HOUSE
RESEARCH
ORGANIZATION bill analysis 5/22/2001

SB 311
Zaffirini (Gallego)
(CSSB 311 by Wolens)

SUBJECT: Abolishing the General Services Commission, creating new agencies

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Wolens, S. Turner, Bailey, Counts, Craddick, Danburg, Hunter, D. Jones, Longoria, Marchant, McClendon, Merritt

0 nays

1 present, not voting — McCall

2 absent — Brimer, Hilbert

SENATE VOTE: On final passage, April 24 — voice vote

WITNESSES: For — Danny Tilley, Texas Building and Trades Council

Against — None

On — Ken Levine, Sunset Advisory Commission; Cindy Reed, State Auditor's Office; *Registered but did not testify:* Mary Cheryl Dorwart, Laure McLaughlin, and James A. Scogin, Comptroller's Office; Matt Kreisle; Frank Wagner, State Auditor's Office

BACKGROUND: The General Services Commission (GSC) provides a variety of central services for state agencies and political subdivisions, including purchasing, business services, telecommuncations, and facilities construction, leasing, and maintenance. GSC also operates the State Cemetery under the direction of the State Cemetery Committee. The commission was constituted in its present form in 1991, but the state has had similar agencies to perform most of these functions since 1919, when it created the State Board of Control by consolidating 21 state agencies.

In fiscal 1999, GSC spent about $136 million, of which $80 million went toward capital projects. Another $34 million was spent on personnel costs, and $22 million went toward operating expenses. About $70 million of the commission's budget came from bonds issued by the Texas Public Finance

Authority (TPFA) to buy, build, renovate, and repair state facilities. The rest came from general revenue and interagency contracts. In addition to these budgeted funds, GSC has the authority to receive and spend funds for certain off-budget purposes through riders in the general appropriations act. In fiscal 1999, this included $66.5 million for the TEX-AN Telecommunications Revolving Account, $44.9 million for debt service, $2.1 million for the Capitol Complex Telecommunications Revolving Account, and $3.1 million for central store industry expenditures. GSC also is responsible for more than $1 billion in state purchases, travel, and leases managed by GSC and paid for by individual agencies.

The commission comprises six public commissioners appointed by the governor to serve staggered six-year terms.

Selected responsibilities of GSC are detailed below. Duties not detailed include open records responsibilities, operation of the Texas State Cemetery, and duties related solely to the agency's internal functions.

Building. GSC builds, leases, renovates, and maintains buildings and grounds for the state. The agency now has 48 capital projects in development at a cost of more than $340 million and manages more than 30 state-owned buildings and parking garages. GSC must use a competitive bid process to award these contracts and must award contracts to the lowest and best bid. Five agencies — the Texas Department of Transportation, Texas Parks and Wildlife Department, Texas Department of Mental Health and Mental Retardation, Adjutant General's Department, and State Preservation Board — are authorized to manage capital construction projects without oversight by GSC, while other agencies have the authority to own and maintain buildings. GSC also provides janitorial, recycling, ground, pest control, and facility maintenance services.

GSC leases almost 12 million square feet of office space throughout the state for about 100 agencies at a cost of $108.5 million per year. GSC may contract for leases using either competitive bids or sealed proposals or may negotiate for leases with governmental entities. GSC also may negotiate with private groups if it makes a written determination that competition is not available. In selecting space, GSC must determine the lowest and best bid for the state. GSC may delegate leasing authority to higher education institutions.

Procurement and other business services. GSC buys or provides goods and services for most state agencies. The agency is only responsible for purchases of goods and services worth more than $25,000 and $100,000, respectively; agencies may make direct purchases under this amount. In fiscal 1999, GSC was responsible for more than $1 billion in purchases. GSC also operates a cooperative purchasing program for local governments, political subdivisions, and assistance organizations, which allows these entities to obtain lower prices by using the state's bulk buying power.

Among the services provided by GSC are printing, interagency and outgoing mail, travel, and business machine and vehicle repair services. GSC maintains a list of businesses that want to work with the state, including a list of Historically Underutilized Businesses (HUBs), that governmental entities must consult in competitive bidding. GSC also audits purchases made by state agencies to ensure compliance with state laws and procedures.

