

SENATE AMENDMENTS

2nd Printing

By: Callegari

H.B. No. 1886

A BILL TO BE ENTITLED

AN ACT

relating to the procurement methods of certain political subdivisions and certain other entities for the construction, rehabilitation, alteration, or repair of certain projects.

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

SECTION 1. Chapter 271, Local Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS

PROJECTS

Sec. 271.181. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

1 (3) "Design-build firm" means a partnership,
2 corporation, or other legal entity or team that includes an
3 engineer and a construction contractor qualified to engage in civil
4 works construction in Texas.

5 (4) "Design criteria package" means a set of documents
6 that:

7 (A) provides sufficient information to convey
8 the intent, goals, criteria, and objectives of the civil works
9 project; and

10 (B) permits a design-build firm to:

11 (i) assess the scope of work and the risk
12 involved; and

13 (ii) submit a proposal on the project.

14 (5) "Engineer" means an individual licensed as an
15 engineer under Chapter 1001, Occupations Code.

16 (6) "Local governmental entity" means a municipality,
17 a county, a river authority, a defense base development authority
18 established under Chapter 379B, a municipally owned water utility
19 with a separate governing board appointed by the governing body of a
20 municipality, or any other special district or authority authorized
21 by law to enter into a public works contract for a civil works
22 project. The term does not include a water district or authority
23 created under Section 52, Article III, or Section 59, Article XVI,
24 Texas Constitution, with a population of less than 50,000.

25 Sec. 271.182. APPLICABILITY. (a) Before September 1,
26 2009, this subchapter applies to a local governmental entity with a
27 population of 500,000 or more within its geographic boundaries or

1 service area.

2 (b) On or after September 1, 2009, and before September 1,
3 2011, this subchapter applies to a local governmental entity with a
4 population of more than 100,000 within its geographic boundaries or
5 service area.

6 (c) On or after September 1, 2011, and before September 1,
7 2013, this subchapter applies to a local governmental entity with a
8 population of more than 50,000 within its geographic boundaries or
9 service area.

10 Sec. 271.183. APPLICABILITY OF OTHER LAW. (a) The
11 purchasing requirements of Section 361.426, Health and Safety Code,
12 apply to purchases by a local governmental entity made under this
13 subchapter.

14 (b) Except as provided by this section, to the extent of any
15 conflict, this subchapter prevails over any other law relating to
16 the purchasing of goods and services except a law relating to
17 contracting with historically underutilized businesses.

18 Sec. 271.184. NOTICE REQUIREMENTS. (a) A local
19 governmental entity shall advertise or publish notice of requests
20 for bids, proposals, or qualifications in any manner prescribed by
21 law.

22 (b) For a contract entered into by a local governmental
23 entity under any of the methods provided by this subchapter, the
24 entity shall publish notice of the time and place the bid or
25 proposals or the request for qualifications will be received and
26 opened in any manner prescribed by law.

27 Sec. 271.185. CONTRACTS FOR CIVIL WORKS PROJECTS:

1 DESIGN-BUILD. (a) A local governmental entity may use the
2 design-build method for the construction, rehabilitation,
3 alteration, or repair of a civil works project. In using this method
4 and in entering into a contract for the services of a design-build
5 firm, the contracting local governmental entity and the
6 design-build firm shall follow the procedures provided by this
7 subchapter.

8 (b) A contract for a project under this subchapter may cover
9 only a single integrated project. A local governmental entity may
10 not enter into a contract for aggregated projects at multiple
11 locations. If a metropolitan transit authority created under
12 Chapter 451, Transportation Code, enters into a contract for a
13 project involving a bus rapid transit system created under Chapter
14 451, Transportation Code, the bus rapid transit system is a single
15 integrated project for purposes of this subsection.

16 (c) A local governmental entity shall use the following
17 criteria as a minimum basis for determining the circumstances under
18 which the design-build method is appropriate for a project:

19 (1) the extent to which the entity can adequately
20 define the project requirements;

21 (2) the time constraints for the delivery of the
22 project;

23 (3) the ability to ensure that a competitive
24 procurement can be held; and

25 (4) the capability of the entity to manage and oversee
26 the project, including the availability of experienced personnel or
27 outside consultants who are familiar with the design-build method

1 of project delivery.

2 (d) A local governmental entity shall make a formal finding
3 on the criteria described by Subsection (c) before preparing a
4 request for qualifications under Section 271.189.

5 Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS. (a) During
6 the first four years that this subchapter applies to a local
7 governmental entity under Section 271.182, the entity may, under
8 this subchapter, enter into contracts for not more than two
9 projects in any fiscal year.

10 (b) After the period described by Subsection (a):

11 (1) a local governmental entity with a population of
12 500,000 or more may, under this subchapter, enter into contracts
13 for not more than four projects in any fiscal year;

14 (2) a local governmental entity with a population of
15 100,000 or more but less than 500,000 may, under this subchapter,
16 enter into contracts for not more than three projects in any fiscal
17 year; and

18 (3) a local governmental entity with a population of
19 less than 100,000 may, under this subchapter, enter into contracts
20 for not more than two projects in any fiscal year.

21 Sec. 271.187. USE OF ENGINEER. (a) The local governmental
22 entity shall select or designate an engineer who is independent of
23 the design-build firm to act as its representative for the
24 procurement process and for the duration of the work on the civil
25 works project. The selected or designated engineer has full
26 responsibility for complying with Chapter 1001, Occupations Code.

27 (b) If the engineer is not a full-time employee of the local

1 governmental entity, the local governmental entity shall select the
2 engineer on the basis of demonstrated competence and qualifications
3 as provided by Section 2254.004, Government Code.

4 Sec. 271.188. USE OF OTHER PROFESSIONAL SERVICES. (a) The
5 local governmental entity shall provide or contract for,
6 independently of the design-build firm, the following services as
7 necessary for the acceptance of the civil works project by the
8 entity:

9 (1) inspection services;

10 (2) construction materials engineering and testing;

11 and

12 (3) verification testing services.

13 (b) The local governmental entity shall select the services
14 for which it contracts under this section in accordance with
15 Section 2254.004, Government Code.

16 Sec. 271.189. REQUEST FOR QUALIFICATIONS. (a) The local
17 governmental entity shall prepare a request for qualifications that
18 includes:

19 (1) information on the civil works project site;

20 (2) project scope;

21 (3) project budget;

22 (4) project schedule;

23 (5) criteria for selection under Section 271.191 and
24 the weighting of the criteria; and

25 (6) other information that may assist potential
26 design-build firms in submitting proposals for the project.

27 (b) The local governmental entity shall also prepare a

1 design criteria package as described by Section 271.190.

2 Sec. 271.190. CONTENTS OF DESIGN CRITERIA PACKAGE. A
3 design criteria package may include, as appropriate:

- 4 (1) budget or cost estimates;
- 5 (2) information on the site;
- 6 (3) performance criteria;
- 7 (4) special material requirements;
- 8 (5) initial design calculations;
- 9 (6) known utilities;
- 10 (7) capacity requirements;
- 11 (8) quality assurance and quality control
12 requirements; and
- 13 (9) the type, size, and location of structures.

