

CHAPTER 684

H.B. No. 2626

AN ACT

relating to the continuation and operation of the General Services Commission and to the transfer of certain functions to or from the commission; the purchase, financing, management, and use of real and personal property of the state; and contracting for certain services provided to the state or among state agencies; providing for the issuance of revenue bonds; making an appropriation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02(3), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "*Historically underutilized* [~~Disadvantaged~~] business" means:

(A) 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:

(i) are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, *and* [~~who~~] have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; *and*

(ii) *have a proportionate interest and demonstrate active participation in the control, operation, and management of the corporation's affairs;*

(B) a sole proprietorship created for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Paragraph (A)(i) of this subdivision;

(C) 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 *who:*

(i) *are* described by Paragraph (A)(i) of this subdivision; *and*

(ii) [~~Those persons must~~] *have a proportionate interest and demonstrate active participation in the control, operation, and management of the partnership affairs;*

(D) a joint venture in which each entity in the joint venture is a *historically underutilized* [~~disadvantaged~~] business under this subdivision; or

(E) a supplier contract between a *historically underutilized* [~~disadvantaged~~] business under this subdivision and a prime contractor under which the *historically underutilized*

[disadvantaged] business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

SECTION 2. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (4), (5), and (6) to read as follows:

(4) "Automated information systems" means any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, awarded to a vendor by a state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network.

(5) "Best value" means lowest overall cost of information systems based on the following factors, including, but not limited to:

(A) purchase price;

(B) compatibility to facilitate exchange of existing data;

(C) capacity for expansion and upgrading to more advanced levels of technology;

(D) quantitative reliability factors;

(E) the level of training required to bring end-users to a stated level of proficiency;

(F) the technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and

(G) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.

(6) "Qualified information systems vendor" means manufacturers or resellers of automated information systems who are authorized by the commission to publish catalogues of products and services which may be directly purchased by state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes).

SECTION 3. Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. **HISTORICALLY UNDERUTILIZED [DISADVANTAGED] BUSINESSES.**

(a) The ~~commission [Office of Small Business Assistance of the Texas Department of Commerce]~~ shall certify businesses that are *historically underutilized* [disadvantaged] businesses. As part of its certification procedures, the ~~commission [office]~~ may approve a municipal program that certifies *historically underutilized* [disadvantaged] businesses under substantially the same definition prescribed by Section 1.02(3) of this Act and may certify businesses certified by the municipality as *historically underutilized* [disadvantaged] businesses under this Act.

(b) The ~~commission [office]~~ shall compile in the most cost-efficient format a directory of businesses certified as *historically underutilized* [disadvantaged] businesses under Subsection (a) of this section. The ~~commission [office]~~ shall update the directory at least semiannually and provide a copy of the directory to ~~[the commission and]~~ each state agency semiannually. ~~The commission shall provide access to the directory either electronically or in another format, depending on the needs of each state agency. On request, the commission shall make the directory available to local governments and the public.~~ The commission and state agencies shall use the directory in determining awards of state purchasing and public works contracts.

(c) ~~The commission shall prepare a report based on a compilation and analysis of reports submitted to it by each state agency and information provided by the comptroller. [commission and each state agency shall report to the office] The report shall include the total number and dollar amount of contracts awarded and actually paid to historically underutilized [disadvantaged] businesses certified by the commission. Not later than September 15 and March 15 of each year, each state agency shall submit to the commission information~~

required by the commission for its preparation of the report required by this subsection. [These reports shall be made each January and July and shall report on the previous six-month period. The office shall compile and analyze the reports and submit a report based on the analysis to the presiding officer of each house of the legislature each February.] The commission shall submit a consolidated report on April 15 of each year on the previous six-month period to the joint committee charged with monitoring the implementation of the historically underutilized business goals. The commission shall submit a consolidated report on October 15 of each year on the preceding fiscal year to the presiding officer of each house of the legislature, the members of the legislature and the joint committee. The commission may require information from a state agency and may adopt rules to administer this section. The comptroller shall provide information to the commission that will assist the commission in the performance of its duties under this section. Subsections (d)–(k) of this section apply to the report and information required under this section.

(d) Each state agency that participates in a group purchasing program under Section 3.01(a)(5) of this Act shall include in the information submitted to the commission under Subsection (c) of this section a separate list of purchases from historically underutilized businesses that are made through the group purchasing program and shall report the dollar amount of each purchase that is allocated to the reporting agency.

(e) To ensure accuracy in reporting the use of historically underutilized businesses, each state agency shall continuously maintain, and shall compile monthly, information relating to the agency's use, and the use by each operating division of the agency, of historically underutilized businesses, including information regarding subcontractors and suppliers required by Subsection (f) of this section.

(f) A contractor or supplier to whom a state agency has awarded a contract shall report to the agency the identity of each historically underutilized business to whom the contractor or supplier has awarded a subcontract for the purchase of supplies, materials, services, or equipment.

(g) The commission, in cooperation with the comptroller and each state agency reporting under this section, shall categorize each historically underutilized business that is included in a report under this section by sex, race, and ethnicity.

(h) The report required by Subsection (c) of this section shall include an analysis of the relative level of opportunity for historically underutilized businesses for various classes or categories of acquisitions of materials, supplies, equipment, and services.

(i) The commission shall seek the advice of the governor, the legislature, and state agencies in facilitating identification of and development of opportunities for historically underutilized businesses.

(j) [(d)] The commission shall offer assistance and training to historically underutilized [disadvantaged] businesses regarding state procurement procedures. The commission shall advise historically underutilized [disadvantaged] businesses of the availability of state contracts and advise historically underutilized [disadvantaged] businesses to enter the businesses' names on the state's bid list.

(k) It is the intent of this measure that reports of historically underutilized business purchasing and contracts shall form a record of each agency's purchases in which the agency selected the vendor. If the vendor was selected by the commission as part of its state contract program, the purchase shall be reflected on the commission's report of its own purchases except in those cases where an agency selects a sole source vendor under the provisions of Section 3.09 of this Act. In the case of Section 3.09 purchases, the selections of vendors shall remain part of the record of the agency selecting the vendor, not the commission.

SECTION 4. Section 1.04(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person commits an offense if the person intentionally applies as a historically underutilized [disadvantaged] business for an award of a purchasing contract or public works contract under this Act and the person knowingly does not meet the definition of a historically underutilized [disadvantaged] business under Section 1.02(3) of this Act.

SECTION 5. Section 2.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. MEMBERSHIP. The commission is composed of six members appointed by the governor with the advice and consent of the senate. All members must be representatives of the general public. Appointments to the commission shall be made without regard to the race, color, *disability* [handicap], sex, religion, age, or national origin of the appointees. In making appointments under this section, the governor shall attempt to appoint members of different minority groups, including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans. A person is not eligible for appointment if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization that contracts with the commission;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that contracts with the state; or
- (3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 6. Section 2.06(i), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, *disability* [handicap], sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, *that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), and its subsequent amendments;*
- (2) a comprehensive analysis of the commission work force that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to address appropriately those areas of significant underutilization.

