

By: Cook

H.B. No. 2499

Substitute the following for H.B. No. 2499:

By: Hilderbran

C.S.H.B. No. 2499

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Department of
3 Information Resources and the transfer of certain department
4 functions to the comptroller of public accounts.

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

6 SECTION 1. Section 572.054, Government Code, is amended by
7 adding Subsection (g-1) to read as follows:

8 (g-1) For purposes of this section, the Department of
9 Information Resources is a regulatory agency.

10 SECTION 2. Section 2054.005, Government Code, is amended to
11 read as follows:

12 Sec. 2054.005. SUNSET PROVISION. The Department of
13 Information Resources is subject to Chapter 325 (Texas Sunset Act).
14 Unless continued in existence as provided by that chapter, the
15 department is abolished and this chapter expires September 1, 2017
16 [2011].

17 SECTION 3. Sections 2054.021(a), (c), (g), and (h),
18 Government Code, are amended to read as follows:

19 (a) The department is governed by a board composed of seven
20 voting members appointed by the governor with the advice and
21 consent of the senate. One member must be employed by an
22 institution of higher education as defined by Section 61.003,
23 Education Code. Each member must have expertise in at least one of
24 the following areas:

6 (c) Three [~~Two~~] groups each composed of three ex officio
7 members serve on the board on a rotating basis. The ex officio
8 members serve as nonvoting members of the board. [~~Only one group~~
9 ~~serves at a time.~~] The first group is composed of the commissioner
10 of insurance, the executive commissioner of the Health and Human
11 Services Commission, and the executive director of a small state
12 agency [~~the Texas Department of Transportation~~]. [~~Members of the~~
13 ~~first group serve for two-year terms that begin February 1 of every~~
14 ~~other odd-numbered year and that expire on February 1 of the next~~
15 ~~odd-numbered year.~~] The second group is composed of the executive
16 director of the Texas Department of Transportation, the
17 commissioner of education, and the executive director of a small
18 state agency. The third group is composed of the executive director
19 of the Texas Department of Criminal Justice, [and] the executive
20 director of the Parks and Wildlife Department, and the executive
21 director of a small state agency. Members of a [~~the second~~] group
22 serve on the board for two-year terms that begin February 1 of [~~the~~]
23 odd-numbered years [~~in which the terms of members of the first group~~
24 ~~expire~~] and [~~that~~] expire on February 1 of the next odd-numbered
25 year. Only one group serves at a time. The governor shall appoint
26 the small state agency representative for each group. In this
27 subsection, "small state agency" means a state agency with fewer

1 than 100 employees.

2 (g) The training program must provide information to the
3 person regarding:

4 (1) this chapter and the board [~~the enabling~~
5 ~~legislation that created the department and its policymaking body~~]
6 to which the person is appointed to serve;

7 (2) the programs operated by the department;

8 (3) the role and functions of the department;

9 (4) the rules of the department, with an emphasis on
10 the rules that relate to disciplinary and investigatory authority;

11 (5) the current budget for the department;

12 (6) the results of the most recent formal audit of the
13 department;

14 (7) the requirements of the:

15 (A) open meetings law, Chapter 551;

16 (B) open records law, Chapter 552; and

17 (C) administrative procedure law, Chapter 2001;

18 (8) the requirements of the conflict of interest laws
19 and other laws relating to public officials; [~~and~~]

20 (9) any applicable ethics policies adopted by the
21 department or the Texas Ethics Commission; and

22 (10) contract management training.

23 (h) A person appointed to the board under Subsection (a) is
24 entitled to reimbursement for travel expenses incurred in attending
25 the training program, as provided by the General Appropriations Act
26 and as if the person were a member of the board.

27 SECTION 4. Section 2054.022(c), Government Code, is amended

1 to read as follows:

2 (c) An employee of the department, other than the executive
3 director, ~~and~~

4 ~~(1) may not participate in the department's bidding~~
5 ~~process, including the proposal development related to a contract~~
6 ~~and the negotiation of a contract, if:~~

7 ~~(A) the employee receives more than five percent~~
8 ~~of the employee's income from any likely bidder on the contract; or~~

9 ~~(B) the employee's spouse is employed by any~~
10 ~~likely bidder on the contract; and~~

11 ~~(2) may not:~~

12 (1) ~~(A)~~ be a person required to register as a
13 lobbyist under Chapter 305 because of the person's activities for
14 compensation on behalf of a business entity that has, or on behalf
15 of a trade association of business entities that have, a
16 substantial interest in the information resources technologies
17 industry; or

18 (2) ~~(B)~~ be employed by a state agency as a
19 consultant on information resources technologies.

20 SECTION 5. Section 2054.0285(b), Government Code, is
21 amended to read as follows:

22 (b) The executive director has authority for certain ~~all~~
23 aspects of information technology for state agencies, including:

24 (1) the use of technology to support state goals;

25 (2) functional support to state agencies;

26 (3) ~~technology purchases;~~

27 ~~(4)~~ deployment of new technology;

1 (4) [45] delivery of technology services; and
2 (5) [46] provision of leadership on technology
3 issues.