GSC manages the state's surplus and salvage property, as well as the federal surplus property program for the state. Each agency determines the condition and value of the property and stores the property until disposition. Available property must be advertised for 30 days, during which time state agencies, political subdivisions, and assistance organizations may express interest in buying the property. After 30 days, GSC may sell, or delegate responsibility to sell, the property by competitive bid or auction.

Electronic procurement. In 1997, the 75th Legislature enacted SB 820 by West, creating an electronic procurement system for state agencies and political subdivisions under GSC. The agency has an active pilot program through which governmental entities may solicit, receive, and award bids.

Telecommunications. GSC manages the state's telecommunications system, including the statewide TEX-AN network and the Capitol Complex Telephone System (CCTS). TEX-AN provides telecommunications services, ranging from local and long-distance services to cellular phones and Internet access, to state agencies, local governments, and tax-funded organizations that choose to participate. More than 20 vendors have contracts with GSC to provide these services. CCTS provides local phone service and features, such as voice mail, to state agencies in the Capitol Complex. Both systems are funded through fees charged to users of the system.

Telecommunications Planning Group. This group creates plans and policies for the state's telecommunications system, managed by GSC. The group may negotiate rates and execute contracts with telecommunications service providers, acquire transmission facilities, and develop carrier systems. The council also reports biennially to the Legislature on progress toward fulfilling the plan.

This group includes the GSC executive director, the comptroller, and the executive director of the Department of Information Resources (DIR), or their representatives, as well as advisory members representing education, the Telecommuncations Infrastructure Fund, and the Texas State Library and Archives Commission.

Major information resources projects. State agencies must receive DIR's approval before spending appropriated funds on major information resources projects, defined as projects with development costs of more than $1 million that require one year or longer to reach operational status, involve more than one state agency, or substantially alter the work methods of state agency personnel or the delivery of services to clients.

GSC is subject to the Texas Sunset Act and will expire September 1, 2001, unless continued by the Legislature.

DIGEST:

SB 311 would abolish the GSC and transfer its functions to DIR and to two newly created agencies, the Texas Procurement Commission (TPC) and the Texas Building Commission (TBC), on October 1, 2001. The bill also would create a telecommunications oversight council; authorize multiple award contract purchasing, outsourcing of services, and design-build and construction manager-at-risk contracting; and require state agencies to use the electronic procurement system, among other changes.

To transfer GSC's duties, the agencies would have to establish a transition plan. If there was a disagreement about which agency had received a power or duty under the bill's provisions, the governor would have to settle the dispute. Each agency would receive the employees and property primarily used to support the transferred functions, as well as any money at GSC or appropriated funds used to carry out those duties. All rules and procedures adopted by GSC would remain in effect until changed by the appropriate agency. The governor would have to make appointments to the TPC and TBC as soon as possible on or after September 1, 2001.

The bill also contains standard sunset provisions regarding appointments, conflicts of interest, complaints, and other aspects of agency management for the two new agencies.

Texas Building Commission. CSSB 311 would create the TBC and transfer to it GSC's powers and duties related to building construction, leasing, renovation, and maintenance, as well as the State Cemetery. The TBC would be attached administratively to the State Preservation Board (SPB) but would be independent of SPB's direction. The commission would be subject to sunset review in 2007.

The TBC would comprise the governor, lieutenant governor, and a member appointed for a two-year term by the governor from a list of nominees by the House speaker. The SPB executive director would be the executive director of the commission.

The TBC could use the design-build contracting method to build facilities other than civil engineering projects, such as highways, bridges, water plants, docks, drainage projects, and other projects. The bill would establish procedures for entering into these contracts that would require a request for qualifications and a two-phase evaluation process, including such considerations as the project's safety and long-term durability, the feasibility of implementing the project, the bidder's experience, and the bidder's ability to meet schedules and cost estimates. The TBC would have to select the design-build firm that offered the best value on the basis of published selection criteria and its own ranking evaluations.