SECTION 7. Section 2.06(j), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) A policy statement prepared under Subsection (i) of this section must cover an annual period, be updated at least annually, *be reviewed annually by the Commission on Human Rights for compliance with Subsection (i)(1) of this section,* and be filed with the governor's office.

SECTION 8. Section 2.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2001 [1993].

SECTION 9. Section 2.10(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The commission shall prepare and maintain a written plan that describes how a person who does not speak English [~~or who has a physical, mental, or developmental disability~~] can be provided reasonable access to the commission's programs. *The commission shall also comply with federal and state laws for program and facility accessibility.*

SECTION 10. Section 3.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) *The Texas Youth Commission may purchase care and treatment services for its wards, including educational services, and such purchases shall be negotiated to achieve fair and reasonable prices at rates which do not exceed any maximum provided by law. Selection of service providers shall be based upon the qualifications and demonstrated competence of the provider.*

SECTION 11. Section 3.022, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) *A medical or dental unit as that term is defined in Section 61.003, Education Code, may purchase the following types of medical equipment by the use of competitive sealed proposals if it follows commission rules and procedures provided by this section regarding the use of competitive sealed proposals and submits to the commission a written finding that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state for the proposed acquisition:*

- (1) *prototypical medical equipment not yet available on the market;*
- (2) *medical equipment so new to the market that its benefits are not fully known; or*
- (3) *major medical equipment that is so technically complex that development of specifications for competitive bidding is not feasible.*

SECTION 12. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.0221 to read as follows:

Sec. 3.0221. COMPETITIVE SEALED PROPOSALS; ACQUISITION OF CERTAIN SUPPLIES, MATERIALS, EQUIPMENT, AND ROUTINE SERVICES. (a) *The commission may follow a procedure using competitive sealed proposals to acquire:*

- (1) *supplies, materials, or equipment if the cost of acquisition is \$1 million or more; or*
- (2) *routine services if the cost of acquisition is \$100,000 or more.*

(b) *Only the commission may acquire goods or services using competitive sealed proposals under this section. The commission may not delegate this authority to a state agency.*

(c) *To acquire goods or services using competitive sealed proposals under this section, the commission must first determine in an open meeting that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state.*

(d) *The commission shall solicit proposals by a request for proposals. The commission shall give public notice of a request for proposals in the manner provided for requests for bids under Section 3.12 of this article.*

(e) *The commission shall consult with appropriate personnel of a requisitioning agency to develop specifications for a request for competitive sealed proposals under this section.*

(f) *The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors. The commission shall file each proposal in a register of proposals, which shall be open for public inspection after a contract is awarded unless the register contains information that is excepted from disclosure as an open record under Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(g) *As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. After the submission of a proposal but before making an award, the commission may permit the offeror to revise the proposal in order to obtain the best final offer. The commission may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this subsection. The commission shall provide each offeror with an equal opportunity for discussion and revision of proposals.*

(h) *The commission shall invite a requisitioning agency to participate in discussions conducted under Subsection (g) of this section.*

(i) *The commission shall make a written award of a contract to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the commission finds that none of the offers is acceptable,*

it shall refuse all offers. The contract file must state in writing the basis on which the award is made.

(j) The commission may adopt rules and request assistance from other state agencies to perform its responsibilities under this section.

(k) This section does not affect Section 3.022 of this article regarding the use of competitive sealed proposals for acquiring goods or services related to telecommunications or automated information technology.

SECTION 13. Section 3.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. MENTAL HEALTH AND MENTAL RETARDATION COMMUNITY CENTERS; ASSISTANCE ORGANIZATIONS. Community centers for mental health and mental retardation services that receive ~~are receiving~~ state grants-in-aid under the provisions of Article 4 of the Texas Mental Health and Mental Retardation Act and assistance organizations as defined by Section 9.01 of this Act that receive any state funds may purchase goods and services ~~drugs and medicines~~ through the commission.

SECTION 14. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.061 to read as follows:

Sec. 3.061. GROUP PURCHASING PROGRAMS. (a) Institutions of higher education, as defined by Section 61.003, Education Code, are authorized to purchase materials, supplies or equipment through group purchasing programs that offer discount prices to institutions of higher education.

(b) The commission shall promulgate rules allowing purchases through group purchasing programs unless the commission determines within a reasonable period of time after receiving notification of a particular purchase that a lower price is available through the commission.

(c) The rules shall also include provisions that provide for commission determination of compliance with state laws and commission rules regarding purchasing with historically underutilized businesses.

(d) This section does not affect other authority granted to institutions of higher education under this Act.

SECTION 15. Section 3.07(b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Each emergency purchase made under this section is subject to the historically underutilized ~~disadvantaged~~ business provisions of Section 3.10 of this article.

SECTION 16. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.081 to read as follows:

Sec. 3.081. CATALOGUE PURCHASE PROCEDURE. (a) A vendor who wants to sell or lease automated information systems under this section to state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) shall apply to the commission for designation as a "qualified information systems vendor" according to an application process promulgated by the commission. At a minimum, the application process shall include submission of the following elements:

(1) a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service;

(2) a maintenance, repair, and support plan for all eligible products and services;

(3) proof of the applicant's financial resources and ability to perform; and

(4) a guarantee that the vendor will make available equivalent replacement parts for products sold to Texas for at least three years from the date of a product's discontinuation.

(b) Within 90 days of the effective date of this Act the commission shall establish standards and criteria for designating qualified information systems vendors on a regional and statewide basis. A vendor remains qualified until the commission determines the vendor fails to meet the criteria set forth in this section. Vendors granted regional status may sell catalogue-listed products and services directly to state agencies covered by the

Information Resources Management Act (Article 4413(32j), Revised Statutes) within a region defined by the commission. Vendors granted statewide status may sell catalogue-listed products and services directly to any state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes). The commission's standards and criteria shall be developed in accordance with the following parameters:

- (1) the ability of the vendor to provide adequate and reliable support and maintenance;*
- (2) the vendor's ability to provide adequate and reliable support and maintenance in the future;*
- (3) the technical adequacy and reliability of the vendor's products; and*
- (4) consistency with standards adopted by the Department of Information Resources or a subsequent entity.*

(c) If a vendor is designated by the commission as a qualified information systems vendor, the vendor shall publish and maintain a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service. The vendor shall update the catalogue on an as-needed basis to reflect changes in price or the availability of products or services and shall forward a copy of each updated catalogue to the commission and all eligible purchasers.