14 Sec. 271.191. EVALUATION OF DESIGN-BUILD FIRMS. (a) The
15 local governmental entity shall receive proposals and shall
16 evaluate each offeror's experience, technical competence,
17 capability to perform, the past performance of the offeror's team
18 and members of the team, and other appropriate factors submitted by
19 the team or firm in response to the request for qualifications,
20 except that cost-related or price-related evaluation factors are
21 not permitted at this stage.

22 (b) Each offeror must:

- 23 (1) select or designate each engineer that is a member
24 of its team based on demonstrated competence and qualifications, in
25 the manner provided by Section 2254.004, Government Code; and
- 26 (2) certify to the local governmental entity that each
27 selection or designation was based on demonstrated competence and

1 qualifications, in the manner provided by Section 2254.004,
2 Government Code.

3 (c) The local governmental entity shall qualify a maximum of
4 three offerors to submit additional information and, if the entity
5 chooses, to interview for final selection.

6 Sec. 271.192. SELECTION OF DESIGN-BUILD FIRM. The local
7 governmental entity shall select a design-build firm using one of
8 the following selection options:

9 (1) qualifications-based selection as provided by
10 Section 271.193; or

11 (2) a combination of technical and cost proposals as
12 provided by Section 271.194.

13 Sec. 271.193. PROCEDURES FOR QUALIFICATIONS-BASED
14 SELECTION. A local governmental entity that selects a design-build
15 firm using the qualifications-based selection option:

16 (1) may request that the firms identified under
17 Section 271.191(c) provide additional information regarding
18 demonstrated competence and qualifications, project approaches,
19 the ability of the firm to meet schedules, or other factors as
20 appropriate, except that price or cost-related criteria may not be
21 utilized;

22 (2) may not require firms to submit and may not accept
23 or consider conceptual or detailed engineering designs as part of
24 the proposal; and

25 (3) shall:

26 (A) rank each proposal submitted on the basis of
27 the criteria set forth in the request for qualifications and the

1 results of any interview; and

2 (B) select the design-build firm that is most
3 highly qualified on the basis of the published selection criteria
4 and on its ranking evaluations.

5 Sec. 271.194. PROCEDURES FOR COMBINATION OF TECHNICAL AND
6 COST PROPOSALS. (a) A local governmental entity that selects a
7 design-build firm using a combination of technical and cost
8 proposals shall request proposals from firms identified under
9 Section 271.191(c). A firm must submit a proposal not later than
10 the 180th day after the date the local governmental entity makes a
11 public request for the proposals from the selected firms. The
12 request for proposals must include:

13 (1) a design criteria package;
14 (2) a report containing geotechnical information
15 relating to the project site;

16 (3) detailed instructions for preparing the technical
17 proposal and the items to be included, including a description of
18 the form and level of completeness of drawings expected; and

19 (4) the relative weighting of the technical and price
20 proposals and the formula by which the proposals will be evaluated
21 and ranked.

22 (b) The technical proposal component under this section
23 must be weighted a minimum of 50 percent.

24 (c) Each proposal must include a sealed technical proposal
25 and a separate sealed cost proposal.

26 (d) The technical proposal must address:

27 (1) project approach;

1 (2) anticipated problems;
2 (3) proposed solutions to anticipated problems;
3 (4) ability to meet schedules;
4 (5) conceptual engineering design; and
5 (6) other information requested by the local
6 governmental entity.

7 (e) The local governmental entity shall first open,
8 evaluate, and score each responsive technical proposal submitted on
9 the basis of the criteria described in the request for proposals and
10 assign points on the basis of the weighting specified in the request
11 for proposals. The local governmental entity may reject as
12 nonresponsive any firm that makes a significant change to the
13 composition of its firm as initially submitted. The local
14 governmental entity shall subsequently open, evaluate, and score
15 the cost proposals from firms that submitted a responsive technical
16 proposal and assign points on the basis of the weighting specified
17 in the request for proposals. The local governmental entity shall
18 select the design-build firm in accordance with the formula
19 provided in the request for proposals.

20 Sec. 271.195. NEGOTIATION. After selecting the highest
21 ranked design-build firm under Section 271.193 or 271.194, the
22 local governmental entity shall first attempt to negotiate a
23 contract with the selected firm. If the local governmental entity
24 is unable to negotiate a satisfactory contract with the selected
25 firm, the entity shall, formally and in writing, end all
26 negotiations with that firm and proceed to negotiate with the next
27 firm in the order of the selection ranking until a contract is

1 reached or negotiations with all ranked firms end.

2 Sec. 271.196. ASSUMPTION OF RISKS. The local governmental
3 entity shall assume:

4 (1) all risks and costs associated with:

5 (A) scope changes and modifications;

6 (B) unknown or differing site conditions;

7 (C) regulatory permitting, if the local
8 governmental entity is responsible for those risks and costs by law
9 or contract; and

10 (D) natural disasters and other force majeure
11 events; and

12 (2) all costs associated with property acquisition.

13 Sec. 271.197. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

14 (a) Not later than the 30th day after the date a contract is
15 executed under this subchapter, the local governmental entity shall
16 offer unsuccessful design-build firms that submit a response to the
17 entity's request for additional information under Section 271.194 a
18 stipend for preliminary engineering costs associated with the
19 development of the proposal that is equal to a minimum of one-half
20 of one percent of the preliminary estimate or budgeted cost for the
21 construction of the project. A greater amount may be negotiated
22 with a firm as compensation for the use of intellectual property.
23 If the offer is accepted and paid, the local governmental entity may
24 make use of any work product contained in the proposal, including
25 the techniques, methods, processes, and information contained in
26 the proposal. The use by the local governmental entity of any
27 design element contained in an unsuccessful proposal is at the sole

1 risk and discretion of the entity and does not confer liability on
2 the recipient of the stipend under this subsection.

3 (b) If a design-build firm rejects the offer of the stipend,
4 the firm retains all rights to the work product and the local
5 governmental entity may not make use of any unique design element,
6 technique, method, or process contained in the unsuccessful
7 proposal that was not also contained in the successful proposal at
8 the time of the original submittal. If the local governmental
9 entity wants to acquire the rights to the work product of an
10 unsuccessful firm and the local governmental entity and that firm
11 are unable to reach an agreement on the value of the work product,
12 the matter may be submitted to binding arbitration.

13 (c) If a local governmental entity requests and receives
14 proposals and subsequently cancels the request or suspends the
15 selection process for more than 270 days after the date the local
16 governmental entity requests the design-build firms to provide
17 additional information, each offeror who submitted a proposal as
18 requested shall receive the minimum stipend required by this
19 section.

20 (d) To the extent of a conflict between this section and a
21 federal law or rule governing the expenditure of federal transit
22 funds by a transit authority created under Chapter 451,
23 Transportation Code, the federal law or rule prevails.

