

By: Dukes

H.B. No. 3215

A BILL TO BE ENTITLED

AN ACT

relating to historically underutilized businesses.

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

SECTION 1. Section 466.107, Government Code, is amended to read as follows:

Sec. 466.107. HISTORICALLY UNDERUTILIZED [~~MINORITY~~] BUSINESSES. (a) The executive director and each lottery operator shall take positive steps to:

(1) inform historically underutilized [~~minority~~] businesses of opportunities to:

(A) provide lottery equipment and supplies to the commission;

(B) provide services, including advertising, to the commission for the operation of the lottery; or

(C) obtain a license to sell lottery tickets;

(2) waive or modify bond requirements, if feasible;

(3) award contracts for lottery equipment or supplies to historically underutilized [~~minority~~] businesses when possible;

(4) award contracts for lottery services, including advertising, to historically underutilized [~~minority~~] businesses when possible;

(5) license historically underutilized [~~minority~~] businesses as sales agents;

(6) monitor the effectiveness of the efforts to

1 increase the ability of historically underutilized [~~minority~~]  
2 businesses to do business with the commission; and

3 (7) require all bidders or contractors, when  
4 appropriate, to include specific plans or arrangements to use  
5 subcontracts with historically underutilized [~~minority~~]  
6 businesses.

7 (b) In this section, ~~+~~

8 [~~(1)~~] "historically underutilized [~~Minority~~] business"  
9 has the meaning assigned by Section 2161.001 [~~means a business~~  
10 ~~entity at least 51 percent of which is owned by minority group~~  
11 ~~members or, in the case of a corporation, at least 51 percent of the~~  
12 ~~shares of which are owned by minority group members, and that:~~

13 [~~(A) is managed and, in daily operations, is~~  
14 ~~controlled by minority group members; and~~

15 [~~(B) is a domestic business entity with a home or~~  
16 ~~branch office located in this state and is not a branch or~~  
17 ~~subsidiary of a foreign corporation, firm, or other business~~  
18 ~~entity].~~

19 [~~(2) "Minority group members" includes:~~

20 [~~(A) African Americans;~~

21 [~~(B) American Indians;~~

22 [~~(C) Asian Americans; and~~

23 [~~(D) Mexican Americans and other Americans of~~  
24 ~~Hispanic origin.~~

25 [~~(c) The commission shall annually report to the~~  
26 ~~legislature and the governor on the level of minority business~~  
27 ~~participation as pertains to both the commission's contracts and~~

1 ~~the licensing of sales agents. The report must include~~  
2 ~~recommendations for the improvement of minority business~~  
3 ~~opportunities in lottery-related business.]~~

4 SECTION 2. Section 2161.062, Government Code, is amended by  
5 amending Subsection (e) and adding Subsection (f) to read as  
6 follows:

7 (e) A state agency with a biennial budget that exceeds \$10  
8 million shall designate a staff member to serve as the historically  
9 underutilized businesses coordinator for the agency during the  
10 fiscal year. ~~[The procurement director may serve as the~~  
11 ~~coordinator.]~~ In agencies that employ a historically underutilized  
12 businesses coordinator, the position of coordinator, within the  
13 agency's structure, must be at least equal to the position of  
14 procurement director. The coordinator and the procurement director  
15 may serve under a financial director of the agency only if the  
16 financial director is responsible for procurement and general  
17 fiscal affairs of the agency. In addition to any other  
18 responsibilities, the coordinator shall:

19 (1) coordinate training programs for the recruitment  
20 and retention of historically underutilized businesses;

21 (2) report required information to the commission;  
22 and

23 (3) match historically underutilized businesses with  
24 key staff within the agency.

25 (f) The position classification officer and each state  
26 agency that employs a historically underutilized businesses  
27 coordinator shall ensure that the positions of coordinator and

1 procurement director are classified to titles in the position  
2 classification plan that are in the same salary group.

3 SECTION 3. Subchapter B, Chapter 2161, Government Code, is  
4 amended by adding Section 2161.067 to read as follows:

5 Sec. 2161.067. DUTY TO REPORT CERTAIN VIOLATIONS. If the  
6 commission suspects that a person has committed an offense under  
7 Section 2161.231(a), the commission shall report the alleged  
8 conduct to the prosecuting attorney in the county in which the  
9 alleged conduct occurred.

10 SECTION 4. Section 2161.231(b), Government Code, is amended  
11 to read as follows:

12 (b) An offense under this section is a [~~third-degree~~] felony  
13 punishable by:

14 (1) imprisonment in the institutional division of the  
15 Texas Department of Criminal Justice for any term of not more than  
16 10 years or less than two years; and

17 (2) a fine of \$10,000.

18 SECTION 5. Subchapter E, Chapter 2161, Government Code, is  
19 amended by adding Section 2161.232 to read as follows:

20 Sec. 2161.232. INVESTIGATION ACCOUNT. (a) The  
21 historically underutilized business investigation account is a  
22 separate account in the general revenue fund.

23 (b) The account consists of 50 percent of the amount of  
24 money collected from fines imposed under Section 2161.231(b)(2).

25 (c) Money in the account may be appropriated only to the  
26 commission for the purpose of investigations by the commission into  
27 whether a business qualifies as a historically underutilized

1 business.

2 SECTION 6. Section 6.03(b), Texas Racing Act (Article 179e,  
3 Vernon's Texas Civil Statutes), is amended to read as follows:

4 (b) When the commission receives a plan for the security of  
5 a racetrack facility, or a copy of a management, concession, or  
6 totalisator contract for review under Subdivision (11) of  
7 Subsection (a) of this section, the commission shall review the  
8 contract or security plan in an executive session. Documents  
9 submitted to the commission under this section by an applicant are  
10 subject to discovery in a suit brought under this Act but are not  
11 public records and are not subject to Chapter 552, Government Code  
12 [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article~~  
13 ~~6252-17a, Vernon's Texas Civil Statutes)~~]. In reviewing and  
14 approving contracts under this subsection, the commission shall  
15 attempt to award contracts to historically underutilized [~~ensure~~  
16 ~~the involvement of minority owned~~] businesses in an amount and  
17 manner consistent with Chapter 2161, Government Code, and rules  
18 adopted under that chapter [~~whenever possible~~].

19 SECTION 7. The following are repealed:

- 20 (1) Section 12.029, Agriculture Code;  
21 (2) Section 55.03, Education Code;  
22 (3) Sections 465.0081, 493.012, 1231.086, and  
23 1232.104(c), Government Code; and  
24 (4) Sections 161.131 and 161.132, Natural Resources  
25 Code.

26 SECTION 8. This Act takes effect September 1, 2003.

27 SECTION 9. (a) The change in law made by this Act to Section

1 2161.231(b), Government Code, applies only to an offense committed  
2 on or after the effective date of this Act. For purposes of this  
3 section, an offense was committed before the effective date of this  
4 Act if any element of the offense occurs before that date.

5 (b) An offense committed before the effective date of this  
6 Act is covered by Section 2161.231(b), Government Code, as it  
7 existed when the offense was committed, and the former law is  
8 continued in effect for that purpose.