88R3294 SCP/KBB-D

By:  Cain H.B. No. 5140

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition against the consideration of race or ethnicity as a factor in governmental employment or contracting, in other governmental functions, and in higher education admissions.

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

ARTICLE 1. PROHIBITIONS AGAINST CONSIDERING RACE OR ETHNICITY AS A FACTOR IN GOVERNMENTAL EMPLOYMENT OR CONTRACTING, IN OTHER GOVERNMENTAL FUNCTIONS, AND IN HIGHER EDUCATION ADMISSIONS

SECTION 1.01.  Section 51.805, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A general academic teaching institution may not consider an applicant's race or ethnicity as a factor in making admissions decisions.

SECTION 1.02.  Section 51.808, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A general academic teaching institution or medical and dental unit may not adopt a policy under this section under which the institution may consider an applicant's race or ethnicity as a factor in making admissions decisions.

SECTION 1.03.  Chapter 1, Government Code, is amended by adding Section 1.004 to read as follows:

Sec. 1.004.  PROHIBITION AGAINST CONSIDERATION OF RACE OR ETHNICITY IN CERTAIN GOVERNMENTAL FUNCTIONS. (a) In this section, "state agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b)  Notwithstanding any other law, a state agency, state officer, or political subdivision may not consider the race or ethnicity of:

(1)  an applicant for employment as a factor in making hiring decisions;

(2)  a contractor or vendor responding to a contract solicitation as a factor in awarding the contract; and

(3)  any other person with regard to whom the state agency, state officer, or political subdivision makes a decision that affects the person as a factor in making that decision.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01.  Section 12.029, Agriculture Code, is amended to read as follows:

Sec. 12.029.  [~~MINORITY AND~~] FEMALE-OWNED BUSINESS CONTRACTS. (a) The department shall establish by rule policies to encourage [~~minority and~~] female-owned small businesses to bid for contract and open market purchases of the department and to assist those businesses in that bidding. The department shall review the policies periodically to correct any deficiencies in the policies.

(b)  The department annually shall determine the number, types, and value of contracts awarded to [~~minority and~~] female-owned small businesses in the year preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the department in that year.

(d)  In this section, "[~~minority and~~] female-owned small business" means a business enterprise:

(1)  that is independently owned and operated, that was formed for the purpose of making a profit, and that has fewer than 100 employees and less than $1 million in annual gross receipts; and

(2)  that is controlled by one or more socially and economically disadvantaged persons who own at least 51 percent of the business enterprise and are socially disadvantaged because they are [~~of their identification as members of certain groups, including~~] women[~~, black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans, and American Indians~~].

SECTION 2.02.  Section 5.102, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.102.  RECRUITMENT. For the purpose of providing adequate personnel for all job positions in the commission, the commission shall:

(1)  develop a recruiting program that identifies underrepresentation with the commission and focuses on recruiting women [~~different ethnic, racial, or gender groups~~] for job categories in which underrepresentation occurs; and

(2)  require that all applicants be reviewed by the human resources division to ensure consideration of women [~~underrepresented ethnic, racial, or gender groups~~].

SECTION 2.03.  Sections 54.0515(d) and (e), Education Code, are amended to read as follows:

(d)  An appointed member of the committee serves at the pleasure of the appointing official. In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition[~~, minority populations,~~] and geographic regions of the state.

(e)  It is the legislature's intent that each institution of higher education, as a condition to tuition deregulation under Section 54.0513, reasonably implement the following:

(1)  each institution shall make satisfactory progress towards the goals provided in its master plan for higher education and in "Closing the Gaps," the state's master plan for higher education; and

(2)  each institution shall meet acceptable performance criteria, including measures such as graduation rates, retention rates, enrollment growth, educational quality, [~~efforts to enhance minority participation,~~] opportunities for financial aid, and affordability.

SECTION 2.04.  Section 55.03, Education Code, is amended to read as follows:

Sec. 55.03.  [~~MINORITY-OWNED AND~~] WOMEN-OWNED BUSINESSES. (a) The board of regents of each institution of higher education shall make a good-faith effort to award to [~~minority-owned and~~] women-owned businesses:

(1)  contracts relating to the issuance of bonds by the board under this chapter in the amount of at least 25 percent of the total costs of issuing those bonds; and

(2)  contracts for the items to be financed by bonds issued by the board in the amount of at least 25 percent of the proceeds of those bonds.

