

- SUBJECT:** Repealing local government corporation procurement exemption
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 9 ayes — Alexander, Hawley, Y. Davis, Edwards, Hamric, Hill, Noriega, Pickett, Swinford
- 0 nays
- SENATE VOTE:** On final passage, March 14 — 29-0
- WITNESSES:** For — Gerhardt Schulle, Jr., Texas Society of Professional Engineers; Steve Stagner, Consulting Engineers Council of Texas; *Registered but did not testify:* Michael Chatron, Associated General Contractors of Texas; Cary Grace, City of Houston; David Lancaster, Texas Society of Architects; Scott Norman, Consulting Engineers Council of Texas
- Against — Michael J. Cosentino, Texas Municipal League, City of Bryan, Bryan Commerce and Development, and BTU QSE Services
- On — Joseph Esch, City of Sugar Land
- BACKGROUND:** In 1989, the 71st Legislature authorized local governments to create nonprofit corporations to act in conjunction with what is now the Texas Transportation Commission. The purpose of local government corporations (LGCs) was to provide an incentive for landowners to donate rights-of-way to local governments. By donating to the corporations rather than to the governments themselves, landowners could receive federal tax deductions.
- In 1999, the 76th Legislature enacted HB 2684 by Coleman, which, among other provisions, broadened LGCs' scope beyond transportation to include any governmental purpose of the entities that created them. HB 2684 also exempted LGCs from procurement and competitive bidding requirements under Local Government Code, sec. 394.904.
- In April 2000, Attorney General John Cornyn issued Opinion JC-0206, which determined that an LGC is not subject to the County Purchasing Act because

Transportation Code, sec. 431.101 exempts its contracts from competitive bidding requirements.

DIGEST:

CSSB 354 would repeal the provisions of Transportation Code, sec. 431.101 that exempt LGCs from procurement and competitive bidding requirements imposed by state law. The bill would make LGCs subject to all state laws related to project design and construction, including services, applicable to their creating entities. LGCs created jointly by more than one governmental entity with different threshold contract amounts at which competitive bidding is required would be subject to the lowest threshold. LGCs also would have to comply with Government Code, chapter 2254, the Professional Services Procurement Act (PSPA).

Competitive bidding requirements and restrictions on the sale, leasing, or other disposition of property would not apply to a water-rights transfer transaction by an LGC. The bill also would exempt LGCs created by cities to develop convention center hotel projects. Completion of projects defined before December 31, 2000, including any expansion of treatment facilities, by LGCs created by cities after September 1, 1999, to develop water treatment and distribution facilities would be exempt from procurement and competitive bidding requirements. LGCs created primarily to help cities implement project plans for tax increment reinvestment zones (TIRZs) also would be exempt under Local Government Code, sec. 394.904. Expansion of water distribution facilities would not be exempt.

Conflict-of-interest provisions of Local Government Code, chapter 171 would apply to LGC contract awards. An LGC would have to report annually to the comptroller and to its creating entity a statement of the corporation's purpose and its total revenues, expenditures, and activities for the preceding fiscal year, including bonds issued and capital projects undertaken.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSSB 354 would make LGCs subject to the same scrutiny as the governmental entities that created them. It would reinstate competitive

bidding and procurement requirements for LGCs to prevent patronage and self-interest and to ensure that taxpayers' best interests are served. LGCs were not intended to operate with virtual autonomy.

Most LGCs operate in an ethical manner. Many comply voluntarily with competitive bidding requirements. Some even have board members or entire boards who have been elected to govern, or who comprise the entire governing bodies of, the entities that created them. However, the broadening of LGCs' activities, the lifting of competitive bidding and procurement requirements, and the attorney general's opinion in April 2000 have raised questions about how LGCs are functioning.

Concerns have arisen about LGCs embarking on expensive or controversial projects with little or no oversight. Few checks and balances exist to prevent favoritism or cronyism in procurement and contracting. Appearances of impropriety by some LGCs have threatened the integrity of all LGCs.

Applying conflict-of-interest statutes would require LGC board members to disclose substantial interests in business entities and to abstain from voting on contracts in which they were involved. Applying the PSPA would allow professional engineers and others not subject to low bidding to compete.

It is necessary to "grandfather" certain LGCs, such as the Houston Area Water Corporation and the Harris County Sports and Convention Corporation. Applying competitive bidding to those LGCs could disrupt negotiations in progress or construction already under way.

The annual reporting requirement would ensure meaningful oversight and would help the state monitor the number and activities of LGCs.

**OPPONENTS
SAY:**

If CSSB 354 is enacted, LGCs would cease to be an effective economic development tool for cities. Making LGCs operate under the same rules as city councils or other local governing bodies would defeat the purpose of their creation and make them less attractive to the private sector.

The bill's grandfathering provisions are unfair. They would hurt some LGCs, most notably Bryan, which does not meet the applicable definition and is involved in sensitive contract negotiations. The grandfathering provisions

would include LGCs in Houston, where this controversy arose, that have attracted so much attention. To be fair and to avoid unintended negative consequences, all existing LGC projects should be grandfathered.

If ethics is an issue, all LGC boards should have to comprise elected officials in whole or in part, as some LGCs do.

OTHER
OPPONENTS
SAY:

Before the Legislature changes this law significantly, the state should determine how many LGCs exist and the status of their finances and projects. Then the Legislature should reevaluate which types of activities are suitable for LGCs and which are not.

NOTES:

The House sponsor plans to offer a floor amendment to change the provision under which LGCs assisting TIRZs would be exempt, thereby including Bryan's LGC under the procurement and competitive bidding requirements.

The Senate engrossed version did not exempt projects related to water-rights transfers or TIRZs. The committee substitute expanded the exemption for convention center hotel projects and modified the exemption for expansion of water treatment and distribution facilities. The substitute also added the provision that would require LGCs to comply with the PSPA.