24 Sec. 271.198. COMPLETION OF DESIGN. (a) Following
25 selection of a design-build firm under this subchapter, the firm's
26 engineers shall submit all design elements for review and
27 determination of scope compliance to the local governmental entity

1 before or concurrently with construction.

2 (b) An appropriately licensed design professional shall
3 sign and seal construction documents before the documents are
4 released for construction.

5 Sec. 271.199. FINAL CONSTRUCTION DOCUMENTS. At the
6 conclusion of construction, the design-build firm shall supply to
7 the local governmental entity a record set of construction
8 documents for the project prepared as provided by Chapter 1001,
9 Occupations Code.

10 Sec. 271.200. PERFORMANCE OR PAYMENT BOND. (a) A payment
11 or performance bond is not required for, and may not provide
12 coverage for, the portion of a design-build contract under this
13 section that includes design services only.

14 (b) If a fixed contract amount or guaranteed maximum price
15 has not been determined at the time a design-build contract is
16 awarded, the penal sums of the performance and payment bonds
17 delivered to the local governmental entity must each be in an amount
18 equal to the construction budget, as specified in the design
19 criteria package.

20 (c) The design-build firm shall deliver the bonds not later
21 than the 10th day after the date the design-build firm executes the
22 contract unless the design-build firm furnishes a bid bond or other
23 financial security acceptable to the local governmental entity to
24 ensure that the design-build firm will furnish the required
25 performance and payment bonds before the commencement of
26 construction.

27 SECTION 2. Section 271.904(a), Local Government Code, is

1 amended to read as follows:

2 (a) A covenant or promise in, in connection with, or
3 collateral to a contract for engineering or architectural services
4 to which a governmental agency is a party is void and unenforceable
5 if the covenant or promise provides that a licensed engineer or
6 registered architect whose work product is the subject of the
7 contract must indemnify, ~~[or]~~ hold harmless, or defend the
8 governmental agency against liability for damage, other than
9 liability for damage that is caused by or results from an act of
10 [the] negligence, intentional tort, intellectual property
11 infringement, or failure to pay a subcontractor or supplier
12 committed by [of] the indemnitor or the indemnitor's agent,
13 consultant under contract, or another entity over which the
14 indemnitor exercises control ~~[governmental agency or its agent or~~
15 ~~employee]~~.

16 SECTION 3. Section 46.008, Education Code, is amended to
17 read as follows:

18 Sec. 46.008. STANDARDS. (a) The commissioner shall
19 establish standards for adequacy of school facilities. The
20 standards must include requirements related to space, educational
21 adequacy, and construction quality. All new facilities constructed
22 after September 1, 1998, must meet the standards to be eligible to
23 be financed with state or local tax funds.

24 (b) Any portable, modular building capable of being
25 relocated that is purchased or leased after September 1, 2007, for
26 use as a school facility, regardless of whether the building is an
27 industrialized building as defined by Section 1202.003,

1 Occupations Code, must be inspected as provided by Subchapter E,
2 Chapter 1202, Occupations Code, to ensure compliance with the
3 mandatory building codes or approved designs, plans, and
4 specifications.

5 SECTION 4. Section 51.784(i), Education Code, is amended to
6 read as follows:

7 (i) If a job order contract or an order issued under the
8 contract requires engineering or architectural services that
9 constitute the practice of engineering within the meaning of
10 Chapter 1001, Occupations Code, or the practice of architecture
11 within the meaning of Chapter 1051, Occupations Code, the board
12 shall select or designate an architect or engineer to prepare the
13 construction documents for the facility ~~[those services shall be~~
14 ~~provided in accordance with applicable law]~~. If the architect or
15 engineer is not a full-time employee of the institution, the board
16 shall select the architect or engineer on the basis of demonstrated
17 competence and qualifications as provided by Section 2254.004,
18 Government Code.

19 SECTION 5. Section 60.464(i), Water Code, is amended to
20 read as follows:

21 (i) If a job order contract or an order issued under the
22 contract requires engineering or architectural services that
23 constitute the practice of engineering within the meaning of
24 Chapter 1001, Occupations Code, or the practice of architecture
25 within the meaning of Chapter 1051, Occupations Code, the district
26 shall select or designate an architect or engineer to prepare the
27 construction documents for the facility ~~[those services shall be~~

1 ~~provided in accordance with applicable law].~~ If the architect or
2 engineer is not a full-time employee of the district, the district
3 shall select the architect or engineer on the basis of demonstrated
4 competence and qualifications as provided by Section 2254.004,
5 Government Code.

6 SECTION 6. The changes in law made by this Act apply only to
7 a contract for which a request for proposals or a request for
8 qualifications is first published or distributed on or after the
9 effective date of this Act. A contract for which a request for
10 proposals or a request for qualifications is first published or
11 distributed before the effective date of this Act is governed by the
12 law in effect at the time the request is published or distributed,
13 and the former law is continued in effect for that purpose.

14 SECTION 7. (a) Except as provided by Subsection (b), this
15 Act takes effect September 1, 2007.

16 (b) This Act takes effect only if H.B. No. 447, Acts of the
17 80th Legislature, Regular Session, 2007, takes effect. If H.B. No.
18 447, Acts of the 80th Legislature, Regular Session, 2007, does not
19 take effect, this Act has no effect.

ADOPTED

MAY 22 2007

Letay Spaw
Secretary of the Senate

By: WNV

H.B. No. 1886

Substitute the following for H.B. No. 1886:

By: WNV

C.S. H.B. No. 1886

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the procurement methods of certain political
3 subdivisions and certain other entities for the construction,
4 rehabilitation, alteration, or repair of certain projects.

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

6 SECTION 1. Sections 271.111(7) and (10), Local Government
7 Code, are amended to read as follows:

8 (7) "Facility" means, unless otherwise specifically
9 provided, buildings the design and construction of which are
10 governed by accepted building codes. The term does not include:

11 (A) highways, roads, streets, bridges,
12 utilities, water supply projects, water plants, wastewater plants,
13 water and wastewater distribution or conveyance facilities,
14 wharves, docks, airport runways and taxiways, drainage projects, or
15 related types of projects associated with civil engineering
16 construction; or

17 (B) buildings or structures that are incidental
18 to projects that are primarily civil engineering construction
19 projects.

20 (10) "Governmental entity" means a municipality,
21 county, hospital district, water district or authority created
22 under Section 59, Article XVI, Texas Constitution, including a
23 river authority or conservation and reclamation district, or a
24 defense base development authority established under Chapter 379B

1 ~~[378 as added by Chapter 1221, Acts of the 76th Legislature, Regular~~
2 ~~Session, 1999]~~.

3 SECTION 2. Section 271.116, Local Government Code, is
4 amended by adding Subsection (a-1) to read as follows:

5 (a-1) In this section "facility" means an improvement to
6 real property.