(b)  Not later than October 31 of each academic year, the board of regents shall file with the governor and each house of the legislature a written report containing the following information for the previous academic year for all businesses[~~, minority-owned businesses~~] and women-owned businesses, classified by gender [~~and minority group status~~]:

(1)  the total number of contracts relating to the issuance of bonds by the board under this chapter and to the items to be financed by those bonds;

(2)  the total dollar amount the board of regents must pay under each contract described by Subdivision (1) of this subsection; and

(3)  the total number of businesses submitting bids or proposals relating to the issuance of bonds by the board under this chapter and to the items to be financed by those bonds.

(c)  In this section, "women-owned [~~:~~

[~~(1)  "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.~~

[~~(2)  "Minority group" includes:~~

[~~(A)  African Americans;~~

[~~(B)  American Indians;~~

[~~(C)  Asian Americans; and~~

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

[~~(3)  "Women-owned~~] business" means a business entity at least 51 percent of which is owned by women or, in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

SECTION 2.05.  Section 72.041, Government Code, is amended to read as follows:

Sec. 72.041.  RECRUITMENT [~~DIVERSITY~~]. The judges of the supreme court, court of criminal appeals, and courts of appeals shall encourage the recruitment of women as judicial law clerks and staff attorneys [~~that reflect the gender, racial, and ethnic diversity of this state~~].

SECTION 2.06.  Section 651.009(a), Government Code, is amended to read as follows:

(a)  In each case in which the governing body of a state board, commission, or other state agency that has statewide jurisdiction is appointed by the governor or another appointing authority, the governor or appointing authority shall ensure that, to the extent possible, the membership of the governing body reflects the [~~racial, ethnic, and~~] geographic diversity of this state.

SECTION 2.07.  Section 2161.001(3), Government Code, is amended to read as follows:

(3)  "Economically disadvantaged person" means a person who:

(A)  is economically disadvantaged because of the person's identification as a member of one or more of the following groups [~~a certain group, including~~]:

(i)  [~~Black Americans;~~

[~~(ii) Hispanic Americans;~~

[~~(iii)~~] women; or

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

[~~(v)  Native Americans; and~~]

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

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

SECTION 2.08.  Sections 2161.061(b), (d), and (e), Government Code, are amended to read as follows:

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

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

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

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

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

(1)  the name of the business;

(2)  the contact person or owner of the business;

(3)  the address and telephone number of the business;

(4)  the type or category of business, including relevant capabilities of the business and the North American Industry Classification System codes for the business; and

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

SECTION 2.09.  Section 2161.125, Government Code, is amended to read as follows:

Sec. 2161.125.  CATEGORIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. The comptroller, in cooperation with each state agency reporting under this subchapter, shall categorize each historically underutilized business included in a report under this subchapter by sex[~~, race, and ethnicity~~] and by whether the business qualifies as a historically underutilized business because it is owned or owned, operated, and controlled, as applicable, wholly or partly by one or more veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section 101(16).

SECTION 2.10.  Section 93.002(b), Health and Safety Code, is amended to read as follows:

(b)  In appointing public members under Subsection (a)(1), the governor shall attempt to appoint female members [~~and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans~~].

SECTION 2.11.  Section 318.003(a), Local Government Code, is amended to read as follows:

(a)  The commission must be composed of at least seven residents of the county. Members of the commission must be individuals who broadly reflect the age[~~, ethnic,~~] and geographic diversity of the county.

SECTION 2.12.  Section 351.1035(a), Local Government Code, is amended to read as follows:

(a)  In this section, "disadvantaged business" means:

(1)  a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because they are [~~of their identification as members of certain groups, including black Americans, Hispanic Americans,~~] women and [~~, Asian Pacific Americans, and American Indians, who~~] have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(2)  a sole proprietorship for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Subdivision (1) of this subsection;

(3)  a partnership for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) of this subsection who[~~. Those persons must~~] have a proportionate interest in the control, operation, and management of the partnership's affairs;

(4)  a joint venture in which each entity in the joint venture is a disadvantaged business under this subsection; or

(5)  a supplier contract between a disadvantaged business under this subsection and a prime contractor under which the disadvantaged business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

SECTION 2.13.  Section 375.003(4), Local Government Code, is amended to read as follows:

(4)  "Disadvantaged business" means:

