

## **BILL ANALYSIS**

C.S.H.B. 1516  
By: Isett  
Government Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Department of Information Resources (DIR) currently oversees cooperative contracts through which governmental entities may purchase information technology commodities and technical services. DIR also manages the state data centers in San Angelo and Austin. There are opportunities for increased cost savings and effectiveness by authorizing DIR to consolidate information technology services shared by state entities, additional volume purchasing of those services, and improving management of major information projects.

The purpose of this bill is to improve management of major information projects and enable DIR to conduct procurements for information technology that will promote efficiency and effectiveness and provide the best value for the state.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Information Resources in SECTION 1.07 of this bill.

### **ANALYSIS**

C.S.H.B. 1516 allows Cooperative contracts of DIR may be used by state entities in other states, along with state agencies and political subdivisions in Texas if allowed by the specific contract. The bill specifies that local government purchases under DIR procurement contracts satisfy any state law requiring competitive bids for purchases of items or services.

The bill allows, with DIR's approval, a person to serve as joint information resource manager (IRM) for two or more agencies, and allows a joint IRM to consolidate the operating plans for all agencies served by the IRM.

DIR shall specify the computer hardware configurations to be used by state agencies, other than institutions of higher education, and those configurations must be used in the agency's planning.

Agencies must submit a procurement schedule for commodity items before the agency's operating plan may be approved. Excludes institutions of higher education from this requirement. DIR shall use the information in the procurement schedule in vendor solicitations. DIR, the Legislative Budget Board (LBB), and the State Auditor's Office (SAO) must be notified of any significant changes in an agency's procurement schedule.

Establishes the Texas Project Delivery Framework by amending the Government Code and sets forth the requirements for the development of guidelines and forms by the department in consultation with the LBB, SAO, and state agencies. State agencies are required to use the forms developed.

The bill requires state agencies that propose major information resources projects to prepare a business case providing the justification for the project, including the anticipated return on investment, and a statewide impact analysis of the project's effect on aspects of information resources common throughout state government. These documents must be filed with DIR, LBB, and SAO when the agency submits its legislative appropriations request. Using the statewide impact analysis, DIR must ensure that the proposed project does not unnecessarily duplicate existing statewide information resources technology.

The bill also requires that state agencies develop a project plan for each major information resources project. The plan must be filed with the quality assurance team and the Texas Building and Procurement Commission (TBPC) before spending more than ten percent of project funds or before the first vendor solicitation. The TBPC may not issue a vendor solicitation unless the project plan has been filed, and an agency may not list a vendor solicitation on the Electronic State Business Daily unless the project has been filed. Projects involving vendor solicitations must include a procurement plan with expected service levels and performance standards and a method to monitor changes in the scope of the contract. The bill requires agencies to conduct post-implementation reviews, and provide the reviews to the agency's executive director, to DIR, and to the State Auditor's Office. Each document required in this subchapter must be approved by the agency's executive director, the information resources manager, the project manager, and the agency employee in charge of information security. The agency's executive director must approve any contract amendment or change order that would change the value of the contract by more than ten percent or would significantly alter the contract's completion date.

C.S.H.B. 1516 amends the Government Code by adding a subchapter that to all information resource technologies that are obtained by a state agency using state money or that are used by a state agency. The bill excludes state and federal databases and networks used for criminal justice and homeland security purposes, and specifies that this subchapter only applies to institutions of higher education upon agreement by DIR and the Information Technology Council for Higher Education.

C.S.H.B. 1516 allows DIR to operate statewide technology centers for two or more agencies to provide services related to information resources and information resource technologies and the development and use of statewide applications. DIR may operate a center directly or contract with another party to operate the center. DIR must adopt rules to implement this subchapter, and may charge fees to agencies receiving services from a center to cover the costs of providing that service.

C.S.H.B. 1516 requires DIR to manage statewide technology centers that provide data center or disaster recovery services for two or more agencies. DIR must adopt rules describing those services. The bill requires DIR to comply with all requirements related to historically underutilized businesses (HUBs) and to maximize interoperability.

The bill requires that an agency may not use appropriated funds for data center or disaster recovery services unless the DIR executive director approves the expense. DIR may set thresholds and procedures for securing that approval. The LBB may not review agency requests to provide data center and disaster recovery services outside a statewide technology center.

