

# Revising standards for contracts for government construction projects

HB 447 by Callegari (Jackson)

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**DIGEST:** HB 447 would have consolidated statutes regarding contracting methods for public works contracts for governmental or quasi-governmental entities. It would have applied to state agencies, junior colleges, and local governments such as counties, cities, school districts, and hospital districts. An entity could have awarded a contract using the following methods in addition to competitive bidding:

- competitive sealed proposal method;
- construction manager-agent method;
- construction manager-at-risk method;
- design-build method; and
- job order contracts method.

Use of the design-build and job order contract methods would have been restricted to buildings. The bill would have restricted use of interlocal agreements and reverse auctions in which bidders submit anonymous bids to an Internet location. It would not have applied to Texas Department of Transportation highway projects, regional tollway authorities, university systems, port authorities, or contracts for energy or water conservation.

**GOVERNOR'S  
REASON FOR  
VETO:**

“House Bill No. 447 would discourage competition in public sector capital project development by limiting how government may contract for design and construction services. The limitations and extra contracting requirements contained in this bill would likely result in increased costs and project delays for taxpayers.

“A very similar bill, House Bill No. 2525, was vetoed in the 79th Legislative Session based on similar concerns.”

**RESPONSE:** Rep. Bill Callegari, the bill’s author, said: “HB 447 would have consolidated and expanded the state’s construction contracting law to help governmental entities in Texas. The veto justification provided by the Governor’s Office ignores the benefits that HB 447 would have provided while relying on assertions that defy rational analysis. For example, the statement claims that my bill would ‘discourage competition in public sector capital project development’ by limiting governments’ contracting methods. That is simply not true. HB 447 did not limit governments’ contracting options; it expanded them to provide greater flexibility in selecting construction contracts. Moreover, the bill authorized more governmental entities, such as hospital districts, transit authorities, and junior colleges, to use additional contract selection processes. If anything, HB 447 expanded the tool box that governments can use for selecting contractors that can best meet their needs, and broadens the types of governmental entities eligible to use that tool box. Precisely how these changes in the law limit what governments may do, as the governor’s statement asserts, remains inexplicable. The claim that HB 447 would ‘discourage competition’ remains equally baffling.

“The governor’s veto statement goes on to assert that my bill imposes ‘extra contracting requirements.’ Again, this is simply not true. Beyond expanding the tools that more governments may use for contracts – which is a far cry from imposing extra contracting requirements – my bill consolidated several existing chapters of state law governing these contracts into one. Going back to the toolbox metaphor, my bill took several instruction manuals regarding the same tools, consolidated them into one document, and made them more user-friendly. This change would have simplified our statutes while improving transparency with regard to the state’s expectations regarding contracting procedures. All of the contracting requirements in this new, consolidated chapter of law existed well before HB 447 was introduced, and some of them for as long as 10 years. To assert that my bill added new, extra contracting requirements betrays an unfamiliarity with our laws as they currently exist.

“The veto statement further asserts that my bill would ‘likely result in increased costs and project delays for taxpayers.’ This specious conclusion ignores the facts provided in the Legislative Budget Board’s (LBB’s) fiscal note for HB 447. That fiscal note read as follows: ‘No significant fiscal implication to the State is anticipated.’ Other veto statements signed by the governor clearly hinge on the LBB’s analysis. In the case of HB 447, however, the LBB’s measured calculations were eschewed in favor of an unsubstantiated claim. As a fiscal conservative myself, I am bewildered with regard to how the veto statement arrived at the tortured conclusion that my bill would cost state governments more. The contracting flexibility provided by my bill would have helped Texas governments save time and money. As a final comment on this subject, I ask the rational reader to consider this: how could the consolidation of existing chapters of state law result in increased project costs and delays? The answer is simple: it would not.

