

SUBJECT: Codification of Article 9 provisions, including HUB provisions

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 19 ayes — Junell, West, Coleman, Cuellar, Delisi, Eiland, Farrar, Gutierrez, Heflin, Hochberg, Janek, McReynolds, Mowery, Pickett, Pitts, Puente, Staples, Tillery, Van de Putte

1 nay — Hartnett

7 absent — Flores, Gallego, Giddings, Glaze, Luna, P. Moreno, S. Turner

SENATE VOTE: On final passage, March 16 — voice vote (Nelson recorded nay)

WITNESSES: None

BACKGROUND: The general appropriations act traditionally has contained an article that includes provisions that direct or limit travel, purchasing, contracting, and employment-related activities of most, if not all, state agencies and institutions. In the proposed budget for fiscal 2000-01, as in budgets since 1995, these provisions have been placed in Article 9. These provisions generally direct state agencies in their use and management of money budgeted for:

- ! employee salaries and benefits;
- ! building construction;
- ! computer support and Y2K activities;
- ! rulemaking and board per diem payments;
- ! use of telecommunications;
- ! financing of property or other purchases;
- ! publications;
- ! contracting with historically underutilized businesses (HUBs);
- ! transportation; and
- ! workers' compensation payments.

Article 9 also includes general provisions on state employee conduct standards; work holidays and vacation leave; equal opportunity employment; use of federal funds, special funds, reimbursements, and revenues from the

sale of surplus property and other goods and services; the transfer of funding between budget strategies; and budget performance and accounting requirements. For fiscal 1998-99, Article 9 provisions also contained contingency riders that set aside funds for unanticipated caseload growth and other situations that could require additional spending.

Many of the provisions in Article 9 have been reenacted with each budget bill with little change.

Sometimes provisions added to this article have been challenged as violating the Texas Constitution's prohibition, in Art. 3, sec. 35, against using an appropriations bill to make or change general law. House Rule 8, sec. 4 also includes this prohibition. Two Article 9 provisions in the fiscal 1998-99 budget were challenged on this basis and found unconstitutional: sec. 174, commonly called the "rap rider," prohibiting state investments in companies that produce recordings with objectionable song lyrics, and sec. 142, relating to Human Rights Commission training activities. Also, Article 9, sec. 24 of the fiscal 1998-99 budget, relating to state employees as expert witnesses, was found to be an unconstitutional intrusion on free speech.

DIGEST:

CSSB 178 would codify the following provisions of Article 9:

- ! purchase of insurance by a state agency;
- ! minutes and reports electronically available to Legislature;
- ! state auditor consideration of significant increase in appropriations;
- ! submission of state auditor reports;
- ! funds expended in proportion to method of financing;
- ! replenishment of petty cash accounts;
- ! prompt payment for interagency goods and services;
- ! cleaning and clothing allowances for state employees;
- ! agency review of existing rules;
- ! use of certain printing stock;
- ! definition of information resources;
- ! coordination of information technology and training;
- ! reporting accounting irregularities to the state auditor;
- ! purchases from the federal government;
- ! exceptions to certain purchases;
- ! use of state agency bidders list;
- ! preference under service contracts;

- ! purchase preference for vehicles made in the U.S.;
- ! space occupied by agencies;
- ! pay telephones on state property;
- ! prohibition of unlisted telephone numbers;
- ! use of the TEX-AN network;
- ! deposit of receipts from the Capitol complex phone system;
- ! use of state property;
- ! vending machines on state property;
- ! restriction on acquisition of real property;
- ! gifts of real property to higher education institutions;
- ! prompt payment discounts from vendors to state agencies;
- ! contracts with former agency employees;
- ! contracts for professional services and indemnification;
- ! reimbursement from non-treasury funds;
- ! access to sold state lands and retention of mineral rights;
- ! approval of state agencies' natural gas acquisition contracts; and
- ! provisions relating to HUBs (sec. 146 of Art. 9 of the House-passed version of the general appropriations bill).

This bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

CSSB 178 would place in statute many of the provisions now in Article 9, thereby focusing future budget bills on spending issues relevant to the budget itself and avoiding future violations of constitutional prohibitions. The House already approved these provisions when it passed HB 1 by Junell, the general appropriations bill for fiscal 2000-01.

The HUB program is an essential state program designed to provide business opportunities to businesses that historically have been subject to discrimination. The program has been successful in promoting the use of these disadvantaged businesses in state contracting, thus giving them the opportunity to compete on their own for other government and private-sector business. This program should be continued and transferred to statute because there is still a great disparity between the percentage of businesses owned by minorities and women and their percentage in the general population.

**OPPONENTS
SAY:**

The HUB program that CSSB 178 would transfer to statute is unnecessary. All businesses should have to compete for state business on an equal footing. There should be no participation goals in state contracting that award

contracts to certain businesses. The only contracting goal should be to obtain the best qualified bidder submitting the lowest bid.

Enough time has passed since the law allowed discrimination against minorities and minority businesses. While some disparities in contracting may remain, these should not be remedied by providing preferential treatment to certain businesses over others.

NOTES:

The Senate version of SB 178 generally was based on Article 9 sections in the general appropriations act for fiscal 1999-99. The House committee substitute generally reflects the version of Article 9 in the House-passed version of HB 1 by Junell, the proposed general appropriations act for fiscal 2000-01.

Other bills that would place into statute provisions formerly found in Article 9 include SB 174, 175, 176, and 177 by Ratliff, which passed the House on May 6. The Senate concurred with House amendments to all of these bills except SB 177, for which a conference committee has been appointed.

HB 3032 by Oliveira, also related to HUBs, passed the House on May 12 and was reported favorably without amendment by the Senate Finance Committee on May 14.