The bill would establish guidelines for arrangements involving construction managers-at-risk. A construction manager-at-risk would serve as general contractor for a project and would provide consultation during and after the design of the facility. The TBC would have to select the construction manager-at-risk in a one- or two-step process that would include such considerations as the manager's experience, past performance, and safety record, and cost. The manager would have to advertise publicly for bids for all major elements of the work and could submit bids for portions of the work. The bill also would authorize selection of contractors through a competitive sealed proposal process.

The TBC would have to lease space for state agencies using a best-value approach that considered the cost of the lease, the condition and location of the space, utility costs, access to public transportation, parking availability, security, telephone service, lessor's experience and probable performance, accessibility for people with disabilities, and other relevant factors. The TBC could negotiate directly for these contracts in addition to using competitive bids or sealed proposals. The TBC could contract with a private brokerage or real estate firm to help the commission find leasing space. The TBC could delegate to state agencies the authority to enter into lease agreements. The commission also would have to evaluate the operation of the first four state-leased warehouses in Austin whose leases expired after October 1, 2001, to determine how to reduce inefficient use of warehouse space.

Texas Procurement Commission. CSSB 311 would create the Texas Procurement Commission (TPC) and transfer to it GSC's powers and duties related to buying and providing goods and services, disposing of surplus and salvage property, providing public access to state records, and any other miscellaneous functions not covered elsewhere in the bill. In addition to GSC's current procurement methods, the TPC could use reverse auctions to procure goods and services. The bill also would transfer responsibility to the TPC for Texas Online, the business daily maintained by the Texas Department of Economic Development (TDED) to inform vendors via the Internet about proposed contracts worth more than $25,000. The TPC would have to undergo sunset review in 2013.

The TPC would have to post information about available surplus and salvage property on the comptroller's website. After 10 days, the commission could sell the property by competitive bidding, auction, or direct sale, including through an Internet auction site. The TPC could take control of surplus and salvage property of selected agencies located in Travis

County, a county in which federal surplus property was warehoused by the commission, and other counties as determined by the TPC. The commission could take physical possession of property, determine whether it was surplus or salvage property, and sell the property. The property would remain under the ownership of the agency and proceeds from the sale would return to that agency, minus the cost to run the program. All agencies in designated areas would enter the program by January 1, 2003.

The TPC would comprise five public commissioners appointed by the governor to serve staggered six-year terms.

Telecommunications to DIR. CSSB 311 would transfer GSC's powers and duties related to providing telecommunications services for state government to DIR.

Telecommunications Planning Group. The bill would abolish this group and transfer its powers and duties to a new Telecommunications Planning and Oversight Council, which also would perform oversight functions for the state's telecommunications system.

The council would have to develop service objectives and performance measures for the system, and DIR would have to submit a quarterly report to the council on how well it had met these objectives and measures, as well as on the status of all projects for the system. The council would have to review the system every three months and recommend improvements to DIR. It also would have to submit an annual report to DIR and to each entity served by the system, including an analysis of the system's performance, estimates of savings to system users, trends in network use, and rate information. The first report would have to be issued by September 1, 2002.

The bill would add several new members to the council, including members representing small and large agencies, higher education institutions, public school districts, local governments, the TPC, and the Telecommunications Infrastructure Board, plus two public members with telecommunications expertise. These members would serve two-year terms.

Electronic procurement. CSSB 311 would require state agencies to use the electronic procurement system as required by statute and agency rule. This provision would not apply to bids for major construction projects, to be defined by the TPC.

The bill would transfer responsibility for the electronic infrastructure of the e-procurement system to DIR, while the TPC would maintain responsibility for the system's content. These agencies would have to assess whether the e-procurement system could be interfaced with Texas Online and would have to conduct this interface if they found it beneficial. The TPC would have to integrate the business daily into the system.

The TPC would have to meet at least quarterly with various groups to ensure that the system was meeting users' needs. The TPC and DIR would have to ensure that small businesses and HUBs had maximum access to electronic commerce opportunities.