7 SECTION 3. Section 271.118, Local Government Code, is
8 amended by adding Subsection (a-1) to read as follows:

9 (a-1) In this section "facility" means an improvement to
10 real property.

11 SECTION 4. Section 271.120(i), Local Government Code, is
12 amended to read as follows:

13 (i) If a job order contract or an order issued under the
14 contract requires engineering or architectural services that
15 constitute the practice of engineering within the meaning of
16 Chapter 1001, Occupations Code, or the practice of architecture
17 within the meaning of Chapter 1051, Occupations Code, the
18 governmental entity shall select or designate an architect or
19 engineer to prepare the construction documents for the facility
20 ~~[those services shall be provided in accordance with applicable~~
21 ~~law]~~. If the architect or engineer is not a full-time employee of
22 the governmental entity, the governmental entity shall select the
23 architect or engineer on the basis of demonstrated competence and
24 qualifications as provided by Section 2254.004, Government Code.

25 SECTION 5. Chapter 271, Local Government Code, is amended
26 by adding Subchapter J to read as follows:

1 SUBCHAPTER J. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS
2 PROJECTS

3 Sec. 271.181. DEFINITIONS. In this subchapter:

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5 architect under Chapter 1051, Occupations Code.

6 (2) "Civil works project" means:

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8 supply projects, water plants, wastewater plants, water
9 distribution and wastewater conveyance facilities, desalination
10 projects, airport runways and taxiways, storm drainage and flood
11 control projects, or transit projects;

12 (B) types of projects or facilities related to
13 those described by Paragraph (A) and associated with civil
14 engineering construction; and

15 (C) buildings or structures that are incidental
16 to projects or facilities that are described by Paragraphs (A) and
17 (B) and that are primarily civil engineering construction projects.

18 (3) "Design-build firm" means a partnership,
19 corporation, or other legal entity or team that includes an
20 engineer and a construction contractor qualified to engage in civil
21 works construction in Texas.

22 (4) "Design criteria package" means a set of documents
23 that:

24 (A) provides sufficient information to convey
25 the intent, goals, criteria, and objectives of the civil works
26 project; and

27 (B) permits a design-build firm to:

1 (i) assess the scope of work and the risk
2 involved; and

3 (ii) submit a proposal on the project.

4 (5) "Engineer" means an individual licensed as an
5 engineer under Chapter 1001, Occupations Code.

6 (6) "Local governmental entity" means a municipality,
7 a county, a river authority, a defense base development authority
8 established under Chapter 379B, a municipally owned water utility
9 with a separate governing board appointed by the governing body of a
10 municipality, or any other special district or authority authorized
11 by law to enter into a public works contract for a civil works
12 project. The term does not include a water district or authority
13 created under Section 52, Article III, or Section 59, Article XVI,
14 Texas Constitution, with a population of less than 50,000.

15 Sec. 271.182. APPLICABILITY. (a) Before September 1,
16 2009, this subchapter applies to a local governmental entity with a
17 population of 500,000 or more within its geographic boundaries or
18 service area.

19 (b) On or after September 1, 2009, and before September 1,
20 2011, this subchapter applies to a local governmental entity with a
21 population of more than 100,000 within its geographic boundaries or
22 service area.

23 Sec. 271.183. APPLICABILITY OF OTHER LAW. (a) The
24 purchasing requirements of Section 361.426, Health and Safety Code,
25 apply to purchases by a local governmental entity made under this
26 subchapter.

27 (b) Except as provided by this section, to the extent of any

1 conflict, this subchapter prevails over any other law relating to
2 the purchasing of goods and services except a law relating to
3 contracting with historically underutilized businesses.

4 Sec. 271.184. NOTICE REQUIREMENTS. (a) A local
5 governmental entity shall advertise or publish notice of requests
6 for bids, proposals, or qualifications in any manner prescribed by
7 law.

8 (b) For a contract entered into by a local governmental
9 entity under any of the methods provided by this subchapter, the
10 entity shall publish notice of the time and place the bid or
11 proposals or the request for qualifications will be received and
12 opened in any manner prescribed by law.

13 Sec. 271.185. CONTRACTS FOR CIVIL WORKS PROJECTS:
14 DESIGN-BUILD. (a) A local governmental entity may use the
15 design-build method for the construction, rehabilitation,
16 alteration, or repair of a civil works project. In using this method
17 and in entering into a contract for the services of a design-build
18 firm, the contracting local governmental entity and the
19 design-build firm shall follow the procedures provided by this
20 subchapter.

21 (b) A contract for a project under this subchapter may cover
22 only a single integrated project. A local governmental entity may
23 not enter into a contract for aggregated projects at multiple
24 locations. For purposes of this subsection:

25 (1) if a metropolitan transit authority created under
26 Chapter 451, Transportation Code, enters into a contract for a
27 project involving a bus rapid transit system created under Chapter

1 451, Transportation Code, the bus rapid transit system is a single
2 integrated project; and

3 (2) a water treatment plant, including a desalination
4 plant, that includes treatment facilities, well fields, and
5 pipelines is a single integrated project.

6 (c) A local governmental entity shall use the following
7 criteria as a minimum basis for determining the circumstances under
8 which the design-build method is appropriate for a project:

9 (1) the extent to which the entity can adequately
10 define the project requirements;

11 (2) the time constraints for the delivery of the
12 project;

13 (3) the ability to ensure that a competitive
14 procurement can be held; and

15 (4) the capability of the entity to manage and oversee
16 the project, including the availability of experienced personnel or
17 outside consultants who are familiar with the design-build method
18 of project delivery.

19 (d) A local governmental entity shall make a formal finding
20 on the criteria described by Subsection (c) before preparing a
21 request for qualifications under Section 271.189.

22 Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS. (a) During
23 the first four years that this subchapter applies to a local
24 governmental entity under Section 271.182:

25 (1) a local governmental entity with a population of
26 500,000 or more may, under this subchapter, enter into contracts
27 for not more than three projects in any fiscal year;

1 (2) a local governmental entity with a population of
2 100,000 or more but less than 500,000 may, under this subchapter,
3 enter into contracts for not more than two projects in any fiscal
4 year; and

5 (3) a municipally owned water utility with a separate
6 governing board appointed by the governing body of a municipality
7 with a population of 500,000 or more may:

8 (A) independently enter into a contract for not
9 more than one civil works project in any fiscal year; and

10 (B) enter into contracts for additional civil
11 works projects in any fiscal year, but not more than the number of
12 civil works projects prescribed by the limit in Subdivision (1) for
13 the municipality, provided that:

14 (i) the additional contracts for the civil
15 works projects entered into by the utility under this paragraph are
16 allocated to the number of contracts the municipality that appoints
17 the utility's governing board may enter under Subdivision (1); and

18 (ii) the governing body of the municipality
19 must approve the contracts.