(A)  a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because they are women and [~~of their identification as members of certain groups that~~] have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control[~~, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians~~];

(B)  a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C)  a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which [~~minority or~~] women partners have a proportionate interest in the control, operation, and management of the partnership affairs;

(D)  a joint venture [~~between minority and women's group members~~] formed by women for the purpose of making a profit [~~and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management, interest in capital, and interest earnings, other than a joint venture in which majority group members own or control debt securities, leasehold interest, management contracts, or other interests~~];

(E)  a supplier contract between persons described in Paragraph (A) and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies; or

(F)  a person certified as a disadvantaged business by:

(i)  this state;

(ii)  a political subdivision of this state; or

(iii)  a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391.

SECTION 2.14.  Sections 381.004(b) and (d), Local Government Code, are amended to read as follows:

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

(1)  for state or local economic development;

(2)  for small [~~or disadvantaged~~] business development;

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

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

(5)  to improve the extent to which women-owned [~~women and minority~~] businesses are awarded county contracts;

(6)  to support comprehensive literacy programs for the benefit of county residents; or

(7)  for the encouragement, promotion, improvement, and application of the arts.

(d)  A program established under this section may be designed to reasonably increase participation by [~~minority and~~] women-owned businesses in public contract awards by the county by establishing a contract percentage goal for those businesses.

SECTION 2.15.  Section 901.659, Occupations Code, is amended to read as follows:

Sec. 901.659.  [~~MINORITY AND~~] DISADVANTAGED STUDENT INTERNSHIPS. (a)  The board shall adopt rules to encourage internships for [~~minority and~~] disadvantaged students and certified public accountant examination candidates who notify the board not later than 90 days after the date of being accepted into an accounting internship program.

(b)  The rules adopted by the board shall include standards for appropriate recognition of an accounting firm for its efforts in training and hiring [~~minority or~~] disadvantaged students.

SECTION 2.16.  Section 311.0101(d), Tax Code, is amended to read as follows:

(d)  The board by rule shall adopt goals for the participation of [~~minority business enterprises and~~] women-owned business enterprises in the awarding of state contracts for professional services. To implement the participation goals, the board shall encourage each issuer to award to [~~minority business enterprises and~~] women-owned business enterprises not less than 15 percent of the total value of all professional services contract awards that the issuer expects to make in its fiscal year.

SECTION 2.17.  Section 284.007(d), Transportation Code, is amended to read as follows:

(d)  In this section, "historically underutilized business" means:

(1)  a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because they are [~~of their identification as members of certain groups, including African Americans, Hispanic Americans,~~] women and [~~, Asian Pacific Americans, and Native Americans, who~~] have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2)  a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operations is controlled by a person described by Subdivision (1);

(3)  a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) who also have proportionate interest in the control, daily operations, and management of the partnership's affairs;

(4)  a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5)  a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

SECTION 2.18.  Section 431.109(e), Transportation Code, is amended to read as follows:

(e)  In this section, "historically underutilized business" means:

(1)  a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because they are [~~of their identification as members of certain groups, including African Americans, Hispanic Americans,~~] women and[~~, Asian Pacific Americans, and Native Americans, who~~] have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2)  a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operation is controlled by a person described by Subdivision (1);

(3)  a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership are owned by one or more persons described by Subdivision (1) and who also have proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4)  a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5)  a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

SECTION 2.19.  Section 451.251, Transportation Code, is amended to read as follows:

Sec. 451.251.  CONTRACT GOALS FOR DISADVANTAGED BUSINESSES. An authority that does not have an up-to-date disadvantaged business enterprise program[~~, as defined by 49 C.F.R. Part 23,~~] to assist [~~minorities and~~] women in participating in authority contracts should establish goals for that participation. The recommended contract goals are:

(1)  17 percent for construction, 11 percent for purchasing, and 24 percent for professional services; or

(2)  the weighted average equivalent of the categories in Subdivision (1).

SECTION 2.20.  The heading to Section 451.252, Transportation Code, is amended to read as follows:

Sec. 451.252.  WOMEN-OWNED BUSINESSES [~~MINORITY AND DISADVANTAGED INDIVIDUALS~~] PROGRAM: CERTAIN AUTHORITIES.

