

By: Miles

H.B. No. 2604

Substitute the following for H.B. No. 2604:

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C.S.H.B. No. 2604

A BILL TO BE ENTITLED

AN ACT

1
2 relating to planning and administration of the state's historically
3 underutilized business program.

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

5 SECTION 1. Section 2161.002(c), Government Code, is amended
6 to read as follows:

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

16 SECTION 2. Sections 2161.123(d) and (e), Government Code,
17 are amended to read as follows:

18 (d) The commission and the state auditor shall cooperate to
19 develop procedures providing for random periodic monitoring of
20 state agency compliance with this section. The state auditor shall
21 report to the commission a state agency that is not complying with
22 this section. In determining whether a state agency is making a
23 good faith effort to comply, the state auditor shall consider
24 whether the agency:

1 (1) has adopted rules under Section 2161.003;

2 (2) has used the commission's directory under Section
3 2161.064 and other resources to identify historically
4 underutilized businesses that are able and available to contract
5 with the agency;

6 (3) made good faith, timely efforts to contact
7 identified historically underutilized businesses regarding
8 contracting opportunities; ~~and~~

9 (4) conducted its procurement program in accordance
10 with the good faith effort methodology set out in commission rules;
11 and

12 (5) established goals for contracting with
13 historically underutilized businesses in each procurement category
14 based on:

15 (A) scheduled fiscal year expenditures; and

16 (B) the availability of historically
17 underutilized businesses in each category as determined by rules
18 adopted under Section 2161.002.

19 (e) In conducting an audit of an agency's compliance with
20 this section or an agency's making of a good faith effort to
21 implement the plan adopted under this section, the state auditor
22 shall ~~[not]~~ consider the success or failure of the agency to
23 contract with historically underutilized businesses in accordance
24 with the agency's goals described by Subsection (d)(5) [in any
25 specific quantity. The state auditor's review shall be restricted
26 to the agency's procedural compliance with Subsection (d)].

27 SECTION 3. Section 2161.127, Government Code, is amended to

1 read as follows:

2 Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS. (a)
3 Each state agency must include as part of its legislative
4 appropriations request a detailed report for consideration by the
5 budget committees of the legislature that shows the extent to which
6 the agency complied with this chapter and rules of the commission
7 adopted under this chapter during the two calendar years preceding
8 the calendar year in which the request is submitted. To the extent
9 the state agency did not comply, the report must demonstrate the
10 reasons for that fact. The extent to which a state agency complies
11 with this chapter and rules of the commission adopted under this
12 chapter is considered a performance measure for purposes of the
13 appropriations process.

14 (b) The report under Subsection (a) must include:

15 (1) the agency's goals established under Section
16 2161.123(d)(5) for contracting with historically underutilized
17 businesses during the two calendar years preceding the calendar
18 year in which the request is submitted;

19 (2) a statement regarding whether the goals
20 established under Section 2161.123(d)(5) were met during the two
21 calendar years preceding the calendar year in which the request is
22 submitted; and

23 (3) if the goals established under Section
24 2161.123(d)(5) were not met during the two calendar years preceding
25 the calendar year in which the request is submitted:

26 (A) a statement of the percentage by which the
27 agency's actual use of historically underutilized businesses

1 deviated from the agency's goals; and

2 (B) an explanation of why the goals were not met.

3 SECTION 4. The Texas Building and Procurement Commission
4 shall commission a disparity study to be prepared by Mason Tillman
5 Associates, Ltd., and delivered to the commission not later than
6 October 1, 2007.

7 SECTION 5. Not later than January 1, 2008, the Texas
8 Building and Procurement Commission shall adopt rules under Section
9 2161.002(c), Government Code, as amended by this Act.

10 SECTION 6. This Act takes effect September 1, 2007.