20 (b) After the period described by Subsection (a):

21 (1) a local governmental entity with a population of
22 500,000 or more may, under this subchapter, enter into contracts
23 for not more than six projects in any fiscal year;

24 (2) a local governmental entity with a population of
25 100,000 or more but less than 500,000 may, under this subchapter,
26 enter into contracts for not more than four projects in any fiscal
27 year; and

1 (3) a municipally owned water utility with a separate
2 governing board appointed by the governing body of a municipality
3 with a population of 500,000 or more may:

4 (A) independently enter into contracts for not
5 more than two civil works projects in any fiscal year; and

6 (B) enter into contracts for additional civil
7 works projects in any fiscal year, but not more than the number of
8 civil works projects prescribed by the limit in Subdivision (1) for
9 the municipality, provided that:

10 (i) the additional contracts for the civil
11 works projects entered into by the utility under this paragraph are
12 allocated to the number of contracts the municipality that appoints
13 the utility's governing board may enter under Subdivision (1); and

14 (ii) the governing body of the municipality
15 must approve the contracts.

16 (c) For purposes of determining the number of eligible
17 projects under this section, a municipally owned water utility with
18 a separate governing board appointed by the governing body of the
19 municipality is considered part of the municipality.

20 Sec. 271.187. USE OF ENGINEER. (a) The local governmental
21 entity shall select or designate an engineer who is independent of
22 the design-build firm to act as its representative for the
23 procurement process and for the duration of the work on the civil
24 works project. The selected or designated engineer has full
25 responsibility for complying with Chapter 1001, Occupations Code.

26 (b) If the engineer is not a full-time employee of the local
27 governmental entity, the local governmental entity shall select the

1 engineer on the basis of demonstrated competence and qualifications
2 as provided by Section 2254.004, Government Code.

3 Sec. 271.188. USE OF OTHER PROFESSIONAL SERVICES. (a) The
4 local governmental entity shall provide or contract for,
5 independently of the design-build firm, the following services as
6 necessary for the acceptance of the civil works project by the
7 entity:

8 (1) inspection services;

9 (2) construction materials engineering and testing;

10 and

11 (3) verification testing services.

12 (b) The local governmental entity shall select the services
13 for which it contracts under this section in accordance with
14 Section 2254.004, Government Code.

15 Sec. 271.189. REQUEST FOR QUALIFICATIONS. (a) The local
16 governmental entity shall prepare a request for qualifications that
17 includes:

18 (1) information on the civil works project site;

19 (2) project scope;

20 (3) project budget;

21 (4) project schedule;

22 (5) criteria for selection under Section 271.191 and
23 the weighting of the criteria; and

24 (6) other information that may assist potential
25 design-build firms in submitting proposals for the project.

26 (b) The local governmental entity shall also prepare a
27 design criteria package as described by Section 271.190.

1 Sec. 271.190. CONTENTS OF DESIGN CRITERIA PACKAGE. A
2 design criteria package may include, as appropriate:
3 (1) budget or cost estimates;
4 (2) information on the site;
5 (3) performance criteria;
6 (4) special material requirements;
7 (5) initial design calculations;
8 (6) known utilities;
9 (7) capacity requirements;
10 (8) quality assurance and quality control
11 requirements;
12 (9) the type, size, and location of structures; and
13 (10) notice of any ordinances, rules, or goals adopted
14 by the local governmental entity relating to awarding contracts to
15 historically underutilized businesses.

16 Sec. 271.191. EVALUATION OF DESIGN-BUILD FIRMS. (a) The
17 local governmental entity shall receive proposals and shall
18 evaluate each offeror's experience, technical competence,
19 capability to perform, the past performance of the offeror's team
20 and members of the team, and other appropriate factors submitted by
21 the team or firm in response to the request for qualifications,
22 except that cost-related or price-related evaluation factors are
23 not permitted at this stage.

24 (b) Each offeror must:
25 (1) select or designate each engineer that is a member
26 of its team based on demonstrated competence and qualifications, in
27 the manner provided by Section 2254.004, Government Code; and

1 (2) certify to the local governmental entity that each
2 selection or designation was based on demonstrated competence and
3 qualifications, in the manner provided by Section 2254.004,
4 Government Code.

5 (c) The local governmental entity shall qualify offerors to
6 submit additional information and, if the entity chooses, to
7 interview for final selection.

8 Sec. 271.192. SELECTION OF DESIGN-BUILD FIRM. The local
9 governmental entity shall select a design-build firm using a
10 combination of technical and cost proposals as provided by Section
11 271.193.

12 Sec. 271.193. PROCEDURES FOR COMBINATION OF TECHNICAL AND
13 COST PROPOSALS. (a) A local governmental entity shall request
14 proposals from design-build firms identified under Section
15 271.191(c). A firm must submit a proposal not later than the 180th
16 day after the date the local governmental entity makes a public
17 request for the proposals from the selected firms. The request for
18 proposals must include:

19 (1) a design criteria package;

20 (2) if the project site is identified, a geotechnical
21 baseline report or other information that provides the design-build
22 firm minimum geotechnical design parameters to submit a proposal;

23 (3) detailed instructions for preparing the technical
24 proposal and the items to be included, including a description of
25 the form and level of completeness of drawings expected; and

26 (4) the relative weighting of the technical and price
27 proposals and the formula by which the proposals will be evaluated

1 and ranked.

2 (b) The technical proposal is a component of the proposal
3 under this section.

4 (c) Each proposal must include a sealed technical proposal
5 and a separate sealed cost proposal.

6 (d) The technical proposal must address:

7 (1) project approach;

8 (2) anticipated problems;

9 (3) proposed solutions to anticipated problems;

10 (4) ability to meet schedules;

11 (5) conceptual engineering design; and

12 (6) other information requested by the local
13 governmental entity.

14 (e) The local governmental entity shall first open,
15 evaluate, and score each responsive technical proposal submitted on
16 the basis of the criteria described in the request for proposals and
17 assign points on the basis of the weighting specified in the request
18 for proposals. The local governmental entity may reject as
19 nonresponsive any firm that makes a significant change to the
20 composition of its firm as initially submitted. The local
21 governmental entity shall subsequently open, evaluate, and score
22 the cost proposals from firms that submitted a responsive technical
23 proposal and assign points on the basis of the weighting specified
24 in the request for proposals. The local governmental entity shall
25 select the design-build firm in accordance with the formula
26 provided in the request for proposals.

27 Sec. 271.194. NEGOTIATION. After selecting the highest

1 ranked design-build firm under Section 271.193, the local
2 governmental entity shall first attempt to negotiate a contract
3 with the selected firm. If the local governmental entity is unable
4 to negotiate a satisfactory contract with the selected firm, the
5 entity shall, formally and in writing, end all negotiations with
6 that firm and proceed to negotiate with the next firm in the order
7 of the selection ranking until a contract is reached or
8 negotiations with all ranked firms end.