C.S.H.B. 1516 allows DIR to establish additional statewide technology centers and sets forth the criteria for such establishment, including cost and requirements analyses. After the cost analysis has been completed, DIR must notify the agencies selected to participate in the center. The notification must include the operations to be transferred to the center, the scope of services to be provided to the agency, and the schedule of expected costs to the agency.

An agency selected to participate in a statewide technology center may not spend appropriated funds for the identified operations or services without prior approval of LBB. Unless LBB grants that prior approval, the agency must enter into an interagency contract with DIR for the operations or services to be provided through the statewide technology center. After the agency is selected for a center and before execution of the interagency contract, the agency may only spend funds for the selected operations and services with the approval of DIR's executive director. Amounts charged to an agency under the contract may not exceed the direct and indirect costs of providing the operations and services included in the contract.

By the 30th business after an agency is notified that it has been selected to receive services or conduct operations through a center, an agency may request that the LBB grant approval for funds to be used to provide those services outside the statewide technology center. The request to LBB must be in writing, include the written determination of the DIR executive director, and demonstrate that DIR's decision to include the agency in the statewide technology center will probably fail to achieve meaningful cost savings to the state or result in an unacceptable loss or effectiveness or operational efficiency. If the LBB agrees with the agency, it may allow the

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agency to not use the statewide technology center. The LBB shall notify the agency, DIR and the comptroller of its decision. DIR must ensure that service levels included in the interagency contracts are met.

With the approval of the Governor, DIR may require an agency using a statewide technology center to transfer to DIR resources that DIR, in consultation with the agency, determines are utilized to provide the operations or services through the center. These resources may include information resources, information resource technologies, full-time equivalent positions or other resources necessary to support the selected operations. DIR shall advise the governor, the lieutenant governor, the speaker, and SAO of any cost savings expected from the transfer of these resources.

Working with the agency, DIR must attempt to reconcile any federal funding issues that arise from the proposed transfer of resources. If those issues cannot be resolved, the agency is exempt from the transfer unless otherwise directed by the Governor. DIR shall establish a transition schedule for the transfer of any resources to statewide technology centers. Information technology transferred to DIR is exempt from current statutes requiring transfer through the Building and Procurement Commission.

DIR must prioritize the transfer of services to the statewide technology center, with priority given to the largest 25 state agency centers. At least three agency centers per fiscal year must transfer to the statewide center based on cost effectiveness. This requirement expires on September 1, 2013. Consolidation of data centers must give priority to the State Data Center in San Angelo.

An agency may not move its services from a statewide technology center without approval of DIR's executive director. If DIR becomes aware that an agency is not complying with an interagency contract regarding a statewide technology center, DIR must notify the comptroller, LBB, SAO, and the affected agency. After receiving that notification, the agency may not spend appropriated funds for those operations or services without approval of the DIR executive director.

C.S.H.B. 1516 adds "hardware" and "technology services" to "software" in the definition of commodity items. Includes seat management in the term "technology services" and defines that term. Specifies that a reasonable demand must exist in multiple agencies for DIR to consider the item as a commodity item. DIR is directed to negotiate a favorable price for all state government licenses for commodity items. Allows DIR to charge an administrative fee to governmental entities in other states if those entities purchase commodities through DIR cooperative contracts. Requires DIR to make a good faith effort to provide contracting opportunities and increase the contract awards for HUBs.

The bill allows an agency to seek an exemption from using a DIR cooperative contract from DIR or LBB. Requires an agency to seek that exemption from DIR before submitting a request to LBB. Specifies that approval of an agency's biennial operating plan does not constitute specific approval for a purchase outside the cooperative contract. Requires DIR to establish guidelines for the classes of commodities to be purchased under this section, in cooperation with other agencies. DIR may determine when to conduct a statewide vendor solicitation that will reduce prices for agencies.

C.S.H.B. 1516 authorizes the DIR executive director to issue waivers to authorize an agency to acquire telecommunications services to the DIR other than through the consolidated telecommunications system.

C.S.H.B. 1516 makes the following conforming amendments:

- Adds Subdivision (8-a) to Section 2054.003, Government Code.
- Defines "department" as the Department of Information Resources in Section 2157.001, Government Code;
- Replaces "Department of Information Resources" with "department" in Sections 2157.001, 2157.003, 2157.005(a), 2157.063(b), 2157.121(b) and (c), 2157.181(a), 2157.182, 2157.184, Government Code.

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C.S.H.B. 1516 Repeals two sections of the Government Code. The first directs members of the telecommunications planning and oversight council to abstain from actions regarding waivers requested by the agency that member represents. The second provides details on DIR's management of the state data center that are replaced with the provisions of this bill.

