

SUBJECT: Amending provisions for county administration and finance

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Lewis, W. Smith, Casteel, Chisum, Farabee, Flynn, Olivo
0 nays
2 absent — Farrar, Quintanilla

WITNESSES: For — John B. Dahill and Donald Lee, Texas Conference of Urban Counties;
Glen Whitley, Tarrant County

Against — Patricia Ott, Justices of the Peace and Constables Association of
Texas

BACKGROUND: Government Code, sec. 41.008 requires each district or county attorney to keep a register of all official acts and reports, all actions or demands prosecuted or defended, and all proceedings held in relation to the attorney's official acts. Local Government Code, sec. 81.003 requires county clerks to record court proceedings "in suitable books" and to attest to the record.

Local Government Code, sec. 270.007(a) allows counties to sell or license computer software applications or systems developed by the county or by a contracted entity for use by the county. However, sec. 270.007(I) prohibits counties from developing software for the purpose of selling, licensing, or marketing it. A county or administrative agency has no authority to obtain intellectual property rights such as patents, copyrights, and trademarks.

Local Government Code, sec. 114.042 requires an officer who collects money for a county to report the collection immediately to the county clerk. Sec. 114.045 requires district and county attorneys to report court receipts to the county clerk. Sec. 151.902 requires employees to have a written employment contract if their salary is paid from certain funds in counties with a population of 500,000 or more. Sec. 270.007(g) requires a city or county that sells software to sell it to all buyers at the same price.

DIGEST: CSHB 2931 would amend and repeal miscellaneous provisions of statutes that relate to county government operations.

CSHB 2931 would allow the commissioners court of a county with a population of 125,000 or more to appoint a county administrative officer, who could ask an officer of the county or of a district or precinct in the county to provide any information necessary for the administrative officer to perform his or her duties. The information could not be withheld unreasonably but could be withheld if the information was confidential by law.

The bill would apply Government Code, ch. 791, governing interlocal cooperation contracts, to local nonprofit transportation corporations and political subdivision corporations. It also would authorize the parties to an interlocal contract to contract with a nonprofit tax-exempt organization to supervise the performance of the interlocal contract. It would authorize a county and an administrative agency created under an interlocal contract to acquire, apply for, register, secure, hold, protect, and renew intellectual property rights, including patents, copyrights, and trademarks.

A county could develop a computer application or software as long as the sole purpose of developing the application or software was not to sell, license, or market it.

The bill would authorize counties of various sizes to establish reserve or contingency items in their budgets. It would delete the requirement that county documents be kept or recorded in paper format and would allow storage in an electronic format.

CSHB 2931 would repeal Local Government Code, secs. 114.042, 114.045, 151.902, and 270.007(g). It also would delete gender-specific references in portions of several codes.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 2931 would modernize the statutes on county government operations and would remove obsolete provisions from the law. For example, requiring a county officer or district attorney to report collections to the county clerk does not make sense considering that the county auditor or treasurer, rather than the

county clerk, generally handles a county's money. In smaller counties that do not have an auditor or treasurer, the county clerk has the dual function of clerk and treasurer, and other statutes require this type of reporting to the auditor or treasurer.

The bill would clarify some conflicting provisions of current law. It would make clear that a county could sell or license software as long as the county did not develop the software solely for that purpose. Counties are not commercial entities and do not have the resources to produce software merely to sell it to others.

CSHB 2931 would clarify current law pertaining to the rights of counties to obtain patents, copyrights, and trademarks, making it clear that counties have the right to obtain these protections for their intellectual property. It also would allow counties to form an administrative agency to pool their resources to produce software. This could be very helpful for poorer counties that might not be able to afford to create these advances otherwise. An administrative agency could sell the software to other counties, thereby enabling the counties to recoup some of their costs.

It makes no sense to require a county to charge all buyers of software the same price. If a small county wants to buy software for one computer and a large county wants to buy software for 100 computers, they should not pay the same price. Counties should be able to apply factors such as the ability to pay and the amount of use when setting the price.

CSHB 2931 would not allow a commissioners court to vest authority in an administrative officer that the commissioners did not have themselves. The Texas Constitution prohibits a commissioners court from granting authority that it does not have. Some commissioners courts have appointed such officials already, and the bill merely would codify current practice. An administrative officer could request only that county, district, or precinct officers provide information necessary for performing the officer's duties. A commissioners courts needs the discretion to assign an officer to a supervisory role on par with other county officials so that the officer can compile necessary information, such as for budget reports.

The bill would promote purchasing efficiency. By expanding the definition of local governmental entities that can participate in interlocal contracts, CSHB 2931 would enable counties to partner and pool their resources to acquire services for their residents. This would help smaller and/or poorer counties to deliver high-quality services to their residents. A nonprofit transportation corporation would allow counties or other entities to join together on projects such as building roads. A political subdivision corporation would allow counties to band together to buy services such as electricity. Responsibility for such agreements would remain with local elected officials.

**OPPONENTS
SAY:**

CSHB 2931 would allow county commissioners to appoint administrative officers that could have authority exceeding that of the commissioners. This nonelected official could exercise supervisory control over independent elected officials. The constitutional separation between elected officials and county officers exists for a reason. County officials should have only the power to pay the expenses of administering elected offices, not to influence how those offices are run.

NOTES:

The committee substitute would change the filed version of HB 2931 by:

- authorizing local governments to contract with certain nonprofit organizations under interlocal contracts;
- specifying that a county administrative officer appointed by a commissioners court could request, rather than require, a county officer to provide necessary information, that this information could not be withheld unreasonably, and that the administrative officer's authority would be in addition to any authority granted by other law; and
- specifying that a commissioners court could appoint an administrative officer only in a county with a population of 125,000 or more.

The companion bill, SB 1655 by Madla, was reported favorably, as substituted, by the Senate Intergovernmental Relations Committee on May 7.