9 Sec. 271.195. ASSUMPTION OF RISKS. The local governmental
10 entity shall assume:

11 (1) all risks and costs associated with:

12 (A) scope changes and modifications, as
13 requested by the local governmental entity;

14 (B) unknown or differing site conditions unless
15 otherwise provided by the local governmental entity in the request
16 for proposals and final contract;

17 (C) regulatory permitting, if the local
18 governmental entity is responsible for those risks and costs by law
19 or contract; and

20 (D) natural disasters and other force majeure
21 events unless otherwise provided by the local governmental entity
22 in the request for proposals and final contract; and

23 (2) all costs associated with property acquisition,
24 excluding costs associated with acquiring a temporary easement or
25 work area associated with staging or construction for the project.

26 Sec. 271.196. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

27 (a) Unless a stipend is paid under Subsection (c), the design-build

1 firm retains all rights to the work product submitted in a proposal.
2 The governmental entity shall return all copies of the proposal and
3 other information submitted to an unsuccessful offeror. The local
4 governmental entity may not make use of any unique or nonordinary
5 design element, technique, method, or process contained in the
6 unsuccessful proposal that was not also contained in the successful
7 proposal at the time of the original submittal, unless the entity
8 acquires a license from the unsuccessful offeror.

9 (b) Each employee and agent of the local governmental entity
10 must enter into a confidentiality agreement that prohibits the
11 disclosure of the contents of the unsuccessful proposal with any
12 other party, including the successful offeror. Any violation of a
13 confidentiality agreement or any use by the local governmental
14 entity of a unique or nonordinary design element, technique,
15 method, or process covered by a confidentiality agreement may be
16 enforced by an injunctive or declaratory action. The local
17 governmental entity is liable to any unsuccessful offeror, or any
18 member of the design-build team or its assignee, for one-half of the
19 cost savings associated with the unauthorized use of the work
20 product of the unsuccessful offeror.

21 (c) The local governmental entity may offer an unsuccessful
22 design-build firm that submits a response to the entity's request
23 for additional information under Section 271.193 a stipend for
24 preliminary engineering costs associated with the development of
25 the proposal. The stipend must be one-half of one percent of the
26 contract amount and must be specified in the initial request for
27 proposals. If the offer is accepted and paid, the local

1 governmental entity may make use of any work product contained in
2 the proposal, including the techniques, methods, processes, and
3 information contained in the proposal. The use by the local
4 governmental entity of any design element contained in an
5 unsuccessful proposal is at the sole risk and discretion of the
6 entity and does not confer liability on the recipient of the stipend
7 under this subsection.

8 Sec. 271.197. COMPLETION OF DESIGN. (a) Following
9 selection of a design-build firm under this subchapter, the firm's
10 engineers shall submit all design elements for review and
11 determination of scope compliance to the local governmental entity
12 before or concurrently with construction.

13 (b) An appropriately licensed design professional shall
14 sign and seal construction documents before the documents are
15 released for construction.

16 Sec. 271.198. FINAL CONSTRUCTION DOCUMENTS. At the
17 conclusion of construction, the design-build firm shall supply to
18 the local governmental entity a record set of construction
19 documents for the project prepared as provided by Chapter 1001,
20 Occupations Code.

21 Sec. 271.199. PERFORMANCE OR PAYMENT BOND. (a) A payment
22 or performance bond is not required for the portion of a
23 design-build contract under this section that includes design
24 services only.

25 (b) If a fixed contract amount or guaranteed maximum price
26 has not been determined at the time a design-build contract is
27 awarded, the penal sums of the performance and payment bonds

1 delivered to the local governmental entity must each be in an amount
2 equal to the construction budget, as specified in the design
3 criteria package.

4 (c) If the local governmental entity awards a design-build
5 contract under Section 271.193, the design-build firm shall deliver
6 the bonds not later than the 10th day after the date the
7 design-build firm executes the contract unless the design-build
8 firm furnishes a bid bond or other financial security acceptable to
9 the local governmental entity to ensure that the design-build firm
10 will furnish the required performance and payment bonds before the
11 commencement of construction.

12 SECTION 6. Chapter 271.112, Local Government Code, is
13 amended by adding Subsection (g) to read as follows:

14 (g) If the contract for a facility involves the use of state
15 or federal highway funds, the purchasing requirements of the
16 appropriate state or federal funding entity apply, unless otherwise
17 waived by the appropriate state or federal funding entity.

18 SECTION 7. Section 271.904(a), Local Government Code, is
19 amended to read as follows:

20 (a) A covenant or promise in, in connection with, or
21 collateral to a contract for engineering or architectural services
22 to which a governmental agency is a party is void and unenforceable
23 if the covenant or promise provides that a licensed engineer or
24 registered architect whose work product is the subject of the
25 contract must indemnify, ~~or~~ hold harmless, or defend the
26 governmental agency against liability for damage, other than
27 liability for damage that is caused by or results from an act of

1 ~~[the]~~ negligence, intentional tort, intellectual property
2 infringement, or failure to pay a subcontractor or supplier
3 committed by ~~[of]~~ the indemnitor or the indemnitor's agent,
4 consultant under contract, or another entity over which the
5 indemnitor exercises control ~~[governmental agency or its agent or~~
6 ~~employee]~~.

7 SECTION 8. Section 44.041(i), Education Code, is amended to
8 read as follows:

9 (i) If a job order contract or an order issued under the
10 contract requires engineering or architectural services that
11 constitute the practice of engineering within the meaning of
12 Chapter 1001, Occupations Code, or the practice of architecture
13 within the meaning of Chapter 1051, Occupations Code, the district
14 shall select or designate an architect or engineer to prepare the
15 construction documents for the facility ~~[those services shall be~~
16 ~~provided in accordance with applicable law]~~. If the architect or
17 engineer is not a full-time employee of the district, the district
18 shall select the architect or engineer on the basis of demonstrated
19 competence and qualifications as provided by Section 2254.004,
20 Government Code.

21 SECTION 9. Section 46.008, Education Code, is amended to
22 read as follows:

23 Sec. 46.008. STANDARDS. (a) The commissioner shall
24 establish standards for adequacy of school facilities. The
25 standards must include requirements related to space, educational
26 adequacy, and construction quality. All new facilities constructed
27 after September 1, 1998, must meet the standards to be eligible to

1 be financed with state or local tax funds.

2 (b) Any portable, modular building capable of being
3 relocated that is purchased or leased after September 1, 2007, for
4 use as a school facility, regardless of whether the building is an
5 industrialized building as defined by Section 1202.003,
6 Occupations Code, must be inspected as provided by Subchapter E,
7 Chapter 1202, Occupations Code, to ensure compliance with the
8 mandatory building codes or approved designs, plans, and
9 specifications.

10 SECTION 10. Section 51.784(i), Education Code, is amended
11 to read as follows:

12 (i) If a job order contract or an order issued under the
13 contract requires engineering or architectural services that
14 constitute the practice of engineering within the meaning of
15 Chapter 1001, Occupations Code, or the practice of architecture
16 within the meaning of Chapter 1051, Occupations Code, the board
17 shall select or designate an architect or engineer to prepare the
18 construction documents for the facility [~~these services shall be~~
19 ~~provided in accordance with applicable law~~]. If the architect or
20 engineer is not a full-time employee of the institution, the board
21 shall select the architect or engineer on the basis of demonstrated
22 competence and qualifications as provided by Section 2254.004,
23 Government Code.

