

By: Shapleigh

S.B. No. 311

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting certain foreign corporations from participating in state contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.0775 to read as follows:

Sec. 2155.0775. CERTAIN FOREIGN CORPORATIONS BARRED FROM PARTICIPATION IN STATE CONTRACTS. (a) In this section:

(1) "Domestic" means created or organized in the United States or under the law of the United States or any state.

(2) "Expanded affiliated group" has the meaning assigned to "affiliated group" by Section 1504(a), Internal Revenue Code of 1986, as that section existed on January 1, 2003.

(3) "Foreign" means created or organized in a country other than the United States or under the law of a country other than the United States.

(4) "Transaction" includes a series of transactions.

(b) A foreign corporation may not participate in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if:

(1) the foreign corporation acquires directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation; and

(2) immediately after the acquisition, more than 80

1 percent of the stock, by vote or value, of the foreign corporation
2 is held by former shareholders of the domestic corporation by
3 reason of holding stock in the domestic corporation.

4 (c) A foreign corporation may not participate in state
5 contracts that are subject to this subtitle, including contracts
6 for which purchasing authority is delegated to a state agency, if:

7 (1) the foreign corporation acquires directly or
8 indirectly properties constituting a trade or business of a
9 domestic partnership;

10 (2) immediately after the acquisition and without
11 regard to stock of the foreign corporation which is sold in a public
12 offering related to the acquisition, more than 80 percent of the
13 stock, by vote or value, of the foreign corporation is held by
14 former partners of the domestic partnership;

15 (3) the foreign corporation does not have substantial
16 business activities in the foreign country in which or under the law
17 of which the corporation is created or organized when compared to
18 the total business activities of the expanded affiliated group; and

19 (4) the stock of the foreign corporation is publicly
20 traded and the principal market for the public trading of the stock
21 is in the United States.

22 (d) Subsection (b)(2) shall be applied by substituting "50
23 percent" for "80 percent" with respect to a foreign corporation if:

24 (1) the corporation does not have substantial business
25 activities in the foreign country in which or under the law of which
26 the corporation is created or organized when compared to the total
27 business activities of the expanded affiliated group; and

1 (2) the stock of the corporation is publicly traded
2 and the principal market for the public trading of the stock is in
3 the United States.

4 (e) For the purposes of this section, stock held by members
5 of an expanded affiliated group that includes the foreign
6 corporation shall not be taken into account in determining
7 ownership.

8 SECTION 2. (a) The changes in law made by this Act to state
9 contracting procedures apply only to a contract executed on or
10 after the effective date of this Act.

11 (b) A contract executed before the effective date of this
12 Act is governed by the law as it existed immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 3. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2003.