

SUBJECT: Competition for government contracts regardless of group affiliation

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner
1 nay — Vo

WITNESSES: For — Jon Fisher, Associated Builders and Contractors of Texas; Gary Roden, (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Jack Baxley, Texo Construction Association; Michael Chatron, AGC Texas Building Branch; Cathy Dewitt, TAB; Perry Fowler)

Against — Michael Cunningham, Texas State Building and Construction Trades Council; Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: Leonard Aguilar and Chad Tomlin, Southwest Pipe Trades; Joseph Arabie, Allied Workers Local Union 22; Thomas Dodd, United Association Plumbers & Pipefitters Local 286; Tim Goebler, Elevator Union; Clint Matthews, Union Elevator Construction; Emily Timm, Workers Defense Project)

BACKGROUND: Education Code, ch. 51, subch. T sets the requirements for public higher education institutions to select contractors for construction and repair projects.

In 2011, the 82nd Legislature enacted HB 628 by Callegari, which consolidated contracting and delivery procedures for construction projects for most governmental entities into Government Code, ch. 2267. HB 628 also contained a right-to-work provision prohibiting a government body from considering in the contracting process whether a person was a member of or had another relationship with any organization.

DIGEST: HB 1548 would amend Education Code, ch. 51 and Government Code, ch. 2267, relating respectively to higher education institutions and government entities, to prohibit a government entity awarding a public works contract funded with state money from prohibiting or requiring bidders to enter into an agreement with a collective bargaining organization. The bill would prohibit the government entity from

discriminating against a contractor based on whether it was or was not party to a collective bargaining agreement or based on a contractor's willingness to enter into such an agreement.

The bill also would add to Education Code, ch. 51 a definition for public work contract already present in the Government Code. A public work contract would be defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The bill would apply only to public contracts for which a request for a proposal was first published after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 1548 appropriately would keep the state out of the business of automatically excluding anyone from bidding for a public contract. Project Labor Agreements (PLAs) increasingly are being used across the country as a means for forcing government entities to award contracts to unionized companies. A PLA is a pre-hire collective bargaining agreement with labor organizations that establishes terms of employment for specific construction projects. Typically, a PLA requires that employees hired for the contract be referred through union hiring halls. Non-unionized companies are in effect either excluded from the contracting process or forced to act as a unionized company for the life of the contract by paying union wage rates, contributing to pension plans, and performing other requirements.

By prohibiting government contractors in the state from requiring bidders to a contract to enter into an agreement with a union, HB 1548 would ensure contracts were open to all companies and awarded based on factors such as cost and quality, not whether employees were part of a PLA. The current national trend is moving in favor of government-mandated PLAs and while such PLAs are not common in Texas at this point, the Legislature should do everything possible to make sure this does not change. Leaders in 14 other states, including Michigan and Maine, have banned government-mandated PLAs.

The bill would not prohibit the use of PLAs but would leave that decision to a contracting company. It should be left up to the government entity to make a decision on a contract based on the existing contracting rules'

focus on quality and cost, not whether a contractor uses a PLA.

OPPONENTS
SAY:

It would not be appropriate at this time to discourage government entities from using PLAs. These agreements are useful because contractor and labor disputes are always a potential risk with construction contracts. Through a PLA, the government entity sets out rules in advance that everyone follows, which means that everyone knows how a dispute would be resolved. In addition, use of a PLA can assist government entities in securing a steady supply of skilled labor throughout the contract, which can otherwise be difficult.

The agreements the bill would affect are purely voluntary, and nothing in a PLA would violate the state's right-to-work law. No one forces government agencies to negotiate PLAs, and no one would be forced to join a labor organization in order to be a part of a PLA project.

NOTES:

The companion bill, SB 1381 by Hancock, has been referred to the Senate Government Organization Committee.