

BILL ANALYSIS

C.S.H.B. 611
By: Murphy
Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a governmental entity, including a state agency, municipality, county, or special district, may provide design and construction services and compete against the private sector in bidding on certain projects. Such projects may include improvements to real property that is not owned or leased by a governmental entity. The opportunity to bid on such services promotes a strong and competitive market in the private sector.

C.S.H.B. 611 prevents a governmental entity from using its personnel to compete against the private sector on projects the entity does not own, allowing an entity to staff personnel appropriately according to its public mission.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 611 amends the Government Code to prohibit a governmental entity from providing, through its officers or employees, a commercially available service for an improvement to real property unless the property is owned, leased, or operated by the entity or is held by the entity under an easement or other agreement with the property owner that provides for access to the property. The bill establishes that a nonprofit corporation created by a river authority engaged in distribution and sale of electric energy to the public is considered, with the river authority, as a single governmental entity for purposes of the bill's provisions. The bill exempts the following from the bill's provisions: construction services in an amount less than \$25,000 provided for a project; contract management or project management services provided for a governmental entity's employees; water and water quality technical assistance activities, operation, or maintenance provided by a river authority within its service area; activities necessary to ensure compliance with the administration of federal funds; incidental sampling and testing of construction or maintenance material provided at a commercial quarry or a commercial fabrication plant by a state agency for another governmental entity that pays the cost of that service at a location where the state agency provides regular testing or inspection for state agency projects; or a public calamity or emergency that requires the provision of services prohibited under these provisions in order to preserve life, health, safety, welfare, or property.

C.S.H.B. 611 limits the application of the bill's provisions to commercially available services that consist of the practice of engineering within the meaning of The Texas Engineering Practice Act; the practice of architecture within the meaning of state law regulating architects, landscape architects, and interior designers; construction services; construction management services; or environmental document preparation services. The bill makes a nonsubstantive change.

C.S.H.B. 611 makes the limitation on the provision of certain services by a governmental entity inapplicable to services provided on or after September 1, 2011, under a contract for services

entered into before that date.

C.S.H.B. 611 defines "governmental entity" for purposes of the bill's provisions by reference to the Education Code and the Local Government Code.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 611 differs from the original by defining "governmental entity" to mean a board, commission, department, office, or other agency of this state other than an institution of higher education; a special district or authority with a governing board appointed by the governor; or a regional planning commission, whereas the original defines "governmental entity" to mean a state agency or a municipality, county, or special district or authority.

C.S.H.B. 611 contains a provision not included in the original's applicability provisions adding environmental document preparation services to the commercially available services that fall within the scope of that applicability.

C.S.H.B. 611 differs from the original by creating an exception to the prohibition against a governmental entity's provision of commercially available services for an improvement to real property, excluding from the prohibition property that is owned, leased or operated by the entity or is held by the entity under an easement or other agreement with the property owner that provides for access to the property, whereas the original prohibits the provision of such services for an improvement to real property that is not owned or leased by the entity.

C.S.H.B. 611 contains a provision not included in the original establishing that a nonprofit corporation created by a river authority is considered, with the river authority, a single governmental entity for purposes of the limitations on the provision of professional services by a governmental entity.

C.S.H.B. 611 contains provisions not included in the original exempting certain specified governmental business and activities from the prohibition against a governmental entity's provision of commercially available services for an improvement to real property other than the property specified.

C.S.H.B. 611 omits provisions included in the original requiring cost accounting for certain governmental entities, specifying the manner in which such cost accounting is to be performed, and providing a related transition provision for those provisions. The substitute differs from the original in nonsubstantive ways.