(d) A state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) may purchase or lease automated information systems directly from a qualified information systems vendor and may negotiate additional terms and conditions to be included in contracts relating to the purchase or lease, provided the purchase or lease is based on the best value available and is in the state's best interest. In determining which products or services are in the state's best interest, the agency shall consider the following factors:

- (1) installation costs and hardware costs;*
- (2) the overall life cycle cost of the system or equipment;*
- (3) estimated cost of employee training and estimated increase in employee productivity;*
- (4) estimated software and maintenance costs; and*
- (5) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.*

(e) The commission shall establish rules and regulations and implement the catalogue purchase procedure set forth in this section no later than January 1, 1994.

(f) Purchases of automated information systems shall be made through the catalogue procedure enumerated in this section unless the commission or state agency determines that the best value available accrues from an alternative purchase method authorized by this Act.

(g) The commission shall make the catalogue purchasing procedure enumerated in this section available to local governments that qualify for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code. In this subsection, "local government" has the meaning assigned to it by Section 271.081, Local Government Code.

SECTION 17. Section 3.10(b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission and each state agency shall make a good faith effort to assist historically underutilized [~~disadvantaged~~] businesses to receive not less than 30 [at least 10] percent of the total value of all contract awards for the purchase of supplies, materials, services, and equipment that the commission or other agency expects to make during [for] a [state agency in its] fiscal year. The commission and each state agency shall estimate the expected total value of the [an agency's] contract awards they expect to make that are subject to this subsection not later than the 60th day of the agency's fiscal year and may revise the estimate as new information requires.

SECTION 18. Section 3.101, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.101. *CENTRALIZED MASTER BIDDERS LIST [LISTS]*. (a) This section:

(1) applies to all purchases or other acquisitions under this article, including the acquisition of services, for which competitive bidding or competitive sealed proposals are required;

(2) applies to each [all] state agency [agencies] that makes [make] purchases or other acquisitions under this article, including the commission and agencies that make purchases or other acquisitions under Section 3.06 of this article; and

(3) does not apply to purchases or other acquisitions made by the commission under Section 3.11 of this article.

(b) The commission shall develop a uniform registration form for application to do business with the commission or with any state agency. *The commission and each state agency shall make the form available to applicants. The form shall include an application for:*

(1) certification as a historically underutilized business;

(2) a payee identification number for use by the comptroller; and

(3) placement on the commission's master bidders list.

(c) A state agency shall submit to the commission each uniform registration form that it receives. The commission shall send to the comptroller a copy of each uniform registration form.

~~(d) The commission [The registration forms shall constitute a valid application for a bidders list by all state agencies. Nothing in this subsection shall be construed as preventing any state agency from developing and using its own registration form, but such forms shall not be required in addition to or in lieu of the uniform registration form developed by the commission.~~

~~(e) Each state agency] shall maintain a master bidders list and annually register on the list the name and address of each vendor that applies for registration in accordance with rules adopted under this section. The commission [An agency] may include other relevant vendor information on the list. Each state agency shall solicit bids or proposals from all eligible vendors on the list that serve the agency's geographic region, as provided by this section, when the agency proposes to make a purchase or other acquisition that will cost more than \$15,000 [\$5,000]. The commission shall maintain the master bidders list in a manner that facilitates a state agency's solicitation of vendors that serve the agency's geographic area.~~

~~(e) The commission shall make the master bidders list available to each state agency that makes purchases or other acquisitions to which this section applies. The commission shall provide access to the list either electronically or in another format, depending on the needs of each state agency.~~

~~(f) The commission [(d) A state agency] may charge applicants for registration a fee and may charge registrants an annual renewal fee in an amount designed to recover the commission's [agency's] costs in developing and maintaining the master [its] bidders list and in soliciting bids or proposals under this section. The commission [An agency] shall set the amount of the fees by rule.~~

~~(g) The commission [(e) Each state agency] shall adopt procedures [for developing and maintaining the master [its] bidders list and procedures for removing inactive vendors from the list.~~

~~(h) The commission [(f) Each state agency] shall establish by rule a vendor classification process under which only vendors that may be able to make a bid or proposal on a particular purchase or other acquisition are solicited under this section.~~

~~(i) A state agency may maintain and use its own bidders list only if the commission determines by rule that the agency has specialized needs that can best be met through maintaining and using its own specialized bidders list. The commission by rule may prescribe the categories of purchases or other acquisitions for which an agency's specialized bidders list may be used. An agency may supplement the bidders list with its own list of historically underutilized businesses if it determines that supplementation will increase the number of historically underutilized businesses that submit bids.~~

(j) [(g)] The commission may establish by rule a process under which the requirement for soliciting bids or proposals from eligible vendors on a [the] bidders list may be waived for appropriate state agencies or appropriate purchases or other acquisitions in circumstances in which the requirement is not warranted. The commission also may assist state agencies regarding issues that arise under this section.

SECTION 19. Section 3.15(h), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) This section does not apply to interagency purchases or transactions. Interagency purchases and transactions must be accomplished on special vouchers or electronically as prescribed by the comptroller [of public accounts. ~~The commission shall audit all interagency purchases and transactions after they have been completed.~~].

SECTION 20. Section 3.29(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 160 SAE net horsepower, *except that the vehicle may have a wheel base of up to 116 inches or SAE net horsepower of up to 280 if the vehicle will be converted so that it is capable of using compressed natural gas or another alternative fuel that results in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates. This exception to the wheel base and horsepower limitations applies to a state agency regardless of the size of the agency's vehicle fleet. The wheel base and horsepower limitations prescribed by this subsection do* [This provision does] not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

SECTION 21. Section 4.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsection (d) to read as follows:

(a) The commission shall have charge and control of all public buildings, grounds and property of the state, and is the custodian of all public personal property, and is responsible for the proper care and protection of such property from damage, intrusion, or improper usage. [The commission is expressly directed to take any steps necessary to protect public buildings against any existing or threatened fire hazards.] The commission is authorized to provide for the allocation of space in any of the public buildings to the departments of the state government for the uses authorized by law, and is authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accommodation of the uses to which such buildings or space therein may be allotted.

(d) *The commission may allocate space in buildings in the Texas Judicial Complex only to:*

- (1) *a court;*
- (2) *a judicial agency;*
- (3) *the attorney general's office;*
- (4) *the Texas Department of Criminal Justice;*
- (5) *the Texas Youth Commission;*
- (6) *the Criminal Justice Policy Council;*
- (7) *the State Commission on Judicial Conduct;*
- (8) *the State Office of Administrative Hearings;*
- (9) *the Board of Law Examiners;*
- (10) *the Interagency Council on Sex Offender Treatment;*
- (11) *building security;*
- (12) *building maintenance; or*
- (13) *a vending facility operated under Chapter 94, Human Resources Code.*

SECTION 22. Article 4, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 4.082 to read as follows:

Sec. 4.082. TEXAS JUDICIAL COMPLEX. "Texas Judicial Complex" is the collective name of the Supreme Court Building, the Tom C. Clark State Courts Building, and the Price Daniel, Sr., Building.