Travel. DIR, in consultation with the TPC, would have to establish and manage an online travel reservation and ticketing system for state agencies. The TPC would be responsible for the content of the system. As possible, DIR would be directed to connect the system to providers of travel services. The system would have to be fully operational by September 1, 2002.

Multiple award contract purchasing. CSSB 311 would direct the TPC to create a list and searchable database of contracts awarded to vendors for an indefinite amount of goods or services by any state or federal governmental entity. State agencies and local governments could buy goods and services directly from a vender under a contract on this list, and these purchases would be considered to satisfy state requirements for competitive bidding and proposals. State agencies would have to post purchase orders placed for more than $25,000 under a contract on an Internet site maintained by the TPC.

DIR could modify the terms of these contracts, if amenable to the parties, to comply with state requirements and could exclude vendors from the list if they did not make a good-faith effort to use HUBs or small businesses. Prices on the list would be maximum prices; governmental entities could negotiate lower prices as possible. Vendors would have to report their sales from this list to DIR.

Contract management. CSSB 311 would create a contract advisory team to review proposed agency contracts worth $1 million or more and make recommendations regarding the contract management guide and contract manager training detailed below. The team would have to include one member each from the Attorney General's Office, Comptroller's Office, DIR, TPC, and Governor's Office.

Agencies would have to provide the team with a list of all contracts worth at least $1 million and solicited before September 1, 1998, and would have to create a plan for issuing new solicitations for those contracts by September 1, 2003.

The attorney general, in consultation with TPC, DIR, the comptroller, and the state auditor, would have to create a contract management guide for state agencies on how to negotiate, select, and monitor a contract. The guide would have to include both required provisions that agencies must include in their contracts and recommended provisions. The guide would have to be completed by March 1, 2002.

The state auditor would have to monitor agency compliance with the guide and create a required training program for agency contract managers. At least one manager per agency would have to complete the training program by December 31, 2002.

These provisions would not apply to a higher education institution, and provisions relating to the solicitation of contracts would not apply to the Texas Department of Transportation.

Outsourcing of services. The TPC would have to create a process for identifying and reviewing commercially available services provided by the commission to determine if they could be provided better by the private sector or by another state agency. Each service provided by TPC would have to be reviewed at least once every six years.

The TPC could contract with a private company or a state agency provider for a service if it determined that the service could be performed with a comparable or better level of quality and at a savings of at least 10 percent to the state.

The TPC could not provide a service that GSC did not provide unless it determined that it could provide the service at a lower cost or higher level of quality than could other state agencies or the private sector.

Major information resources projects. CSSB 311 would direct DIR to create a division to oversee the implementation of major information resources projects. The division would be funded from a portion of the money appropriated to or budgeted for these projects.

This bill would take effect September 1, 2001.

SUPPORTERS SAY:

The GSC has long been one of the state's most poorly managed agencies, with a history of cost overruns and project delays that have cost the state's taxpayers millions of dollars. Despite successive audits by the agency, the State Auditor's Office, and the University of Texas that repeatedly identified weaknesses at GSC, the agency has failed to correct some of these problems. GSC also has been unresponsive to customers who use some of its services and has refused to respond to requests for public information by some legislative staff.

In light of these problems, GSC should be abolished and its functions transferred to other, more accountable and more responsive agencies. CSSB 311 would create the process for this transfer, including the creation of two new agencies, and would change the statutes to provide for more efficient and cost-effective provision of services.

Texas Building Commission. GSC's most serious problems have been related to building construction. Particularly egregious was the agency's management of the construction of the Robert E. Johnson Legislative Office Building, which was completed nearly two years behind schedule and more than 70 percent ($25 million) over budget. Eight months after the project was scheduled to be finished, a consultant hired by GSC to assess the building's condition identified many serious problems and recommended many repairs and modifications. The long delay in completing the building cost the state considerable money for temporary leases to house agencies that were to occupy the building. For the State Auditor's Office alone, the state had to pay an additional $932,000 for office space and parking fees. While this building represents the worst example of GSC mismanagement, these problems were not an isolated occurrence. GSC consistently has completed projects late and over budget, and many projects have contained significant design flaws.