24 SECTION 11. Subchapter A, Chapter 2254, Government Code, is
25 amended by adding Section 2254.007 to read as follows:

26 Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
27 subchapter may be enforced through an action for declaratory or

1 injunctive relief filed not later than the 10th day after the date a
2 contract is awarded.

3 (b) This section does not apply to the enforcement of a
4 contract entered into by a state agency as that term is defined by
5 Section 2151.002. In this subsection, "state agency" includes the
6 Texas Building and Procurement Commission.

7 SECTION 12. Section 2254.003(b), Government Code, is
8 amended to read as follows:

9 (b) The professional fees under the contract[+
10 ~~[(1) must be consistent with and not higher than the~~
11 ~~recommended practices and fees published by the applicable~~
12 ~~professional associations, and~~

13 ~~[(2)]~~ may not exceed any maximum provided by law.

14 SECTION 13. Section 431.101(g), Transportation Code, is
15 amended to read as follows:

16 (g) A local government corporation ~~[created by a navigation~~
17 ~~district]~~ must comply with all state law related to the design and
18 construction of projects, including the procurement of design and
19 construction services, that applies to the local government
20 ~~[navigation district]~~ that created the corporation.

21 SECTION 14. Subchapter D, Chapter 431, Transportation Code,
22 is amended by adding Section 431.110 to read as follows:

23 Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN
24 IMPROVEMENTS. Any competitive bidding requirement or restriction
25 on a local government that created a local government corporation
26 does not apply to an expenditure by the local government
27 corporation for:

1 (1) an improvement:

2 (A) that is constructed in a reinvestment zone;

3 and

4 (B) the construction of which is managed by a
5 private venture participant; or

6 (2) an improvement constructed by the corporation for
7 which more than 50 percent of the construction is funded by a
8 private entity.

9 SECTION 15. Section 60.452, Water Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) Subchapter J, Chapter 271, Local Government Code, does
12 not apply to this subchapter.

13 SECTION 16. Section 60.464(i), Water Code, is amended to
14 read as follows:

15 (i) If a job order contract or an order issued under the
16 contract requires engineering or architectural services that
17 constitute the practice of engineering within the meaning of
18 Chapter 1001, Occupations Code, or the practice of architecture
19 within the meaning of Chapter 1051, Occupations Code, the district
20 shall select or designate an architect or engineer to prepare the
21 construction documents for the facility [~~those services shall be~~
22 ~~provided in accordance with applicable law~~]. If the architect or
23 engineer is not a full-time employee of the district, the district
24 shall select the architect or engineer on the basis of demonstrated
25 competence and qualifications as provided by Section 2254.004,
26 Government Code.

27 SECTION 17. The changes in law made by this Act apply only

1 to a contract for which a request for proposals or a request for
2 qualifications is first published or distributed on or after the
3 effective date of this Act. A contract for which a request for
4 proposals or a request for qualifications is first published or
5 distributed before the effective date of this Act is governed by the
6 law in effect at the time the request is published or distributed,
7 and the former law is continued in effect for that purpose.

8 SECTION 18. This Act takes effect September 1, 2007.

ADOPTED

FLOOR AMENDMENT NO. _____

MAY 22 2007

Lotay Spaw
Secretary of the Senate

BY: _____

W. West
(West)

Amend C.S.H.B. 1886 (committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 252.021(a), Local Government Code, is amended to read as follows:

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Subchapter H or J, Chapter 271.

(2) In SECTION 5 of the bill, in added Section 271.196, Local Government Code (page 6, lines 16-36), strike Subsections (a) and (b) and substitute the following:

(a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The local governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The local governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The local governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal,

1 unless the entity acquires a license from the unsuccessful offeror.

2 (b) A violation of this section voids the contract for the
3 project entered into by the local governmental entity. The local
4 governmental entity is liable to any unsuccessful offeror, or any
5 member of the design-build team or its assignee, for one-half of the
6 cost savings associated with the unauthorized use of the work
7 product of the unsuccessful offeror. Any interested party may
8 bring an action for an injunction, declaratory relief, or damages
9 for a violation of this section. A party who prevails in an action
10 under this subsection is entitled to reasonable attorney's fees as
11 approved by the court.

12 (3) In SECTION 5 of the bill, at the end of added Section
13 271.196, Local Government Code (page 6, between lines 50 and 51),
14 insert the following:

15 (d) Notwithstanding other law, including Chapter 552,
16 Government Code, work product contained in an unsuccessful proposal
17 submitted and rejected under this subchapter is confidential and
18 may not be released unless a stipend offer has been accepted and
19 paid as provided by Subsection (c).

20 (4) In SECTION 5 of the bill, added Section 271.199(b),
21 Local Government Code (page 7, line 3), between "budget" and the
22 comma, insert ", if commercially available and practical".

23 (5) Add the following appropriately numbered SECTION and
24 renumber subsequent SECTIONS of the bill accordingly:

25 SECTION _____. Section 791.011, Government Code, is amended
26 by adding Subsection (h) to read as follows:

27 (h) An interlocal contract between a governmental entity
28 and a purchasing cooperative may not be used to purchase
29 engineering or architectural services.

ADOPTED

FLOOR AMENDMENT NO. 3

MAY 22 2007

BY: Ingrao

Atay Spaw

Secretary of the Senate

- 1 Amend the Senate Committee Substitute to House Bill 1886
- 2 (Senate committee printing), Sec. 271.181 on page 2, line 34 by
- 3 inserting after "include" the words "a regional tollway
- 4 authority created under Chapter 366, Transportation Code; a
- 5 regional mobility authority created under Chapter 370,
- 6 Transportation Code; or".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 15, 2007

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1886 by Callegari (Relating to the procurement methods of certain political subdivisions and certain other entities for the construction, rehabilitation, alteration, or repair of certain projects.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of Chapter 271, Local Government Code, to expand the definition of "governmental entity" to include a hospital district; a water district or authority created under Section 59, Article XVI, Texas Constitution; and a conservation and reclamation district for the purposes of purchasing and contracting authority.

The bill would add Subchapter J to Chapter 271, Local Government Code, to authorize a municipality; county; river authority; defense base development authority; certain municipally owned water utilities; or any other special district or authority authorized to enter into certain public works contracts to utilize design-build procedures for certain civil works projects. Authorization under the subchapter would not apply to a water district or authority with a population of less than 50,000.

The bill would apply to different population-sized entities, starting with the largest prior to September 1, 2009, and on or after September 1, 2011, applying to local governmental entities with a population of more than 100,000 in its geographic boundaries or service area. Procedures and other requirements for using this method of procurement are included in the proposed statute. With certain exceptions and under certain conditions, the local government entity would assume all risks and costs associated with scope changes and modifications; unknown or differing site conditions; regulatory permitting, if responsible for those risks and costs by law; and natural disasters and other force majeure events; and costs associated with property acquisition.