SECTION 23. Section 4.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (b-1) to read as follows:

(b-1) The space in the old State Board of Insurance State Office Building, located on San Jacinto Street between 11th and 12th streets in Austin, is allocated to the legislature and legislative agencies for their use. The presiding officers of each house of the legislature shall jointly decide the allocation of the space within the building.

SECTION 24. Section 4.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is transferred to Chapter 443, Government Code, designated as Section 443.020, and amended to read as follows:

Sec. 443.020 [4.13]. PASS KEYS TO ROOMS IN THE CAPITOL. Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so, shall be fined not exceeding \$100.

SECTION 25. Section 5.16(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepared by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, (6) an overall estimate of the cost of the project, (7) the information about historic structures considered instead of new construction that was prepared as required by Section 5.01A of this article, [and] (8) *an evaluation of energy alternatives as required by Section 5.161 of this article, and* (9) other information as required by the commission. A project analysis may include two or more alternative proposals for meeting the space needs of the using agency by (1) new construction, (2) acquisition and rehabilitation of an existing or historic structure, or (3) a combination of the above. If any part of the project involves the construction or rehabilitation of a building that is to be used primarily as a parking garage or for office space for the state government, the project analysis also shall include a description of the amount and location of space in the building that can be made available for lease, under Section 4.15 of this Act, to private tenants or shall include a statement of the reason that the lease of space in the building to private tenants is not feasible. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

SECTION 26. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.161 to read as follows:

Sec. 5.161. EVALUATION OF ENERGY ALTERNATIVES. (a) *For each project for which a project analysis is prepared under Section 5.16 of this article, and for which the construction, alteration, or repair involves installing or replacing all or part of an energy system, energy source, or energy-consuming equipment, the commission, or the private architect/engineer employed by the commission, shall prepare a written evaluation of energy alternatives for the project.*

(b) An evaluation prepared under this section shall include information about the economic and environmental impact of various energy alternatives, including an evaluation of economic and environmental costs both initially and over the life of the system, source, or equipment.

(c) An evaluation under this section shall identify the best energy alternative for the project considering both economic and environmental costs and benefits.

SECTION 27. Section 5.22, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. The commission shall adopt rules that state the criteria the commission uses to evaluate the competence and qualifications of private architects/engineers. The commission shall develop the rules in consultation with the Texas Board of Architectural Examiners and the State Board of Registration for Professional Engineers. Except in an emergency, the [The] commission shall allow each private architect/engineer selected for an interview at least 30 days after the date the commission notifies the architect/engineer to prepare for the interview.

(d) In this section, an emergency is a situation that:

- (1) presents an imminent peril to the public health, safety, or welfare;*
- (2) presents an imminent peril to property;*
- (3) requires expeditious action to prevent a hazard to life, health, safety, welfare, or property; or*
- (4) requires expeditious action to avoid undue additional cost to a state agency or the state.*

SECTION 28. Section 5.26, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and by adding Subsection (c) to read as follows:

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of facilities construction and space management, who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; ~~one person~~ ~~[two persons]~~ appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; ~~one person~~ ~~[two persons]~~ appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; ~~one person~~ ~~[two persons]~~ appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; ~~one person~~ ~~[and two persons]~~ appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated; ~~one person appointed by the commission from a list of nominees submitted to it by the Executive Secretary of the Texas Building and Construction Trades Council;~~ ~~one person appointed by the commission from a list of nominees submitted to it by the President of the Associated Builders and Contractors of Texas;~~ ~~one person appointed by the commission from a list of nominees submitted to it by the Executive Director of the National Association of Minority Contractors residing in Texas;~~ ~~one person appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code;~~ ~~one person appointed by the commission representing a state agency that has a substantial ongoing construction program;~~ ~~and one person appointed by the commission representing the attorney general's office.~~ Members of any review committee appointed pursuant to this subsection shall serve without compensation but may be reimbursed for their necessary and actual expenses.

(c) Any contract covered by this section that is not excepted by Sections 5.13 and 5.14 shall be considered to have an arbitration clause as a part of the contract covering any dispute or claim arising out of the contract. A party to a contract with a claim or dispute against the other party shall give 30 days' written notice of the nature and extent of the claim or dispute.

If the matters are not resolved within this notice period, either party may commence arbitration by giving the other a written request for arbitration and arbitrators shall be appointed. The arbitrators shall be selected as provided in the contract. If the contract does not provide for the selection of arbitrators, each party shall appoint one arbitrator. The two appointed arbitrators shall select a third arbitrator. All arbitrators shall be uninterested parties and have no affiliation with either party to the contract. The parties shall make their appointments within 10 business days after a written request for arbitration is delivered from one party to another. The third arbitrator shall be appointed within 10 business days after the appointment of the party arbitrators. The arbitration shall be conducted within 20 business days after the appointments are made. The decision of the arbitrators shall be binding on the parties. The arbitration shall be governed by and may be compelled and enforced under the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) or under the United States Arbitration Act (9 U.S.C. Section 1 et seq.), if applicable. The arbitration award shall not include punitive or exemplary damages nor attorney's fees. Arbitration may not be requested after the first anniversary of the completion of the work under the contract.

The Comptroller, with the assistance of the Center for Public Policy Dispute Resolution of The University of Texas School of Law, shall review the performance of the dispute resolution system created herein and shall furnish a report to the 75th Legislature in its Regular Session.

This subsection expires on September 1, 1995, except that the subsection remains in effect for the limited purpose of governing an arbitration proceeding that begins before that date. For the purpose of the expiration date, an arbitration proceeding begins before September 1, 1995, if the written request for arbitration is sent on or before August 31, 1995.

SECTION 29. Section 5.32(b)(1), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Solar energy" means [~~radiant~~] energy from the sun that may be collected and converted into useful thermal, mechanical, or electrical energy. The term includes biomass energy that is created in living plants through photosynthesis, *wind energy*, and other renewable energy resources.

SECTION 30. Section 5.32(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) During the planning phase of the proposed construction of a new state building, the commission or, if the construction is included in the exceptions prescribed by Section 5.13 of this article, the governing body of the appropriate agency or institution shall *verify in an open meeting* [~~determine~~] the economic feasibility of incorporating solar energy devices for space heating, cooling, water heating, *electrical loads*, and interior lighting into the building's design and proposed energy system. Economic feasibility for each function shall be determined by comparing the estimated cost of *providing energy for the function* [~~procurement~~] using conventional design practices and energy systems with the estimated cost of *providing energy for the function* using solar energy devices during the economic life of the proposed new building.

SECTION 31. Section 5.36, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.36. PUBLIC WORKS CONTRACTS WITH CERTAIN BUSINESSES. A state agency that enters into a contract for a project, including a project constructed by or for an agency otherwise excepted under Section 5.13 of this article, shall make a good faith effort to assist *historically underutilized* [~~disadvantaged~~] businesses to receive *not less than 30* [~~at least 10~~] percent of the total value of each construction contract award that the agency expects to make in its fiscal year. Each agency shall estimate the expected total value of contract awards under this article not later than the 60th day of its fiscal year and may revise the estimate as new information requires.