A significant hindrance in successfully completing these projects has been GSC's lack of a project management tracking system, without which the agency cannot account accurately for crucial aspects of its projects. Yet since 1995, successive audits, both internal and external, have identified the lack of such as system as a significant problem, without resulting in the creation of a system by the agency. These audits also have faulted the agency's lack of a consistent construction management strategy, excessive change orders, and inadequate engineering staff. GSC clearly cannot meet the state's construction needs.

CSSB 311 would create the Texas Building Commission to fulfill the state's building construction, renovation, leasing, and maintenance needs. By administratively attaching the TBC to the State Preservation Board, which has completed successfully large construction projects such as the Capitol renovation and extension and the Bob Bullock Texas State History Museum, and by giving the agency the same executive director as the SPB, the bill would promote the exchange of information on how to manage these projects successfully. It would eliminate the need for duplicative administrative structures and would result in greater efficiencies in basic agency support functions. Placing elected officials on the commission also would increase accountability for these functions.

Administratively attaching the TBC to the SPB would not reduce contracts to HUBs. The only purchases of the SPB exempt from HUB requirements are those made under certain chapters relating to the board. All contracts for the TBC, however, would be authorized under chapters that mandate full compliance with HUB regulations.

The bill would help the TBC fulfill its duties by authorizing several new construction contracting methods, including design-build, construction manager-at-risk, and sealed proposals. The Legislature already has approved these methods for school districts and universities, and the state's primary construction manager ought to have the same flexibility to enter into contracts that would provide the best value for the state.

These methods are not new and provide several benefits over traditional contracting methods. Across the nation, about one-third of construction is now conducted through design-build. These methods reduce the risk to public agencies by creating a single point of accountability responsible for completing a project on time, on budget, and to specifications. Unlike in traditional methods, where a contractor is not responsible for flaws in a project's design, the design-build method ensures that the contractor, rather than the governmental entity, is responsible for these kinds of problems. Research by major universities has found that the design-build method of contracting is one-third faster and 6 percent cheaper and that it results in half as many claims and litigation as with traditional design and low-bid contracting. The ability to hold a construction manager "at risk" for the costs of project delays or overruns would reduce the financial risks to the state.

It would not be enough to provide these new contracting methods to GSC. The agency already has the authority to consider some qualitative criteria by determining whether a bid is the lowest and *best* bid, but GSC has selected contractors based solely on price. The agency has not even adopted guidelines for determining what would be a best bid. This reluctance further indicates the need for a new agency.

Similarly, despite a statutory mandate to seek the lowest and best bids for leases, GSC has focused only on obtaining the lowest price in its leases for state agencies. In doing so, it has failed to consider other important criteria, such as access to public transportation, the condition of the facility, or accessibility for people with disabilities. For example, the Sunset Advisory Commission found that as many as 140 of GSC's leased sites may not comply with accessibility standards. GSC also has leased sites without first inspecting the space. All of these problems indicate another reason why GSC should be abolished.

The bill also would authorize a number of changes in lease procedures to simplify the state's leasing process and encourage more property owners to consider leasing to the state. In the past, GSC has received only about two bids per lease, largely due to these cumbersome procedures. By using real estate agents, TBC also could take advantage of industry best practices and thereby obtain the best value for the state.

Texas Procurement Commission. After taking away GSC's building and telecommunications responsibilities, CSSB 311 essentially would leave an agency responsible solely for procurement and surplus property, besides a few miscellaneous functions. Reconstituting GSC as the Texas Procurement Commission would recognize this fact.

The bill also would streamline the state's surplus and salvage disposal process to make the process less cumbersome and to increase savings to the state. The state's current procedures are very burdensome, requiring agencies to prepare a detailed description for, estimate of the value of, and provide storage for each piece of property, regardless of value. For many low-value items, this effort is not worth the revenue received. As a result, many state agencies store unneeded property rather than sell it, at a significant cost to the state. Having each agency handle and store its own surplus property is inefficient. CSSB 311 would give the TPC greater control over the disposition of surplus and salvage goods and would allow the commission to combine federal and state surplus property programs to make the program more efficient. There is no reason why the state should operate two separate surplus property programs. The bill would allow the TPC to use the same staff and facilities to store and distribute property to save the state money. Reducing the amount of time that property would have to be posted and authorizing direct sales also would help agencies dispose of unneeded property more quickly.