The bill directs DIR to conduct a statewide assessment of information technology security and practices at state agencies, and to report the results of that assessment to the governor, lieutenant governor, the speaker, and SAO by December 31, 2005. Exempts that assessment and resulting report from the open records act.

In coordination with LBB, the Building and Procurement Commission and the comptroller, the bill directs DIR to analyze the existing information systems of state agencies to determine how those systems could be better coordinated and managed. DIR must report the results of that assessment to the governor, lieutenant governor, the speaker, and SAO by December 31, 2005.

C.S.H.B. 1516 requires that, with the exception of institutions of higher education, state agencies to enter into an interagency contract with DIR by March 31, 2006 to set a timeline for transfer of that agency's data center resources to DIR. DIR must focus on the largest 25 agency data centers. Requires DIR to transfer at least three data centers to the statewide technology center each fiscal year, upon determination by DIR that such a move is cost-effective, and requires an agency to comply with DIR's request to transfer its data center.

Not later than August 31 of 2006 and 2007, a report must be submitted to the state and legislative leadership describing the specific agency data centers that were reviewed and transferred during that fiscal year. DIR's consolidation plan for data centers must prioritize and fully utilize the existing capacity of the state data center in San Angelo.

The bill specifies that the changes in law made in this act apply only to contracts for which the initial solicitation occurred after the effective date of this act. Contracts for which the initial solicitation occurred before the effective date of this act are governed by the laws in effect at that time.

### **EFFECTIVE DATE**

September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute:

- Removes reference to "telecommunications" in the caption.
- Removes reference to "telecommunications" in Article I. title.
- Specifies that procurement contract must specifically allow use of that contract by a governmental entity in another state. Adds a provision specifying that items and services purchased by local governments under DIR's procurement contracts satisfy any state laws requiring competitive procurement of those items and services.
- Excludes institutions of higher education from the requirement that agencies must use the hardware configurations established by DIR.
- Revises the requirement that state agencies submit their procurement schedule to DIR for approval to include "commodity items" instead of "computer hardware." Excludes institutions of higher education from the requirement that agencies must submit a procurement schedule. "Commodity items" includes computer hardware and technology services, including seat management.
- Adds the State Auditor's Office to DIR and LBB as entities that are notified if an agency makes a substantive change to the procurement schedule for commodity items.
- Requires DIR to consult with LBB and SAO when developing guidelines and forms to implement the Texas Project Delivery Framework.
- Adds the State Auditor's Office to DIR and LBB as entities that receive a business plan and statewide impact analysis for proposed major information projects.
- Adds the Texas Building and Procurement Commission to the Quality Assurance Team as entities that must receive project plans for a major information resources project.

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- Prohibits an agency from listing a vendor solicitation on the Electronic State Business Daily unless the project has been submitted to the Quality Assurance Team and the Texas Building and Procurement Commission.
- Adds a requirement that a procurement plan developed under this section must include a method to monitor changes to the scope of the contract. The method must be consistent with DIR guidelines.
- Removes the requirement that validation and verification plans be prepared.
- Adds the State Auditor's Office to the agency's executive director and DIR to receive a post-implementation review of a major information resources project.
- Adds an agency's information resources manager to the agency's executive director, project manager and IT security manager that must sign off on documents developed under the Project Delivery Framework. Allows DIR to prescribe documents other than those specified to implement the Project Delivery Framework.
- Adds a requirement that the agency's executive director approve a contract amendment or change order that increases the value of a contract by ten percent or significantly changes the completion date of a contract.
- Changes "Statewide Information Centers" to "Statewide Technology Centers" throughout the bill.
- Excludes state and federal databases and networks used for criminal justice and homeland security purposes.
- Specifies that institutions of higher education are included in this section only upon agreement by DIR and the Information Technology Council for Higher Education, unless LBB directs otherwise.
- Removes the requirement that agencies use statewide technology centers for data center and disaster recovery services
- Adds new requiring DIR to comply with all requirements related to HUBs. Also requires DIR to maximize competition and interoperability.
- Removes regarding management of a statewide technology center for telecommunication services.
- Prohibits an agency from spending appropriated funds for maintaining data center or disaster recovery services without the approval of the DIR executive director. This prohibition adds to a prohibition already in the bill that agencies not contract or issue purchase orders for those services without DIR approval.
- No later than March 31, 2006, each state agency must enter into an interagency contract with DIR for data center services that sets a timeline for transfer of the services from the agency to the data center. DIR must establish priorities for the consolidation of the largest 25 data centers. Any DIR consolidation plan must fully utilize the data center at Angelo State University. LBB may not review agency requests to operate a data center outside the statewide technology centers established by DIR.
- Adds a requirement that, when the DIR executive director determines that a new statewide technology center would increase efficiency and cost-effectiveness, the executive director must also identify the agencies that will be required to participate in the new center.
- Removes the requirement that the DIR board be given 30 days notice of any intent to establish a new statewide technology center that would require an interagency contract.
- Adds a new requirement that a new center may not be established by DIR without the approval of the Governor and LBB.
- Establishes a cost and requirements analysis for DIR to conduct with each agency selected to participate in a new statewide technology center. The agency must identify its requirements, costs, and required service levels, and DIR is required to meet those requirements and service levels to the extent possible.
- Moves a section requiring the use of statewide technology centers to a section later in this subchapter.
- Changes DIR notification to an agency that the agency has been selected to participate in the new center from after DIR board approval to after completion of the cost analysis.
- Removes the requirement that DIR give the agency a copy of the determination that the agency has been selected, since this notification is the determination referred to.
- Adds a requirement that the notice provided to the agency by DIR include an anticipated costs schedule for the agency.

