or
12 contract with a third party to perform the duties of a diversity,
13 equity, and inclusion office;

14 (C) compel, require, induce, or solicit any
15 person to provide a diversity, equity, and inclusion statement or
16 give preferential consideration to any person based on the
17 provision of a diversity, equity, and inclusion statement;

18 (D) give preference on the basis of race, sex,
19 color, ethnicity, or national origin to an applicant for
20 employment, an employee, or a participant in any function of the
21 entity; or

22 (E) require as a condition of employment any
23 person to participate in diversity, equity, and inclusion training,
24 which:

25 (i) includes a training, program, or
26 activity designed or implemented in reference to race, color,
27 ethnicity, gender identity, or sexual orientation; and

1 (ii) does not include a training, program,
2 or activity developed for the purpose of ensuring compliance with
3 any applicable federal law; and

4 (2) adopts policies and procedures for appropriately
5 disciplining, including by termination, an employee or contractor
6 of the entity who engages in conduct in violation of Subdivision
7 (1).

8 (b) Subsection (a)(1) may not be construed to apply to:

9 (1) academic course instruction;

10 (2) scholarly research or a creative work by a school
11 district's or open-enrollment charter school's students or faculty;

12 (3) an activity of a student organization registered
13 with or recognized by a school district or open-enrollment charter
14 school;

15 (4) guest speakers or performers on short-term
16 engagements;

17 (5) a program or activity to enhance student academic
18 achievement or postgraduate outcomes that allows participation
19 without regard to race, sex, color, or ethnicity; or

20 (6) data collection.

21 SUBCHAPTER C. LIABILITY FOR CERTAIN DIVERSITY, EQUITY, AND

22 INCLUSION INITIATIVES

23 Sec. 621.101. LIABILITY FOR CERTAIN INITIATIVES. The
24 following individuals may bring an action against a governmental
25 entity that violates Section 621.051:

26 (1) an employee of the governmental entity; or

27 (2) an individual who resides in an area served by the

1 governmental entity.

2 Sec. 621.102. REMEDIES. (a) A claimant is entitled to
3 recover in an action brought under this chapter:

4 (1) declaratory and injunctive relief; and

5 (2) costs and reasonable attorney's fees.

6 (b) If the court finds an action brought under this chapter
7 to be frivolous, a governmental entity is entitled to recover costs
8 and reasonable attorney's fees.

9 Sec. 621.103. IMMUNITY WAIVER. The sovereign immunity of
10 this state and governmental immunity of a political subdivision to
11 suit and from liability is waived to the extent of the liability
12 created by this chapter.

13 Sec. 621.104. NOTICE. A governmental entity is entitled to
14 receive notice of a claim against it under this chapter not later
15 than 90 days before the date a claimant files an action under this
16 chapter. The notice must reasonably describe a specific action of
17 the governmental entity that is the basis for the claim against it.

18 Sec. 621.105. VENUE. (a) Notwithstanding any other law,
19 including Chapter 15, Civil Practice and Remedies Code, and except
20 as provided by Subsection (b), a claimant may bring an action under
21 this chapter in a county in which the governmental entity is
22 located.

23 (b) A claimant must bring an action under this chapter in
24 Travis County if the governmental entity is:

25 (1) an agency, board, commission, department, or
26 office that is in the executive branch of state government;

27 (2) the legislature or a legislative state agency; or

1 (3) the supreme court, the court of criminal appeals,
2 the Texas Judicial Council, or another agency in the judicial
3 branch of state government.

4 (c) If the action is brought in a venue authorized by this
5 section, the action may not be transferred to a different venue
6 without the written consent of all parties.

7 ARTICLE 3. PROHIBITION ON CERTAIN CONSIDERATIONS IN CONTRACTING

8 SECTION 3.01. Subchapter 7, Chapter 2252, Government Code,
9 is amended by adding Section 2252.911 to read as follows:

10 Sec. 2252.911. PROHIBITED CONSIDERATIONS IN CONTRACTING.

11 (a) In this section, "governmental entity" has the meaning
12 assigned by Section 2252.001, except that the term does not include
13 an institution of higher education as defined by Section 61.003,
14 Education Code.