Telecommunications to DIR. CSSB 311 would transfer telecommunications functions to DIR to ensure the necessary technical expertise to manage these functions successfully.

GSC does not have the technical expertise to manage telecommunications. The rapid evolution in this industry requires a managing agency that can follow this progress and take advantage of new opportunities. Instead, GSC has applied traditional practices to its management of telecommunications. For example, GSC contracted for cellular and pager services at fixed prices for set features, despite the industry's constant changes in rates and features, thus preventing its clients from taking advantage of these options and lower rates. Moving this function to DIR, which is the primary agency for directing and coordinating the state's use of information resources technologies, would complete the centralization of information technology at a single agency and would allow more effective planning, managing, and implementation of this technology.

Contrary to suggestions otherwise, GSC's problems have not primarily been due to staffing difficulties. In fact, the commission consistently has failed to provide adequate oversight and direction. For example, the commissioners never voted on changes to the AT&T contract necessitated by the company's failure to provide certain services, instead choosing to delegate this authority to staff. The Sunset Commission found that GSC had not evaluated effectively AT&T's ability to provide the services in the contract. As a result of delays due to the contract's nonfulfillment, the state lost up to $6 million in opportunity costs, and GSC had to use the equivalent of 10 full-time employees to manage problems related to the contract. GSC has charged customers above cost-recovery levels despite a legislative prohibition. GSC also has failed to provide sufficient information to or answer questions from TEX-AN clients, and many agencies believe that GSC is not committed to addressing their concerns. For all of these reasons, the telecommunications functions of the state should be moved to DIR.

Telecommunications Planning Group. The state needs an entity to monitor the state's telecommunications system and to recommend improvements. Telecommunications has experienced significant problems, from contracting to customer services. System clients do not have a voice in the system. Creating the Telecommunications Planning and Oversight Council and investing it with the authority to set performance measures and review the performance of the system would help ensure the effective implementation of the state's telecommunications system.

Electronic procurement. CSSB 311 would divide e-procurement between DIR and the TPC to ensure the best management of the appropriate aspects of the state's e-procurement system. Granting control over the system's electronic infrastructure to DIR would ensure the system the necessary expertise, while as the state's procurement agency, the TPC would be responsible for the system's content.

The bill would clarify that all state agencies must use the e-procurement system. E-procurement offers many benefits over traditional contracting, including eliminating paperwork, allowing for the simplification and standardization of solicitations, and enabling the automatic collection of all purchasing information, which can be used develop additional contracts and to obtain lower prices and better values. Also, more purchasing authority can be delegated through e-procurement, since the open process allows for efficient monitoring. Together, these features could result in significant savings for the state. All state agencies, however, must be required to use the system or the state will lose part of its volume buying power.

Although the intent is to require agencies actually to contract for needed goods and services through the system, the bill would leave the TPC some discretion to determine by rule the required use of the system, since the system is still in development. The bill also would transfer authority over the state's electronic business daily to the TPC, since it is inefficient to have TDED operate a component of the state's procurement system.

The bill would not harm HUBs and small businesses. It specifically would require DIR and the TPC to ensure that small businesses and HUBs had maximum access to electronic commerce opportunities.

Travel services. Moving state travel services online would increase flexibility, convenience, and savings to the state. Currently, state agency travel coordinators spend significant amounts of time calling travel agencies to obtain information on flights and services, communicating this information to the traveler, and then calling the agency again to make the reservations. Placing this information on line would provide greater efficiency to the state, and would save employee time and costs. The state would continue to use contracted airfares but simply would offer these online.

The technology for this system already exists. The federal government has a web-based travel system that allows employees to book reservations online with multiple travel agencies using the government's contracted rates. The federal government estimates that the system will save 30 to 40 percent on fees and will take up to 60 percent less time to use. Similarly, Dell Computer Corp. has an Intranet system to make travel reservations within existing contracts.