- Drops the requirement that the agency then provide its required service levels to DIR, since that will be done during the cost analysis.
- Adds a requirement that DIR must ensure that contracted service levels are met.
- Adds a requirement that, prior to execution of the interagency contract, the agency may only spend money for the selected services with the approval of the DIR executive director.
- Extends from the 15<sup>th</sup> business day to the 30<sup>th</sup> business day the amount of time an agency has to request from LBB approval to spend money for the identified services outside an interagency contract with DIR.
- Adds a requirement that DIR have the approval of the Governor and LBB before requiring an agency to transfer to DIR ownership or control of resources utilized to support the selected operations or services.
- Adds a requirement that DIR consult with the affected agency when determining the resources that are utilized to support the selected operations or services.
- Adds LBB and SAO to the governor, lieutenant governor and speaker to be notified of expected savings that will result from the transfer of an agency's resources.
- Adds a requirement that DIR, with the affected agency, work to resolve any federal funding issues related to transfer of resources. If those issues cannot be resolved, the resources are exempt from transfer unless otherwise directed by the Governor and LBB.
- Adds requirement that DIR prioritize the agency data centers to transfer to the statewide technology center, with priority given to the State Data Center in San Angelo. At least three agency data centers must transfer each fiscal year, through FY 2012.
- In the section entitled "Use of Statewide Technology Centers Required," moved from earlier in the bill, adds a prohibition on state agencies moving services from a statewide technology center without DIR approval.
- Adds the State Auditor's Office to those notified by DIR if DIR becomes aware that an agency is not complying with an interagency contract to use a statewide technology center.
- Specifies that "technology services" includes "seat management" in the definition of "commodity items" and that a reasonable demand for commodity items exists in multiple agencies
- Requires DIR to make a good faith effort to provide contracting opportunities and increase the contract awards to HUBs.
- Changes the reference from a "waiver" to an "exemption" when an agency is not required to purchase a commodity item from a DIR contract. Allows such an exemption to be granted by LBB, requires an agency to seek an exemption from DIR before requesting an exemption from LBB, and specifies that approval of an agency's biennial operating plan does not constitute approval to purchase from a source other than a DIR contract.
- Removes designation of a consolidated telecommunications system as a statewide information center under Subchapter L.
- Changes waiver process for telecommunications from the Telecommunications Planning and Oversight Council to the DIR executive director.
- Drops the prohibition on agencies spending funds on telecommunications services unless authorized by the DIR executive director.
- Adds the State Auditor's Office to the recipients of the information technology security assessment conducted by DIR.
- Adds the State Auditor's Office to the recipients of an analysis of current automated information systems of state agencies.
- Requires DIR to transfer at least three data centers each fiscal year to the statewide technology center upon a DIR determination that such a move is cost-effective. DIR must submit to the state and legislative leadership an annual report describing the agency data centers that were reviewed and transferred during the fiscal year and providing an update on the rebid of the contract to manage the State Data Centers. The report is due at the end of FY 06 and FY 07.
- Renumbers various sections of the bill as necessary.