15 (b) Notwithstanding any other law, a governmental entity
16 may not award a contract or provide preferential treatment to a
17 person submitting a bid for a contract on the basis of race, color,
18 ethnicity, sex, gender identity, or sexual orientation.

19 SECTION 3.02. Section 106.001(c), Civil Practice and
20 Remedies Code, is amended to read as follows:

21 (c) This section does not prohibit the adoption of a program
22 designed to increase the participation of businesses owned and
23 controlled by [~~women, minorities, or~~] disadvantaged persons in
24 public contract awards.

25 SECTION 3.03. Section 2161.001(3), Government Code, is
26 amended to read as follows:

27 (3) "Economically disadvantaged person" means a

1 person who:

2 (A) is economically disadvantaged because of the
3 person's status [~~identification~~] as a veteran [~~member of a certain~~
4 ~~group, including:~~

5 [~~(i) Black Americans;~~

6 [~~(ii) Hispanic Americans;~~

7 [~~(iii) women;~~

8 [~~(iv) Asian Pacific Americans;~~

9 [~~(v) Native Americans; and~~

10 [~~(vi) veterans~~] as defined by 38 U.S.C.
11 Section 101(2) who has [~~have~~] suffered at least a 20 percent
12 service-connected disability as defined by 38 U.S.C. Section
13 101(16); and

14 (B) has suffered the effects of discriminatory
15 practices or other similar insidious circumstances over which the
16 person has no control.

17 SECTION 3.04. Sections [2161.061](#)(b), (d), and (e),
18 Government Code, are amended to read as follows:

19 (b) As one of its certification procedures, the comptroller
20 may:

21 (1) approve the certification program of one or more
22 local governments or nonprofit organizations in this state that
23 certify historically underutilized businesses [~~, minority business~~
24 ~~enterprises, women's business enterprises,~~] or disadvantaged
25 business enterprises under substantially the same definition, to
26 the extent applicable, used by Section [2161.001](#), if the local
27 government or nonprofit organization meets or exceeds the standards

1 established by the comptroller; and

2 (2) certify a business that is certified by a local
3 government or by a nonprofit organization as a historically
4 underutilized business under this chapter.

5 (d) A local government or a nonprofit organization that
6 certifies historically underutilized businesses [~~minority~~
7 ~~business enterprises, women's business enterprises,~~] or
8 disadvantaged business enterprises as described in Subsections (b)
9 and (c) shall complete the certification of an applicant or provide
10 an applicant with written justification of its certification denial
11 within the period established by the comptroller in its rules for
12 certification activities.

13 (e) A local government or a nonprofit organization that
14 certifies historically underutilized businesses under Subsection
15 (c) or that conducts a certification program described by and
16 approved under Subsection (b) shall make available to the public an
17 online searchable database containing information about
18 historically underutilized businesses [~~minority business~~
19 ~~enterprises, women's business enterprises,~~] and disadvantaged
20 business enterprises certified by the local government or nonprofit
21 organization, including:

- 22 (1) the name of the business;
- 23 (2) the contact person or owner of the business;
- 24 (3) the address and telephone number of the business;
- 25 (4) the type or category of business, including
26 relevant capabilities of the business and the North American
27 Industry Classification System codes for the business; and

1 (5) the expiration date of the business's
2 certification.

3 SECTION 3.05. Section 2269.055(b), Government Code, is
4 amended to read as follows:

5 (b) In determining the award of a contract under this
6 chapter, the governmental entity shall:

7 (1) consider and apply any existing laws, including
8 any criteria, related to historically underutilized businesses;
9 and

10 (2) consider and apply any existing laws, rules, or
11 applicable municipal charters, including laws applicable to local
12 governments, related to the use of [~~women, minority,~~] small [~~7~~] or
13 disadvantaged businesses.

14 SECTION 3.06. Section 2303.405(e), Government Code, is
15 amended to read as follows:

16 (e) Factors to be considered in evaluating the local effort
17 of a private entity include:

18 (1) the willingness to negotiate or cooperate in the
19 achievement of the purposes of this chapter;

20 (2) commitments to hire underskilled, inexperienced,
21 disadvantaged, or displaced workers who reside in the enterprise
22 zone;

23 (3) [~~commitments to hire minority workers and to~~
24 ~~contract with minority-owned businesses,~~

25 [~~4~~] provision of technical and vocational job
26 training for enterprise zone residents or economically
27 disadvantaged employees;

- 1 (4) [~~(5)~~] provision of child care for employees;
- 2 (5) [~~(6)~~] commitments to implement and contribute to a
- 3 tutoring or mentoring program for area students;
- 4 (6) [~~(7)~~] prevention or reduction of juvenile crime
- 5 activity; and
- 6 (7) [~~(8)~~] the willingness to make contributions to the
- 7 well-being of the community, such as job training, or the donation
- 8 of land for parks or other public purposes.

