

- SUBJECT:** Subjecting certain nonprofit corporations to open government laws
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 13 ayes — Wolens, S. Turner, Bailey, Brimer, Counts, Craddick, Danburg, Hunter, D. Jones, Longoria, McCall, McClendon, Merritt
- 0 nays
- 2 absent — Hilbert, Marchant
- WITNESSES:** For — *Registered but did not testify:* Donnis Baggett, Texas Daily Newspaper Association and Texas Press Association; Michael Schneider, Texas Association of Broadcasters; Suzy Woodford, Common Cause of Texas
- Against — None
- BACKGROUND:** Government Code, sec. 551.001(3) lists and defines governmental bodies subject to open meetings statutes. Sec. 552.002(1) lists and defines entities subject to public information (open records) statutes. It includes “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.”
- The Texas Department of Housing and Community Affairs (TDHCA) currently contracts with 49 nonprofit corporations throughout the state to disburse federal community services block grant (CSBG) funds and some state funds for various assistance programs, including home heating, weatherization, senior nutrition, and Head Start.
- DIGEST:** HB 371 would apply the open meetings and open records laws to nonprofit corporations eligible to receive federal CSBG funds and authorized to serve geographic areas of Texas.
- This bill would take effect September 1, 2001. It would not apply to deliberations by affected nonprofit corporations before September 4, 2001. The open records provision would apply to all information held by affected nonprofit organizations regardless of when it was collected.

SUPPORTERS  
SAY:

All entities — public, quasi-governmental, and private — that spend tax money should operate under public scrutiny. Their meetings and records should be accessible so that those whose money they are spending can have input on and evaluate their decisions, examine their actions, and hold them accountable.

HB 371 would close a loophole that allows 49 nonprofit corporations spending millions of federal and some state dollars for low-income social services channeled through TDHCA to choose to operate in secret. The bill would subject these corporations to the same notice, exception, and document inspection and production requirements as for other tax-supported entities.

In fiscal 2000, TDHCA allocated more than \$25 million from the U.S. Department of Health and Human Services to all 254 Texas counties through CSBG nonprofit groups. Some of this money paid for administrative expenses.

The need for this legislation became apparent a few years ago when problems surfaced at the East Texas Human Development Corp. in Marshall. Cost overruns, failure to meet payrolls, and layoffs in Head Start led to federal and state investigations. Federal auditors criticized the agency for “pervasive misapplication of grant funds.” News media were denied access to financial records and meetings. The agency eventually relinquished Head Start but continued to receive funds for other programs. Similar problems have occurred at other corporations, some of which have closed because of fiscal mismanagement. Open government laws must be brought to bear on these corporations to discourage and prevent these kinds of abuses of tax-supported programs.

TDHCA rules requiring these corporations to conduct open meetings are commendable, but explicit statutory requirements are preferable to eliminate any ambiguity.

Religious groups or entities that provide nongovernmental services requiring confidentiality would not have to expose activities unrelated to the grants to public scrutiny.

OPPONENTS  
SAY:

Faith-based, private, and other nongovernmental entities should not have to expose their ministries or programs dealing with sensitive issues to public scrutiny. Doing so would discourage them from participating in service delivery programs, such as those funded by CSBG, at a time when their expertise is needed. HB 371 could compromise privileged relationships and have adverse unintended consequences. It should specify that nonprofits must make public only activities that involve public funds or programs.

The open meetings provision is not necessary because TDHCA rules already require CSBG contract agencies to comply with the major requirements of the open meetings law. The open records provision is not needed because nonprofit corporations already are covered under the public information statute.

OTHER  
OPPONENTS  
SAY:

HB 371 is too narrowly drawn. It should apply to all entities engaged in tax-supported activities on behalf of the state. Open government should not be limited to federal community services programs.

NOTES:

The 76th Legislature in 1999 enacted a similar bill, HB 2557 by Glaze, but Gov. George W. Bush vetoed it, stating that it could subject nonprofit and faith-based organizations to unnecessary government intrusion and that its intent could be accomplished better through TDHCA rulemaking.