Multiple award contract purchasing. Authorizing multiple award contract purchasing would save the state money by preventing the unnecessary duplication of contract bidding. The state now allows this purchasing within the state for goods and services needed on a periodic basis, usually by more than one agency. By allowing state entities to buy from these contracts by other state or federal governmental entities, CSSB 311 would reduce these costs even further.

These contracts would fulfill all of the state's statutory requirements, as the TPC could negotiate with the vendors to alter the contracts as necessary to meet state requirements. These contracts would fulfill the state's competitive bid requirements, since they originally were awarded through a competitive process and were determined to provide the best value.

Contract management. CSSB 311 would set statewide contracting guidelines to ensure adequate protections for the $14 billion in yearly state contracts for goods and services, and it would require the Attorney General's Office to provide training and assistance to state agencies. Although some agencies have strong contracting procedures, many others do not negotiate, select, or monitor contracts effectively. In addition to reducing the risk to the state from contracting, standard guidelines and training would reduce the burden on state agencies who now must develop their own procedures. These provisions also would benefit vendors by creating greater consistency between contracts.

Outsourcing of services. Requiring the TPC to compare the services it offers to those provided in the private sector would ensure that the state receives the best value for its money. There is no reason why a state agency should provide a service if it can be performed with the same or better quality and more cheaply by a private business. Although the state now compares some of its services to those of the private sector, the information gathered is used primarily to determine the appropriate price at which the state should offer these services. CSSB 311 would mandate a more thorough evaluation process to determine whether outsourcing some of the states's needed services would provide a better value to the state.

OPPONENTS SAY:

CSSB 311 would fail to address the root of many of the problems that have plagued GSC. Although some of the agency's problems are due to inadequate management, most have been the result of an inability to compete with the private sector in hiring staff, inflexible contracting procedures, and change orders from client agencies that have driven up the prices of its construction services. Abolishing GSC and transferring its functions would solve none of these core problems. Instead, GSC should be given the tools necessary to carry out the functions assigned to it and to continue the progress it recently has made toward reforming its management.

By abolishing GSC, the state would lose all of the investment it has made in reforming the agency, such as implementing the recommendations of a University of Texas study on the agency's construction practices. Eliminating the state's "one-stop shop" for all of an agency's goods and services needs would also reduce efficiency. State agencies would have to deal with three separate entities for their various support needs, including interacting and maintaining relationships with three different billers. The state also would lose economies of scale from combined internal functions, such as a single human resources or legal department.

Originally, the bill would have transferred only GSC's telecommunications duties to another agency. If GSC is to be broken up, moving this function while allowing GSC to retain the rest of its duties would be most logical. Telecommunications is the function most clearly related to another agency's mission, and removing this major responsibility would allow GSC to focus on its core building and procurement services.

Texas Building Commission. GSC should maintain responsibility for the state's building services. Although the agency has had a troubled history, it also has demonstrated the strong ability to manage construction projects successfully, including a $13 million state office building in El Paso that was completed on budget and only a month behind schedule and a $4 million Health and Human Services building in Fort Worth that was finished on time and under budget.

In fact, many of the construction problems experienced by the agency have been the result of client changes, such as additional square footage requests for the Robert E. Johnson Building and change orders for Department of Public Safety projects, including requests for carpeted rather than linoleum floors. GSC also has suffered from high turnover in agency staff, which would be true of any similar agency. In addition, GSC has suffered from a lack of access to modern construction contracting methods, which the Sunset staff determined could have "helped the agency run its construction functions more effectively... [while] the opportunity for project delays and additional costs might have been drastically reduced." Sunset staff concluded that the limitations on contracting methods might have been at the root of some of the most significant problems. GSC should have the opportunity to use the new contracting methods that the bill would authorize.

Although the SPB has been very successful in managing its construction projects, its performance cannot be compared to that of GSC. The SPB was responsible for a very limited number of projects that had little overlap, while GSC has had to handle more than 50 projects at a time. Thus, the proposed new commission would be unlikely to receive significant building expertise by being attached to the SPB or by having the same executive director. Moreover, the SPB is a relatively small agency compared to GSC, and placing the GSC's current building staff and duties under the SPB executive director could create a considerable management and oversight burden.