SECTION 32. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.37 to read as follows:

Sec. 5.37. SMALL CONTRACTOR PARTICIPATION ASSISTANCE PROGRAM. (a) In this section:

(1) "Program" means the small contractor participation assistance program created under this section.

(2) "Public works project" means a construction project designed to serve the public necessity, use, or convenience that is undertaken and carried out by the commission. The term includes a project for the construction, alteration, or repair of a public building.

(3) "Small business concern" has the meaning assigned by the Small Business Act (15 U.S.C. Section 631 et seq.) and its subsequent amendments.

(4) "Small contractor" means a contractor that operates as a small business concern.

(b) This section applies only to a contract for a public works project for which the estimated cost exceeds \$20 million.

(c) Not later than January 1, 1994, the commission shall establish a small contractor participation assistance program to ensure full opportunity for participation in public works projects by small contractors. A program established under this section must include:

(1) a system for the centralized purchase of any necessary insurance coverage for the public works project that is required under Subsection (d) of this section;

(2) a public outreach plan to provide public information about the program and to encourage small contractors to participate in the program;

(3) a technical assistance plan to aid small contractors to develop the skills necessary to participate in the program in accordance with Subsection (e) of this section; and

(4) a financing assistance plan to provide administrative and other assistance to small contractors in obtaining any necessary financing arrangements to make the participation of those contractors possible.

(d) The commission shall provide for the centralized purchasing of:

(1) workers' compensation insurance coverage;

(2) employer's liability insurance coverage;

(3) commercial general and excess liability coverage;

(4) payment and performance bonds; and

(5) any other analogous coverage the commission considers necessary and reasonable for the particular public works project.

(e) A technical assistance plan adopted by the commission must include information on and assistance in:

(1) estimating bids, the bidding process, scheduling, and understanding bid documents;

(2) reading construction drawings and other analogous documents;

(3) business accounting, bonds, and bond requirements;

(4) negotiation with general contractors; and

(5) any other technical and administrative assistance considered appropriate and necessary given the complexity and scope of the particular public works project.

(f) The commission may negotiate contracts with persons or firms having expertise in the areas that must be included in the commission's technical assistance plan to provide the information and assistance.

SECTION 33. Section 6.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.01. DEFINITION. In this article, "space" means office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, or any combination thereof, but does not include aircraft hangar space, radio antenna space, boat storage space, vehicle parking space, residential space for a Texas Department of Mental Health and Mental Retardation program, residential space for a Texas Youth Commission program, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.

SECTION 34. Article 6, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 6.021 to read as follows:

Sec. 6.021. SPACE USE STUDY; LIMITATION ON ALLOCATION OF SPACE. (a) The commission periodically shall conduct a study to determine the space requirements of various state agencies that occupy space under the commission's charge and control, including state-owned space and space leased from other sources.

(b) The commission shall use the results of the study to:

- (1) determine the optimal amount of space required for various state agency uses; and*
- (2) allocate space to state agencies in the best and most efficient manner possible.*

(c) The commission may not allocate space to a state agency as defined in Articles I and II of the General Appropriations Act that exceeds an average of 153 square feet for each agency employee for each agency site for usable office space as defined by the General Services Commission, with the exception of an agency site at which 15 or fewer employees are located, insofar as possible without sacrifice of critical public or client services by the end of the 1994–1995 biennium. This subsection does not apply to:

- (1) warehouse space;*
- (2) laboratory space;*
- (3) storage space exceeding 1,000 gross square feet;*
- (4) library space;*
- (5) space for hearing rooms to conduct hearings required under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes); or*
- (6) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to the specified space.*

(d) The commission shall conduct a study under this section at least once during each state fiscal biennium.

(e) This section does not apply to space that is not occupied by a state agency as defined by Section 1.02 of this Act.

SECTION 35. Section 9.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.13. EXEMPTION. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises ~~[in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof promulgated by the policy-making body of each agency or institution for the guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article].~~

SECTION 36. Section 10.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(e) The commission, Department of Information Resources, and comptroller shall negotiate rates and execute contracts with telecommunications service providers for services. Those entities may acquire transmission facilities by purchase, lease, or lease-purchase in accordance with Article 3 of this Act, ~~which shall be done on a competitive bid basis if possible].~~ Those entities may develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system. The commission may own, lease, or lease-purchase any or all of the facilities or equipment necessary to provide telecommunications services in accordance with Article 3 of this Act.

(g) A representative of the Central Education Agency and a representative of the Texas Higher Education Coordinating Board shall review and comment on telecommunications plans developed by the commission, the Department of Information Resources, and the comptroller under this section. The participation of the Central Education Agency and the Texas Higher Education Coordinating Board is for the limited purpose of coordinating the statewide telecommunications system developed under this article with the telecommunica-

tions systems of educational entities that are not subject to this article. A representative of the Central Education Agency or the Texas Higher Education Coordinating Board under this section acts in an advisory capacity only and is not entitled to vote on decisions made under this article.

SECTION 37. Section 10.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.05. SHARING OF SERVICES OR FACILITIES. Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, among and between entities authorized to use the consolidated telecommunications systems under this Article 10 to avoid waste of state funds and manpower. Such sharing or integrated use does not constitute the resale or carriage of services and does not subject the system to regulation or reporting under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

SECTION 38. Section 10.09(d), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The commission shall prepare and issue a revised centralized telephone service directory not later than March 31 [~~in February~~] of each year.

SECTION 39. Section 14.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.01. DIVISION. The travel division of the commission is composed of the central travel office and the office of vehicle fleet ~~management~~ [maintenance]. The commission shall adopt rules to implement this article, including rules related to:

- (1) the structure of travel agency contracts that the commission makes;
- (2) the procedures the commission uses in requesting and evaluating bids or proposals for travel agency contracts from providers; and
- (3) the use of negotiated contract rates for travel services by state agencies.

SECTION 40. Section 14.02(b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) [~~The central travel office shall initially provide services to designated agencies located in Travis County and shall extend its services to all state agencies as it develops the capability to do so.~~] The office may negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The commission shall make contracts with more than one provider of travel agency services. Contracts entered into under this section are not subject to the competitive bidding requirements imposed under Article 3 of this Act. The comptroller of public accounts shall audit for compliance of rules adopted to enforce the provisions of this section.

SECTION 41. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is amended by adding Article 15 to read as follows:

ARTICLE 15. COUNCIL ON COMPETITIVE GOVERNMENT

Sec. 15.01. DEFINITIONS. In this article:

(1) "Commercial activity" means an activity that provides a product or service that is commonly available from a private source.

(2) "Council" means the State Council on Competitive Government.

(3) "Identified state service" means a service provided by the state that the council has identified as a commercially available service and brought under study by the council to determine whether the service may better be provided through competition with private commercial sources.