The bill would amend the Education Code to require that any portable, modular building capable of being relocated that is purchased or leased after September 1, 2007 for use as a school building to be inspected to ensure compliance with the mandatory building codes or approved designs, plans, and specifications in Chapter 1202, Occupations Code.

The bill would amend the Government Code regarding enforcement of purchasing contracts entered into by a state agency.

The Water Code would be amended to stipulate that Subchapter J, Chapter 271, Local Government Code, would not apply to purchase contracts entered into by Navigation Districts.

Provisions of the bill would apply only to a contract for which a request for proposals or a request for qualification is first published or distributed on or after the effective date of the bill, which would be September 1, 2007.

It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill that would change the Government Code could be absorbed within existing state resources.

Local Government Impact

Expanding the definition of governmental entities would provide those entities added to the definition more flexibility in methods of purchasing. The fiscal impact would vary based on purchases made.

Based on information from various sized local government entities and the Texas Association of Counties regarding the addition of Subchapter J, no significant fiscal impact is anticipated for those local government entities to whom the provisions of the bill would apply in the first five years after the effective date, and there would be no fiscal impact in that initial five-year period to the entities to whom the provisions would not apply until on or after September 1, 2011.

No significant fiscal impact is anticipated as a result of the proposed changes in the bill to the other codes.

Source Agencies:

LBB Staff: JOB, MN, DB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 4, 2007

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1886 by Callegari (Relating to the procurement methods of certain political subdivisions and certain other entities for the construction, rehabilitation, alteration, or repair of certain projects.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would add Subchapter J to Chapter 271, Local Government Code, to authorize a municipality; county; river authority; defense base development authority; certain municipally owned water utilities; or any other special district or authority authorized to enter into certain public works contracts to utilize design-build procedures for certain civil works projects. Authorization under the subchapter would not apply to a water district or authority with a population of less than 50,000.

The bill would apply to different population-sized entities, starting with the largest prior to September 1, 2009, and on or after September 1, 2013, applying to local governmental entities with a population of more than 50,000 in its geographic boundaries or service area. Procedures and other requirements for using this method of procurement are included in the proposed statute. The local government entity would assume all risks and costs associated with scope changes and modifications; unknown or differing site conditions; regulatory permitting, if responsible for those risks and costs by law; and natural disasters and other force majeure events; and costs associated with property acquisition.

The bill would amend the Education Code to require that any portable, modular building capable of being relocated that is purchased or leased after September 1, 2007 for use as a school building to be inspected to ensure compliance with the mandatory building codes or approved designs, plans, and specifications in Chapter 1202, Occupations Code.

Provisions of the bill would apply only to a contract for which a request for proposals or a request for qualification is first published or distributed on or after the effective date of the bill. The bill would take effect September 1, 2007, but only if House Bill 447, Eightieth Legislature, Regular Session, 2007, is passed into law.

Local Government Impact

Based on information from various sized local government entities and the Texas Association of Counties regarding the addition of Subchapter J, no significant fiscal impact is anticipated for those local government entities to whom the provisions of the bill would apply in the first five years after the effective date, and there would be no fiscal impact in that initial five-year period to the entities to whom the provisions would not apply until on or after September 1, 2013.

No significant fiscal impact is anticipated as a result of the proposed changes to the Education Code.

Source Agencies:

LBB Staff: JOB, MN, DB

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 28, 2007

TO: Honorable Bill Callegari, Chair, House Committee on Government Reform

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1886 by Callegari (Relating to the procurement methods of certain political subdivisions and certain other entities for the construction, rehabilitation, alteration, or repair of certain projects.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend sections of Chapter 271, Local Government Code, to expand the definition of "governmental entity" to include a hospital district; a water district or authority created under Section 59, Article XVI, Texas Constitution; and a conservation and reclamation district for the purposes of purchasing and contracting authority.

The bill would add Subchapter J to Chapter 271, Local Government Code, to authorize a municipality; county; water district or authority created under Section 59, Article XVI, Texas Constitution; river authority; other special district or authority; or a defense base development authority to utilize design-build procedures for certain civil works projects. Authorization under the subchapter would not apply to a municipally owned water or wastewater system with a governing board appointed by the governing body of a municipality with a population of 1.2 million or more.

The bill would apply to different population-sized entities, starting with the largest prior to September 1, 2009 and eventually applying to all applicable local governmental entities on or after September 1, 2013. Procedures and other requirements for using this method of procurement are included in the proposed statute. The local government entity would assume all risks and costs associated with scope changes and modifications; unknown or differing site conditions; regulatory permitting; and natural disasters and other force majeure events, and costs associated with property acquisition.

Provisions of the bill would apply only to a contract for which a request for proposals or a request for qualification is first published or distributed on or after the effective date of the bill. The bill would take effect September 1, 2007, but only if House Bill 447, Eightieth Legislature, Regular Session, 2007, is passed into law.

Local Government Impact

Expanding the definition of governmental entities would provide those entities added to the definition more flexibility in methods of purchasing. The fiscal impact would vary based on purchases made.

Based on responses from various sized local government entities and the Texas Association of Counties regarding the addition of Subchapter J, no significant fiscal impact is anticipated for those local government entities to whom the provisions of the bill would apply in the first five years after the effective date, and there would be no fiscal impact in that initial five-year period to the entities to whom the provisions would not apply until on or after September 1, 2013.

Source Agencies:

LBB Staff: JOB, MN, DB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 9, 2007

TO: Honorable Bill Callegari, Chair, House Committee on Government Reform

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1886 by Callegari (Relating to the procurement methods of certain political subdivisions and certain other entities for the construction, rehabilitation, alteration, or repair of certain projects.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would add Subchapter J to Chapter 271, Local Government Code, to authorize a municipality, county, a special district, or authority to utilize design-build procedures for certain civil works projects. The bill would apply to different population-sized entities, starting with the largest prior to September 1, 2009 and eventually applying to all municipalities, counties, special districts, and authorities on or after September 1, 2013. Procedures and other requirements for using this method of procurement are included in the proposed statute. The local government entity would assume all risks and costs associated with scope changes and modifications; unknown or differing site conditions; regulatory permitting; and natural disasters and other force majeure events, and costs associated with property acquisition.

The bill would take effect September 1, 2007, and would apply only to a contract for which a request for proposals or a request for qualification is first published or distributed on or after that date.

Local Government Impact

Based on responses from various sized local government entities and the Texas Association of Counties, no significant fiscal impact is anticipated for those local government entities to whom the provisions of the bill would apply in the first five years after the effective date, and there would be no fiscal impact in that initial five-year period to the entities to whom the provisions would not apply until on or after September 1, 2013.

Source Agencies:

LBB Staff: JOB, MN, DB