9 SECTION 3.07. Section [2310.305\(e\)](#), Government Code, is

10 amended to read as follows:

11 (e) Factors to be considered in evaluating the local effort

12 of a private entity include:

13 (1) the willingness to negotiate or cooperate in the

14 redevelopment of vacated defense facilities and the creation of

15 high-skilled, high wage jobs;

16 (2) commitments to hire dislocated defense workers and

17 economically disadvantaged workers;

18 (3) [~~commitments to hire minority workers and to~~

19 ~~contract with minority-owned businesses;~~

20 [~~(4)~~] provision of technical and vocational job

21 training for residents of the nominating body's jurisdiction or

22 economically disadvantaged employees;

23 (4) [~~(5)~~] provision of child care for employees;

24 (5) [~~(6)~~] commitments to implement and contribute to a

25 tutoring or mentoring program for area students;

26 (6) [~~(7)~~] prevention or reduction of juvenile crime;

27 and

1 (7) [~~(8)~~] the willingness to make contributions to the
2 well-being of the community, such as job training, or the donation
3 of land for parks or other public purposes.

4 SECTION 3.08. Section 281.051(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The board shall encourage and promote participation by
7 all sectors of the business community, including small businesses
8 [~~and businesses owned by members of a minority group or by women~~],
9 in the process by which the district enters into contracts. The
10 board shall develop a plan for the district to identify and remove
11 barriers that do not have a definite or objective relationship to
12 quality or competence and that unfairly discriminate against small
13 businesses [~~and businesses owned by members of a minority or by~~
14 ~~women~~]. These barriers may include contracting procedures and
15 contract specifications or conditions.

16 SECTION 3.09. Section 91.005, Labor Code, is amended to
17 read as follows:

18 Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With
19 respect to a bid, contract, purchase order, or agreement entered
20 into with the state or a political subdivision of the state, a
21 client's status or certification as a small or [~~minority-owned~~]
22 disadvantaged [~~or woman-owned~~] business enterprise or as a
23 historically underutilized business is not affected because the
24 client has entered into a professional employer services agreement
25 with a license holder or uses the services of a license holder.

26 SECTION 3.10. Sections 381.004(a) and (b), Local Government
27 Code, are amended to read as follows:

1 (a) In this section, "another [~~+~~

2 [~~(1) "Another~~] entity" includes the federal
3 government, the State of Texas, a municipality, school or other
4 special district, finance corporation, institution of higher
5 education, charitable or nonprofit organization, foundation,
6 board, council, commission, or any other person.

7 [~~(2) "Minority" includes blacks, Hispanics, Asian~~
8 ~~Americans, American Indians, and Alaska natives.~~

9 [~~(3) "Minority business" means a business concern,~~
10 ~~more than 50 percent of which is owned and controlled in management~~
11 ~~and daily operations by members of one or more minorities.~~

12 [~~(4) "Women-owned business" means a business concern,~~
13 ~~more than 50 percent of which is owned and controlled in management~~
14 ~~and daily operations by one or more women.]~~

15 (b) To stimulate business and commercial activity in a
16 county, the commissioners court of the county may develop and
17 administer a program:

18 (1) for state or local economic development;

19 (2) for small or disadvantaged business development;

20 (3) to stimulate, encourage, and develop business
21 location and commercial activity in the county;

22 (4) to promote or advertise the county and its
23 vicinity or conduct a solicitation program to attract conventions,
24 visitors, and businesses;

25 (5) [~~to improve the extent to which women and minority~~
26 ~~businesses are awarded county contracts,~~

27 [~~(6)~~] to support comprehensive literacy programs for

1 the benefit of county residents; or

2 (6) [~~(7)~~] for the encouragement, promotion,
3 improvement, and application of the arts.