(4) "State agency" has the meaning established by Section 1.02(2) of this Act.

Sec. 15.02. STATE COUNCIL ON COMPETITIVE GOVERNMENT. The State Council on Competitive Government is established. It is the policy of this state that all state services be performed in the most effective and efficient manner in order to be the best value to the

citizens of the state and the state recognizes competition among service providers may improve the quality of service provided. The state shall encourage competition, innovation, and creativity among service providers.

Sec. 15.03. MEMBERSHIP. (a) The council consists of the following persons or their designees:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the comptroller;
- (4) the speaker of the house of representatives;
- (5) the commission's presiding officer under Section 2.04(a) of this Act; and
- (6) the commissioner of the Texas Employment Commission representing labor.

(b) The governor is presiding officer of the board.

(c) If the speaker of the house of representatives is not permitted by the constitution to serve as a voting member of the board, the speaker serves as a nonvoting member.

Sec. 15.04. MEETINGS. The council shall meet as often as necessary to perform its duties.

Sec. 15.05. DUTIES. The council shall identify commercially available services currently being performed by state agencies and, if the council determines that these services may better be provided through competition with private commercial sources or other state agency service providers, require a state agency to engage in any process, including competitive bidding, developed by the council to provide the service in competition with private commercial sources or other state agency service providers.

Sec. 15.06. POWERS. In performing its duties under this article, the council may:

- (1) adopt rules governing any aspect of the council's duties or responsibilities;
- (2) hold public hearings or conduct studies;
- (3) consult with private commercial sources;
- (4) require a state agency to conduct an agency in-house cost estimate, a management study, or any other hearing, study, review, or cost estimate concerning any aspect of an identified state service;
- (5) develop and require for use by state agencies methods to accurately and fairly estimate and account for the cost of providing an identified state service;
- (6) require that an identified state service be submitted to competitive bidding or another process that creates competition with private commercial sources;
- (7) prescribe, in consultation with affected state agencies, the specifications and conditions of purchase procedures that must be followed by the commission and a state agency or a private commercial source engaged in competitive bidding to provide an identified state service;
- (8) award a contract to a state agency currently providing the service, another state agency, a private commercial source, or any combination of those entities, if the bidder presents the best and most reasonable bid, which is not necessarily the lowest bid; and
- (9) determine the terms and conditions of a contract for service or interagency contract to provide an identified state service or other commercially available service.

Sec. 15.07. COST COMPARISON AND CONTRACT CONSIDERATIONS. In comparisons of the cost of providing a service the council must consider the cost of supervising the work of any private contractor. All bids or contracts must include an analysis of health care benefits, retirement, and workers' compensation insurance for employees of the contractor which are reasonably comparable to those of the state. The council must also consider the total cost to the agency of that agency's performing a service, such total cost to include all indirect costs related to that agency including costs of such agencies as the comptroller, the treasurer, the attorney general, and other such support agencies.

Sec. 15.08. DUTIES OF AFFECTED STATE AGENCIES. A state agency shall perform any activities required by the council in the performance of its duties or the exercise of its powers under this article.

Sec. 15.09. EXEMPTION. Contracts made by the council and decisions regarding whether an agency shall engage in competitive bidding are exempt from all state laws regulating or limiting state purchasing and purchasing decisions.

Sec. 15.10. OPEN MEETINGS AND OPEN RECORDS LAWS. The council is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments, and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.

SECTION 42. Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE. (a) The purpose of this Act is to provide a method of financing:

- (1) for the acquisition or construction of buildings in Travis County, Texas; and
- (2) for the purchase or lease of equipment by state agencies.

(b) In this section, "state agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 43. Subsection (a), Section 9A, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The authority may issue and sell obligations for the financing of a lease or other agreement so long as the agreement concerns equipment that a state agency has purchased or leased or intends to purchase or lease. The authority's power to issue obligations includes the power to issue and sell obligations for the financing of a package of agreements involving one or more state agencies. *In this subsection, "state agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).*

SECTION 44. Subsection (c), Section 24A, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Notwithstanding the limitations prescribed by Section 9 of this Act relating to the location of buildings for which bonds may be issued, the authority may issue bonds under this Act to finance the renovation of West Building, G. J. Sutton State Office Complex in Bexar County, at an estimated cost of \$1,375,000; the construction or purchase and renovation of a building or buildings by the ~~commission [State Purchasing and General Services Commission]~~ in Tarrant County, at an estimated cost of \$10,000,000; [and] the construction or purchase and renovation of a building or buildings by the ~~commission [State Purchasing and General Services Commission]~~ in Harris County, at an estimated cost of \$20,000,000; ~~and the purchase and renovation of a building or buildings by the commission in McLennan County, at an estimated cost of \$5,000,000.~~ For purposes of this subsection regarding Tarrant and Harris counties, the ~~commission [State Purchasing and General Services Commission]~~ shall, prior to requesting the authority to issue bonds, prepare project analyses for the potential construction projects and subsequent thereto perform an alternative purchase analysis pursuant to the provisions of Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 45. Section 27, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 27. PURCHASE AND RENOVATION OF TEXAS EMPLOYMENT COMMISSION PROPERTY. (a) The Texas Employment Commission shall sell to the commission office buildings and parking facilities in its possession in or near the Capitol Complex, and the commission shall purchase and renovate the buildings and parking facilities, at an estimated cost of \$46,000,000. *The purchase and renovation is approved for financing in accordance with Section 9 of this Act and bonds may be issued to finance the purchase and renovation in accordance with Section 10 of this Act [a sales price that shall not exceed the maximum amount of funds authorized for the acquisition and renovation in Chapter 700, Acts of the 68th Legislature, Regular Session, 1983].*

(b) After the office buildings have been acquired, the commission may, from funds made available by the authority, renovate the facilities as necessary for occupancy *in accordance with the allocation of space within the building made under Subsection (c) of this section* [~~by other state agencies~~]. In negotiating the price for the Texas Employment Commission facilities, the commission shall consider the cost to the Texas Employment Commission of alternative space outside the Capitol Complex. The commission shall also consider the price in the context of the reasonable rates that might otherwise be paid by prospective occupying state agencies for rent in comparable space.

(c) The space in the office buildings and parking facilities is allocated to the legislature and legislative agencies for their use. The presiding officers of each house of the legislature shall jointly decide the allocation of the space within the buildings and facilities.

SECTION 46. Section 4, Chapter 1203, Acts of the 71st Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The board may issue and sell revenue bonds in one or more series in the name of the authority to finance the renovation and furnishing of facilities for the Texas School for the Deaf. The estimated cost of this renovations and furnishings project is \$500,000.

(d) The board may issue and sell revenue bonds in one or more series in the name of the authority to finance the renovation and furnishing of facilities for the Texas School for the Blind and Visually Impaired. The estimated cost of this renovations and furnishings project is \$600,000.