SECTION 2.21.  Section 451.252(a), Transportation Code, is amended to read as follows:

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

SECTION 2.22.  The heading to Section 451.253, Transportation Code, is amended to read as follows:

Sec. 451.253.  [~~MINORITY AND~~] WOMEN-OWNED BUSINESS PROGRAM: CERTAIN AUTHORITIES.

SECTION 2.23.  Sections 451.253(a), (c), and (d), Transportation Code, are amended to read as follows:

(a)  An authority with a regional economic development facility approved under Subchapter E may establish a program reasonably designed to increase the participation of [~~minority and~~] women-owned businesses in public contracts awarded by the authority, and if the program is established, the board shall provide a plan to assist [~~minority and~~] women-owned businesses in the area served by the authority to achieve the purposes of the program. If the board establishes a [~~an overall minority and~~] women-owned business contract percentage goal as a part of the program, the goal may not exceed the capability of the [~~minority and~~] women-owned businesses in the area served by the authority to perform the number and type of contracts awarded by the authority, as determined by a qualified, independent source.

(c)  This section does not affect Sections 451.110 and 451.111, but prospective bidders may be required to meet uniform standards designed to assure a reasonable degree of participation by [~~minority and~~] women-owned businesses in the performance of any contract.

(d)  In this section, "women-owned[~~:~~

[~~(1)  "Minority" includes blacks, Hispanics, Asian Americans, American Indians, and Alaska natives.~~

[~~(2)  "Minority business" means a business concern more than 50 percent of which is owned and controlled in management and daily operations by members of one or more minorities.~~

[~~(3)  "Women-owned~~] business" means a business concern more than 50 percent of which is owned and controlled in management and daily operations by one or more women.

SECTION 2.24.  Section 451.353(b), Transportation Code, is amended to read as follows:

(b)  A revenue bond indenture may limit a power of the authority provided by Sections 451.054-451.060, 451.061(a) or (b), 451.064-451.068 [~~451.064-451.069~~], or 451.107(a)[~~, or 451.251~~] as long as the bonds issued under the indenture are outstanding.

SECTION 2.25.  The heading to Section 452.201, Transportation Code, is amended to read as follows:

Sec. 452.201.  [~~MINORITY AND~~] WOMEN-OWNED BUSINESS PROGRAM IN CERTAIN AUTHORITIES.

SECTION 2.26.  Sections 452.201(a), (b), (d), and (e), Transportation Code, are amended to read as follows:

(a)  An authority consisting of one subregion governed by a subregional board created under Subchapter O  may establish a program reasonably designed to increase the participation of [~~minority and~~] women-owned business enterprises in contracts awarded by the authority.  If the program is established, the board shall provide a program outlining acceptable assistance to be given [~~minority and~~] women-owned business enterprises in the area served by the authority to achieve the purposes of the program.

(b)  An overall [~~minority and~~] women-owned business enterprise contract percentage goal may be established as a part of the program only after reasonable consultation with affected organizations and a qualified independent source and after public comment.  In establishing a goal, the authority shall consider the various types of construction contracts the authority expects to award and the effect of market conditions on the feasibility of attaining the goals.

(d)  This section does not affect Sections 452.106, 452.107, and 452.108(a) and (b), but prospective bidders may be required to meet uniform standards designed to assure a reasonable degree of participation by [~~minority and~~] women-owned business enterprises in the performance of any contract.

(e)  In this section, "women-owned[~~:~~

[~~(1)  "Minority" includes blacks, Hispanics, Asian Americans, American Indians, and Alaska natives.~~

[~~(2)  "Minority business enterprise" means a small business concern at least 51 percent of which is owned and controlled in management and daily operations by members of one or more minorities.~~

[~~(3)  "Women-owned~~] business enterprise" means a small business concern at least 51 percent of which is owned and controlled in management and daily operations by one or more women.

SECTION 2.27.  The following laws are repealed:

(1)  Sections 381.004(a)(2) and (3), Local Government Code; and

(2)  Section 161.131, Natural Resources Code.

SECTION 2.28.  Section 51.803(k), Education Code, is repealed.

ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01.  The change in law made by this Act to Subchapter U, Chapter 51, Education Code, applies beginning with admissions to a general academic teaching institution for the 2024-2025 academic year. Admissions for an academic period preceding that academic year are covered by the law in effect immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.

SECTION 3.02.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b)  The section of this Act repealing Section 51.803(k), Education Code, takes effect January 1, 2024.