4 SECTION 3.11. Section 3871.103(d), Special District Local
5 Laws Code, is amended to read as follows:

6 (d) The district must follow Resolution 08-2826, adopted by
7 the city on October 22, 2008, for construction, procurement, and
8 professional services contracts related to the use of historically
9 underutilized businesses [~~and minority contracting~~] in the
10 implementation of its district plan.

11 SECTION 3.12. Section 3884.103(d), Special District Local
12 Laws Code, is amended to read as follows:

13 (d) The district must follow Resolution 08-2826, adopted by
14 the city on October 22, 2008, for construction, procurement, and
15 professional services contracts related to the use of historically
16 underutilized businesses [~~and minority contracting~~] in the
17 implementation of its district plan.

18 SECTION 3.13. The heading to Section 22.084, Transportation
19 Code, is amended to read as follows:

20 Sec. 22.084. AIRPORT REVENUE AND REVENUE BOND PROCEEDS
21 [~~, CONTRACTING OPPORTUNITIES FOR MINORITY- AND WOMEN-OWNED~~
22 ~~BUSINESSES~~].

23 SECTION 3.14. Section 22.084(a), Transportation Code, is
24 amended to read as follows:

25 (a) If constituent agencies or a nonprofit corporation
26 created under Section 22.152 issues revenue bonds to finance the
27 construction or acquisition of a facility or other improvement at

1 an airport, the proceeds of the bonds and any other airport income
2 or revenue may be spent on projects for which the proceeds, income,
3 or revenue may otherwise be spent. An agreement may be made to
4 spend all or a portion of the proceeds, income, or revenue for the
5 planning, construction, or acquisition of facilities authorized by
6 Sections 22.011(a)-(c) and 22.012 without inviting, advertising
7 for, or otherwise requiring competitive bids. [~~A contract wholly
8 or partly funded with proceeds, income, or revenue under this
9 subsection shall be let in accordance with the joint board's rules
10 and policies relating to creation of contracting opportunities for
11 minority- and women-owned businesses.~~]

12 SECTION 3.15. The heading to Section 451.252,
13 Transportation Code, is amended to read as follows:

14 Sec. 451.252. [~~MINORITY AND~~] DISADVANTAGED INDIVIDUALS
15 PROGRAM: CERTAIN AUTHORITIES.

16 SECTION 3.16. Section 451.252(a), Transportation Code, is
17 amended to read as follows:

18 (a) The board of an authority confirmed before July 1, 1985,
19 shall establish a program to encourage participation in contracts
20 of the authority by businesses owned by [~~minorities or~~]
21 disadvantaged individuals.

22 SECTION 3.17. Section 452.001(1), Transportation Code, is
23 amended to read as follows:

24 (1) "Authority" means a regional transportation
25 authority created under this chapter or Chapter 683, Acts of the
26 66th Legislature, Regular Session, 1979. The term includes:

27 (A) when used in Subchapters B, C, D, F, H, and I

1 and Section [~~Sections 452.201 and~~] 452.451, a subregional authority
2 created by a contiguous municipality; and

3 (B) as appropriate, an authority, other than an
4 authority created by a contiguous municipality, consisting of one
5 subregion.

6 SECTION 3.18. The following provisions are repealed:

7 (1) Section 12.029, Agriculture Code;

8 (2) Sections 466.107, 466.151(c), 1232.104(c), and
9 2306.6734, Government Code;

10 (3) Section 775.306, Health and Safety Code;

11 (4) Section 381.004(d), Local Government Code;

12 (5) Sections 161.131 and 161.132, Natural Resources
13 Code;

14 (6) Section 2026.152(b), Occupations Code;

15 (7) Sections 451.253 and 452.201, Transportation
16 Code; and

17 (8) Sections 311.0101(d) and 351.1065(c), Tax Code.

18 ARTICLE 4. TRANSITION; EFFECTIVE DATE

19 SECTION 4.01. The changes in law made by Article 3 of this
20 Act apply only to a contract entered into on or after the effective
21 date of this Act. A contract entered into before that date is
22 governed by the law in effect on the date the contract was entered
23 into, and the former law is continued in effect for that purpose.

24 SECTION 4.02. This Act takes effect September 1, 2025.