SECTION 47. Section 5(b), Chapter 1203, Acts of the 71st Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Once the funds are deposited and the comptroller has certified that the funds are available, and after transfer of any reserve funds or capitalized interest certified to be reasonably required by the authority and payment of the costs of issuance of the bonds based on a statement by the authority that specifies those costs, the commission shall begin projects under this Act. ~~The[, and the]~~ funds from the issuance authorized under Section 4(a) of this Act are appropriated to the commission for that purpose. *The funds from the issuance authorized under Section 4(c) or (d) of this Act may be appropriated by the legislature.* The appropriated funds may be used for those purposes and those projects certified and adopted by rule of the Texas School for the Deaf *or the Texas School for the Blind and Visually Impaired, as appropriate,* consistent with this Act.

SECTION 48. Section 8, Chapter 1203, Acts of the 71st Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. AGREEMENTS; PAYMENTS. The Texas School for the Deaf, *the Texas School for the Blind and Visually Impaired,* and the commission, *as appropriate,* may enter into lease agreements or execute deeds or other agreements under this Act as necessary to carry out the purposes of this Act. The commission shall spend funds appropriated by the legislature or received from any other available source for the purpose of making lease payments under this Act. The commission shall include in its biennial appropriation request an amount sufficient to pay the principal of and interest on outstanding bonds issued under this Act.

SECTION 49. Chapter 417, Government Code, is amended by adding Section 417.0081 to read as follows:

Sec. 417.0081. *INSPECTION OF CERTAIN STATE-OWNED BUILDINGS. The state fire marshal, at the commission's direction, shall periodically inspect public buildings under the charge and control of the General Services Commission and shall take any action authorized by the commission to protect the buildings and their occupants from an existing or threatened fire hazard.*

SECTION 50. Section 1(3), Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "State agency" *has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)* [~~means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which~~

is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education as defined in Section 61.003, Education Code. The term does not include a public junior college].

SECTION 51. Section 2(c), Article 9102, Revised Statutes, is amended to read as follows:

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by a [the] state *agency* under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by a [the] state *agency* through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department. If it is determined that full compliance is not practical, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification. *In this subsection, "state agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).*

SECTION 52. Subchapter A, Chapter 419, Government Code, is amended by adding Section 419.0081 to read as follows:

Sec. 419.0081. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS AGAINST FIRE HAZARDS. (a) The commission shall take any action necessary to protect a public building under the charge and control of the General Services Commission, and the building's occupants, against an existing or threatened fire hazard.

(b) The commission and the General Services Commission shall make and each adopt by rule a memorandum of understanding that coordinates the agency's duties under this section.

SECTION 53. Section 771.002, Government Code, is amended to read as follows:

Sec. 771.002. DEFINITIONS. In this chapter:

(1) "Agency" includes:

(A) a department, board, bureau, commission, court, office, authority, council, or institution;

(B) a university, college, or any service or part of a state institution of higher education; and

(C) any statewide job or employment training program for disadvantaged youth that is substantially financed by federal funds and that was created by executive order not later than December 30, 1986.

(2) [~~"Commission" means the State Purchasing and General Services Commission.~~

[~~3~~] "Resources" means materials *and*[,] equipment[~~, and supplies~~].

(3) [~~4~~] "Services" means special or technical services, including the services of employees.

SECTION 54. Section 771.004(a), Government Code, is amended to read as follows:

(a) Before a state agency may *provide* [furnish] or receive a service or resource under this chapter, the agency must have entered into a written agreement or contract that has been approved by the administrator of each agency that is a party to the agreement or contract [~~and by the commission~~].

SECTION 55. Section 771.004, Government Code, is amended by amending Subsection (c) and by adding Subsection (d) to read as follows:

(c) A written agreement or contract is ~~[and advance approval by the commission are]~~ not required:

- (1) in an emergency for the defense or safety of the civil population or in the planning and preparation for those emergencies;
- (2) in cooperative efforts, proposed by the governor, for the economic development of the state; or
- (3) in a situation in which the amount involved is less than \$50,000 ~~[\$2,500]~~.

(d) *In an interagency exchange that is exempt from the requirements of a written agreement or contract, the agencies involved shall document the exchange through informal letters of agreement or memoranda.*

SECTION 56. Section 771.006, Government Code, is amended to read as follows:

Sec. 771.006. ~~[EQUIPMENT]~~ PURCHASES AND SUBCONTRACTS OF SERVICES AND RESOURCES. A contract under this chapter may *authorize an* ~~[permit a furnishing]~~ agency *providing services and resources* to subcontract and purchase *the services and resources* ~~[equipment to the extent considered appropriate by the commission]~~.

SECTION 57. Section 9A(b), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

(b) The department, comptroller, and ~~[State Purchasing and]~~ General Services Commission shall develop a statewide telecommunications operating plan for all agencies that implements a statewide network and includes technical specifications that are binding on the managing and operating agency. *A representative of the Central Education Agency and a representative of the Texas Higher Education Coordinating Board shall review and comment on the operating plan as part of the representatives' duties under Section 10.02(g), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).*

SECTION 58. On the effective date of this Act, all powers, duties, and obligations relating to the protection of public buildings under the charge and control of the General Services Commission, and the buildings' occupants, against existing or threatened fire hazards are transferred from the General Services Commission to the Texas Commission on Fire Protection as provided by this Act. All property in the custody of the General Services Commission and the original or a copy of any record that relates to fire protection activity in the buildings are transferred to the Texas Commission on Fire Protection. All appropriations to the General Services Commission for fire protection activity in the buildings and all employees of the General Services Commission employed primarily to engage in fire protection activity in the buildings are transferred to the Texas Commission on Fire Protection. All investigations and all filed reports or complaints relating to fire protection in the buildings are transferred without change in status from the General Services Commission to the Texas Commission on Fire Protection. All rules, standards, and specifications of the General Services Commission relating to fire protection in the buildings remain in effect as rules, standards, and specifications of the Texas Commission on Fire Protection unless superseded by proper authority of that commission.

SECTION 59. The General Services Commission shall establish the small contractor participation assistance program required by Section 5.37, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, not later than January 1, 1994.

SECTION 60. The General Services Commission shall complete implementation of the changes in law made by Section 18 of this Act relating to the use of a centralized master bidders list by state agencies not later than September 1, 1995. During the transition period provided by this section, affected state agencies shall provide the General Services Commission with all records and information in the custody of the agencies that relate to the commission's preparation of the centralized master bidders list.

SECTION 61. (a) The General Services Commission shall appoint the new members added to the commission's construction contract review committee by Section 28 of this Act as soon as practicable after the effective date of this Act. The representatives of each society or association that has had its representation on the committee reduced from two members to

one member shall determine by agreement or by lot which representative will remain on the committee.

(b) Until all removals and new appointments of members of the commission's construction contract review committee have taken place, a quorum of the committee is a majority of the number of members serving at the time of a meeting.