Neither the TBC nor GSC, whichever agency ultimately receives authority over building, should be authorized to negotiate contracts directly for leased space. The state has authorized competitive bid and sealed proposal procedures to ensure that all companies have an opportunity to compete for state business. Allowing the commission to negotiate directly with a lessor for a contract without first requiring a solicitation for bids or proposals by interested parties would compromise this state priority.

Telecommunications to DIR. The state needs more coordination in the provision of information resources technologies, not a complete removal of telecommunications from GSC. As a vital support service, telecommunications should remain at GSC. GSC's performance on telecommunications has been fairly strong, considering the contract problems with AT&T that no one could have predicted from such a reliable company. The state did not spend funds for services not provided, and GSC has committed to providing all dropped services through alternate means. Requiring greater coordination with DIR and providing for greater oversight through the Telecommunications Planning and Oversight Council would ensure that the GSC manages this program well.

Electronic procurement. Requiring state agencies to use an electronic procurement system would hurt businesses that have not yet moved online. In particular, it could reduce business for small businesses and HUBs, the least likely of private companies to be online. GSC previously has testified that as many as 60 percent of HUBs could be affected adversely by moving state procurement online.

Travel. Travel agencies that contract with, or that might consider contracting with, the state could be disadvantaged under this bill. In the past few years, many travel agencies have seen a dramatic reduction in their revenues, down to as little as 30 percent of former revenues, due to decreased commissions from airlines, and there are indications that the airlines may cut commissions entirely. Some of the travel agencies now under contract with the state to provide travel services are operating those contracts at a loss because the state provides no fees to the agencies. The commission is scheduled to consider the issue of transaction fees at a meeting on May 30, but if GSC is abolished, the commission could choose to wait until the TPC is created in the fall and let the new agency make the decision. These travel agencies cannot afford to do business with the state much longer, particularly if the airlines completely cut their commissions, and it is important that GSC receive a directive to continue considering this issue regardless of the ultimate decision on continuing the agency.

Multiple award contract purchasing. By allowing agencies to buy from any state or federal multiple-award contract, the bill would reduce the power of the state's volume buying by allowing agencies to make individual purchases. The bill at least should exempt purchases for telecommunications goods and services from this provision, since the state provides its own telecommunications system and needs all agencies to buy from that system to achieve the necessary economies of scale.

This provision also could hurt businesses in Texas. Rather than bidding contracts, agencies simply could buy goods and services from contracts negotiated in other states, most likely with out-of-state businesses. Since this process often would be simpler than competitive bidding, agencies might prefer to use it. To have a shot at obtaining this business, Texas companies would have to begin bidding for contracts across the nation, which, in many cases, would be impossible.

OTHER OPPONENTS SAY:

Texas Building Commission. By including on the proposed commission mostly elected officials, CSSB 311 would introduce an opportunity for political influence and favoritism into the contract award process. The commission should be composed of appointed members, as are the boards of most agencies.

The bill would not authorize the TBC to use several contracting methods that school districts and universities may use, such as construction manager-agent to advise the agency and job-order contracts for minor construction or repair. The state's building commission should have all the tools that school districts and universities have to contract for building construction and repair.

NOTES:

The bill's fiscal note estimates a net gain of $28.6 million in general revenue-related funds in fiscal 2002-03 and annual net gains rising to $52.8 million in fiscal 2006. These savings would be due primarily to electronic procurement and improved contract management. According to the fiscal note, electronic procurement would generate annual savings of $28.6 million in general revenue, $42.6 million in state dedicated accounts, and $37.1 million in federal funds.

The committee substitute modified the Senate engrossed bill by abolishing GSC and transferring its functions to other agencies, including two new agencies. The Senate bill would have continued GSC until September 1, 2013, and would have transferred its telecommunications functions to DIR. The substitute also added provisions requiring the attorney general to develop a contract management guide and creating a contract advisory team, and it removed a provision that would have created an interagency work group to help DIR develop contracting guidelines.