

SUBJECT: Defining “contract” to include brokerage services in the HUB statute

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Marchant, B. Cook, J. Davis, Elkins, Gattis, Goodman, Lewis, Villarreal

0 nays

1 absent — Madden

WITNESSES: For — Ann Crenshaw

Against — None

BACKGROUND: Government Code, sec. 2161.001 defines various terms that apply to the state’s Historically Underutilized Businesses (HUB) program. A HUB is defined as a business owned by one or more economically disadvantaged persons; i.e., someone who is economically disadvantaged as a result of discrimination caused by that person’s identification as a member of a certain group, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans.

Texas Building and Procurement Commission (TBPC) rules governing construction projects and purchases of goods and services that are paid for with appropriated money and made under the authority of law require state agencies to establish goals to increase the number of contracts they place with HUBs. TBPC encourages state agencies to use HUBs by:

- assisting state agencies in increasing the amount of business placed with historically underutilized businesses;
- working with state agencies to establish a statewide policy for increasing the use of HUBs;
- assisting state agencies in seeking historically underutilized businesses capable of supplying required goods or services; and

- assisting state agencies in identifying and advising historically underutilized businesses on the types of goods and services the agencies need.

DIGEST: HB 2033 would define “contract” in sec. 2161.001 to include “an arrangement under which a state agency receives professional or investment brokerage services.”

The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 2033 would authorize state agencies that commission brokerage services to satisfy the Legislature’s intent to encourage more state business with certified HUBs. Agencies currently underutilize HUBs in this capacity because these services do not fall under the definition of a “contract.”

The Teacher Retirement System (TRS), Employee Retirement System (ERS), and other state agencies spend large sums on brokerage services. TRS, for example, paid more than \$38 million in equity commissions in fiscal year 2002. Of this amount, eight HUB-certified and other underutilized businesses received about \$1 million, an average of just \$125,000 each. In contrast, Lehman Brothers alone received commission payments totaling more than \$2.5 million and other brokerage businesses, including CS First Boston Corp, Goldman Sachs, and JP Morgan, also each received more in commissions than did all eight HUB-certified and other underutilized businesses combined.

By expanding the definition of contract to include brokerage services, the bill would give TRS and other agencies a greater incentive to look to HUBs to perform these professional services. This would benefit not only HUBs but residents of Texas because HUB-certified brokers are concentrated here, not in New York or other locations out of state. As a result, the bill would help ensure that more of the economic growth derived from state agency contracts for brokerage services, including jobs and tax proceeds, benefitted Texas rather than someplace else.

The bill would not prohibit any state agency from using any brokerage business to conduct trades of equity assets. Nor would it require state agencies to allocate HUB-certified brokerage firms any specific amount of brokerage business.

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**OPPONENTS
SAY:**

HB 2033 might not have any effect, intended or otherwise, on state agencies' commissioning of brokers. The HUB statute applies to purchases of goods and services that are paid for with appropriated money and made under the authority of law. Commissions paid on invested contributions from employees and other sources might not qualify.