SECTION 62. On the effective date of this Act, all powers, duties, and obligations of the Office of Small Business Assistance of the Texas Department of Commerce under Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are transferred to the General Services Commission as prescribed by the changes to Section 1.03 made by this Act. All records and property in the custody of the office that relate to a function transferred by this Act are transferred to the commission. All appropriations to the office for functions transferred by this Act and all employees of the office employed primarily to engage in those functions are transferred to the commission. An application for certification as a historically underutilized business is transferred without change in status from the office to the commission. All rules, standards, and specifications of the office relating to the functions transferred by this Act remain in effect as rules, standards, and specifications of the commission unless superseded by proper authority of the commission. All references in a transferred application, rule, standard, or specification to disadvantaged businesses is considered to be a reference to historically underutilized businesses. A prior certification made by the office that a business is a disadvantaged business is considered to be a certification that a business is a historically underutilized business.

SECTION 63. (a) The General Services Commission may, subject to Subsection (e) of this section, purchase and renovate a building or buildings and the related grounds and improvements in McLennan County at an estimated cost of \$5 million to meet office space needs for one or more state agencies in the county. The commission shall finance the purchase and renovation through bonds issued by the Texas Public Finance Authority.

(b) The proceeds of the bonds issued and sold by the Texas Public Finance Authority to finance the purchase and renovation are appropriated to the General Services Commission for the two-year period beginning on the date that the comptroller certifies that the proceeds are available.

(c) Any person from whom real property or any existing buildings or other improvements are purchased under this section shall provide to the General Services Commission the name and the last known address of each person who:

- (1) owns record legal title to the property, buildings, or other improvements; or
- (2) owns a beneficial interest in the property, buildings, or other improvements through a trust, nominee, agent, or any other legal entity.

(d) When a state agency vacates leased space to move into space in a building purchased under this section or when the leased space itself is purchased under this section, the money specifically appropriated by the legislature or the money available to and budgeted by the agency for lease payments for the leased space for the remainder of the state fiscal biennium ending August 31, 1993, or for the state fiscal biennium ending August 31, 1995, may be used only for rental or installment payments for the purchased space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and for the payment of operating expenses for the purchased space that are incurred by the General Services Commission. The comptroller may adopt rules for the administration of this subsection.

(e) Before the General Services Commission may make the purchase authorized by Subsection (a) of this section, and before the commission may request the Texas Public Finance Authority to issue bonds to finance the purchase and subsequent renovation, the commission must determine that the sum of the rental or installment payments for the purchased space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), plus the renovation and other operating expenses that will be incurred for the purchased space will not exceed, over the term of the bonded indebtedness, the amount of the lease payments that the state would otherwise have to make to meet the space needs that the purchase will satisfy.

SECTION 64. The change in law made by Section 5.26(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, applies only to a breach of contract occurring on or after the effective date of this Act, without regard to whether the contract was entered into before, on, or after that date. A breach of contract occurring before the effective date of this Act is governed by the law in effect at the time the breach of contract occurred, and that law is continued in effect for that purpose.

SECTION 65. (a) The progress of the implementation of the historically underutilized business goals shall be monitored by a joint committee appointed by the lieutenant governor and the speaker of the house of representatives. The committee shall be composed of five members of the senate and five members of the house of representatives. The committee shall make recommendations for any necessary legislative action or remedies for the next regular session of the legislature.

(b) In order to monitor the implementation of this section, the committee may review the records of state agencies related to procurement practices. Each state agency shall cooperate fully with the committee and shall submit information and reports to the committee as requested by the committee.

(c) Not later than June 1, 1994, the comptroller shall complete a disparity study regarding state contracting that meets the requirements of *City of Richmond v. J. A. Croson Co.*, 109 S.Ct. 706 (1989). Each state agency shall report as necessary to the comptroller to assist in preparation of the study. The comptroller shall distribute the study to all state agencies and to the legislature. The General Services Commission shall, as soon as practicable, adopt rules to take effect September 1, 1994, based on the disparity study.

SECTION 66. (a) In addition to the duties prescribed in Article 15, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, the State Council on Competitive Government shall conduct a study by December 1, 1993, or as soon as practicable after that date evaluating services being performed by or for state agencies. Services involving information technology, information facilities management, collocation of field offices, mail, print services, travel management, telecommunications, and fleet management shall be evaluated to identify at least \$3 million in cost savings and enhanced revenue resulting from competition with private commercial sources or other state agency providers. Services to be evaluated shall also include the state's procurement practices to the extent the practices have been evaluated in any report on procurement practices in Texas state government.

(b) The council shall certify the estimate of potential savings or enhanced revenue amounts and forward the information to the Legislative Budget Board. After evaluating the information, the Legislative Budget Board shall identify general revenue fund appropriations of at least \$3 million to be reduced as a result of cost savings or enhanced revenue measures and shall forward that information to the comptroller. The Legislative Budget Board may request the council to identify additional cost savings or enhanced revenue measures to accomplish the \$3 million reduction.

(c) The comptroller shall reduce appropriations to the various agencies by the amounts approved by the Legislative Budget Board and transfer those amounts to the general revenue fund. Cost savings and enhanced revenues realized as a result of the study performed may be considered a part of the savings, spending reductions, or revenue enhancement plans required of all agencies by the General Appropriations Act for the 1994-1995 biennium.

(d) This section expires on September 1, 1995.

SECTION 67. (a) At the time that the comptroller vacates the comptroller's training center, located at 125 Lehmann Drive in Kerrville, possession, charge, and control of the building, property, and its grounds are transferred and committed to the Railroad Commission of Texas for the benefit of the State of Texas. The Railroad Commission may use the center for its purposes and may make the center available to other entities.

(b) The comptroller shall give reasonable notice to the Railroad Commission and to the General Services Commission of the date on which the comptroller intends to vacate the center, and on the date that the comptroller vacates the center the comptroller shall inform the two commissions of that fact. The comptroller, the General Services Commission, and

any other appropriate state agency or officer shall take any action necessary to transfer charge and control of the center to the Railroad Commission as required by this Act.

SECTION 68. (a) The following laws are repealed:

- (1) Section 771.005, Government Code;
- (2) Section 771.009, Government Code; and
- (3) Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(b) The following law is repealed:

- (1) Section 771.008(d), Government Code; or
- (2) Section 6(d), The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes), as added by Section 30, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991.

(c) Subsection (b)(1) of this section takes effect only if a bill relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 72nd Legislature to other acts of that legislature, is enacted by the 73rd Legislature and becomes law. Subsection (b)(2) of this section takes effect only if the bill described by this subsection does not become law.

SECTION 69. This Act takes effect September 1, 1993.

SECTION 70. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 29, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2626 on May 24, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 19, 1993, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 15, 1993.

Effective Sept. 1, 1993 and as provided in Section 68(c).