“Unlike the statement’s assertions, my bill actually offered several crucial reforms that would have helped save taxpayers dollars and, more importantly, stop the potential for the mismanagement of public funds. For example, one provision that was brought to me by the Katy Independent School District within my district would have allowed school districts to save money when purchasing insurance products. Another provision would have provided critical reforms to the area of job order contracting. Several of these reforms were identified in an interim study by another House committee as a way to curb potential abuses and bring transparency to the job order contracting selection process. Now, with the governor’s veto, these savings and these critical reforms will have to wait for another two years.

“Of course, no legislator is apt to greet news of their legislation’s veto with any particular degree of enthusiasm. Passing bills in a process designed to kill them is practically a Herculean task. I try my best to work with others when attempting to pass legislation. Building consensus, albeit a laborious task, works with regard to legislative efficacy. My style is to involve all stakeholders in the legislative process. What I did for HB 447 was no different, and the bill reflects the input of scores of interested parties and several stakeholders meetings that I held. Many of the interest groups that I worked with on this bill, including design professionals, contractors, cities, school districts, junior colleges, state agencies, universities, water districts,

and utilities, voiced their support for HB 447. After filing the bill on January 3rd of this year, I offered the Governor's Office many opportunities to provide input. None was provided. In fact, several times during the legislative session the governor's representatives told me that they had no objection to HB 447. Now, well after the session has concluded, I learn that there was a problem despite my repeated entreaties for the governor's staff to offer constructive comments on the bill. I am sincerely disappointed that I was not extended the same courtesy that I had offered the Governor's Office throughout this session.

“Simply put, the explanation for this veto does not pass logical muster. In light of this, I am ready to discuss the real reasons for this veto at any time. Towards that end, I welcome the governor, or a member of his staff (perhaps the one who wrote the veto statement), to discuss the real reasons for this veto at any time.”

Sen. Mike Jackson, the Senate sponsor, said: “The governor's veto of HB 447 is the result of misguided information. The legislation was agreed upon by all interested parties, which included architects, contractors, engineers, governmental entities, construction companies, and job-order contractors. After months of negotiations, the end result was a comprehensive piece of legislation that would have been the most important reform in construction procurement methods in the last 10 years. It would not have limited construction contracting options, but rather expanded the flexibility in governmental entities' selection process.

“This bill consolidated the methods already used by cities, counties, school districts, universities, and other government agencies into one statute in the Government Code. HB 447 expanded construction project delivery methods to other entities that include hospital districts, junior colleges, and transit authorities, to name a few. Also, it allowed new project delivery methods to be used for horizontal and vertical construction while limiting the use of interlocal agreements for design and construction services that should be site-based.

“From the time this bill was filed on both House and Senate sides, job-order contracting remained an issue. After diligently working with the concerned parties, we were able to initiate a compromise that job-order contracts can be used for contracts under \$500,000 and ‘in the case of maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.’

“The final version of HB 447 also included some much needed legislation in the form of amendments. Most notably, I added an amendment during the committee process that would have allowed the state to recover funds from school districts that file suit alleging defect in design or construction of a facility that is paid for by a percentage of bonded indebtedness from the state. In one instance, a school district is seeking over \$900 million in damages and fees against eight defendants for the design and construction of 11 buildings. If all of these damages are awarded to the district, there is no law that requires the district to return any of the money to the state. If this bill would have been signed into law, the state would have had an opportunity to protect

its monetary interests and/or receive a proportionate percentage of the settlement that would be sent to the comptroller as well as require the recovered funds to be utilized for the repair of the defective design or construction.

“I do not believe HB 447 would have discouraged competition, limited how government may contract for design and construction services, or increased costs and project delays for taxpayers. As the owner of a construction business, I believe this bill would have encouraged competition for construction services, thus saving governmental entities money, streamlined project delivery methods into a single chapter of the Government Code, and addressed several issues that would have increased revenue to the state.”

NOTES: HB 447 was analyzed in Part Two of the April 18 *Daily Floor Report*.