

**SUBJECT:** Access to information on historically underutilized businesses

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 10 ayes — Wolens, S. Turner, Carter, Counts, Craddick, Hunter, Longoria, McCall, Ramsay, Stiles

0 nays

5 absent — Alvarado, Brimer, Danburg, Hilbert, D. Jones

**WITNESSES:** None

**BACKGROUND :** To participate in the state's historically underutilized business (HUB) contracting program, at least 51 percent of a business must be owned by one or more Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, or women. The General Services Commission (GSC) requires businesses to submit a variety of financial and other data to certify that they meet HUB requirements.

**DIGEST:** HB 625 would provide that information submitted by a potential vendor or contractor applying for certification as a historically underutilized or disadvantaged business would not be subject to public information requirements. The information could be disclosed only to a state or local governmental entity for the purposes of verifying an applicant's status as a HUB or conducting a study of a public purchasing program or with the express written consent of the applicant or the applicant's agent.

Information submitted by a HUB in connection with a specific contract, or with an application to be placed on a bidders' list, including information that may have been submitted as part of an application for HUB certification, would be subject to current public information laws and their exceptions.

HB 625 would take immediate effect if finally approved by a record two-thirds vote of the membership of each house.

SUPPORTERS  
SAY:

HB 625 would assure applicants to the state's HUB program that the information they supply could not be improperly obtained by other individuals or companies. Applicants must submit extensive financial and management data — from federal income tax returns and stock transfer ledgers to cancelled checks and the minutes of board meetings for the year preceding application — some of which could be used by competitors to gain otherwise confidential knowledge.

While federal income tax returns are confidential and exempted from public information laws, according to the attorney general's open records opinion OR95-1362, other financial and nonfinancial information may be subject to public information laws and could be obtained by anyone who requested it. Disclosure of some information, such as minutes of board meetings, could place businesses at a competitive disadvantage if obtained by the wrong individuals. Small businesses not participating in the HUB program do not have to publicize similar information and could gain valuable insight to competitors' plans and strategies through the contents of a HUB application.

This situation could unfairly penalize businesses that comply with GSC reporting requirements, and discourage others from participating in the program because they may fear the consequences of public access to company secrets. The goal of the HUB program is to provide an equal footing on which these businesses may compete for state contracts, and rules that interfere with their growth are inimical to the program's purposes. HB 625 would ensure that businesses' participation in the HUB program did not endanger their control over sensitive information.

HB 625 would in no way reduce the level of oversight provided the state's HUB program. The bill would not prohibit the use of any information for purposes related to verifying an applicant's HUB status, but simply provide applicants with the level of confidentiality enjoyed by their non-HUB competitors.

OPPONENTS  
SAY:

HB 625 would remove important accountability measures from the state's HUB program. The success of the HUB program depends upon its integrity, upon the fact as well as the perception that all businesses involved legitimately deserve the assistance the program provides. The affairs of these businesses, therefore, should be more thoroughly examined than those

not participating in the HUB program. The public should have the opportunity to review the information submitted by these businesses in order to provide an open and honest atmosphere for the program management.

In the midst of controversy surrounding the use of race as a factor in state contracting decisions, the program should remain subject to the highest level of scrutiny. The HUB program must retain public confidence in order to be effective, but HB 625 could erode this confidence at the time when it is most needed.