4 SECTION 6. Subchapter B, Chapter 2054, Government Code, is
5 amended by adding Section 2054.0331 to read as follows:

6 Sec. 2054.0331. CUSTOMER ADVISORY COMMITTEE. (a) The
7 board shall appoint a customer advisory committee under Section
8 2054.033.

9 (b) The advisory committee is composed of customers who
10 receive services from each of the department's key programs,
11 including at least:

12 (1) one member representing a state agency with fewer
13 than 100 employees; and

14 (2) one member appointed by the Information Technology
15 Council for Higher Education.

16 (c) The advisory committee shall report to and advise the
17 board on the status of the department's delivery of critical
18 statewide services.

19 SECTION 7. Subchapter B, Chapter 2054, Government Code, is
20 amended by adding Sections 2054.0345 and 2054.0346 to read as
21 follows:

22 Sec. 2054.0345. DETERMINATION OF ADMINISTRATIVE FEES. (a)
23 The department shall adopt a process to determine the amount of the
24 administrative fee the department charges to administer any of its
25 programs, including fees charged for programs under Sections
26 2054.380 and 2170.057.

27 (b) The process must require that the amount of a fee

1 directly relate to the amount necessary for the department to
2 recover the cost of its operations, as determined by the
3 department's annual budget process.

4 (c) The department shall develop clear procedures directing
5 staff for each department program and the department's financial
6 staff to work together to determine the amount of administrative
7 fees. The procedures must require review and approval of all
8 administrative fees by the board, the executive director, and the
9 department's chief financial officer.

10 Sec. 2054.0346. REPORTING OF ADMINISTRATIVE FEES. (a) The
11 department shall report to the Legislative Budget Board all
12 administrative fees that the department sets under Section
13 2054.0345 each fiscal year. The report must include:

14 (1) the underlying analysis and methodology used to
15 determine the fee amounts; and
16 (2) the cost allocation charged to customers.

17 (b) The department shall post on the department's website
18 information about each administrative fee the department charges,
19 including a description of how the fee is determined. The
20 department must update this information when a contract amendment
21 or other action results in a major change to the costs incurred or
22 the price paid by the department or a customer of the department.

23 SECTION 8. Subchapter B, Chapter 2054, Government Code, is
24 amended by adding Section 2054.037 to read as follows:

25 Sec. 2054.037. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
26 RESOLUTION. (a) The board shall develop and implement a policy to
27 encourage the use of:

1 (1) negotiated rulemaking procedures under Chapter
2 2008 for the adoption of department rules; and

3 (2) appropriate alternative dispute resolution
4 procedures under Chapter 2009 to assist in the resolution of
5 internal and external disputes under the department's
6 jurisdiction.

7 (b) The department's procedures relating to alternative
8 dispute resolution must conform, to the extent possible, to any
9 model guidelines issued by the State Office of Administrative
10 Hearings for the use of alternative dispute resolution by state
11 agencies.

12 (c) The department shall:

13 (1) coordinate the implementation of the policy
14 adopted under Subsection (a);

15 (2) provide training as needed to implement the
16 procedures for negotiated rulemaking or alternative dispute
17 resolution; and

18 (3) collect data concerning the effectiveness of those
19 procedures.

20 SECTION 9. Subchapter B, Chapter 2054, Government Code, is
21 amended by adding Sections 2054.038, 2054.039, and 2054.040 to read
22 as follows:

23 Sec. 2054.038. INTERNAL AUDITOR; POWERS AND DUTIES. (a)
24 The board shall:

25 (1) appoint an internal auditor who reports directly
26 to the board and serves at the will of the board; and

27 (2) provide staff and other resources to the internal

1 auditor as appropriate.

2 (b) The internal auditor shall prepare an annual audit plan
3 using risk assessment techniques to rank high-risk functions in the
4 department. The internal auditor shall submit the annual audit
5 plan to the board for consideration and approval. The board may
6 change the plan as necessary or advisable.

7 (c) The internal auditor may bring before the board an issue
8 outside of the annual audit plan that requires the immediate
9 attention of the board.

10 (d) The internal auditor may not be assigned any operational
11 or management responsibilities that impair the ability of the
12 internal auditor to make an independent examination of the
13 department's operations. The internal auditor may provide guidance
14 or other advice before an operational or management decision is
15 made but may not make the decision, approve the decision, or
16 otherwise violate this subsection.

17 (e) The department shall give the internal auditor
18 unrestricted access to the activities and records of the department
19 unless restricted by other law.

20 Sec. 2054.039. OPEN MEETINGS EXCEPTION FOR INTERNAL
21 AUDITOR. A meeting between the board and the department's internal
22 auditor to discuss issues related to fraud, waste, or abuse is not
23 required to be an open meeting under Chapter 551.

24 Sec. 2054.040. AUDIT SUBCOMMITTEE. (a) The board shall
25 maintain an audit subcommittee of the board. The subcommittee
26 shall oversee the department's internal auditor and any other audit
27 issues that the board considers appropriate.

1 (b) The subcommittee shall evaluate whether the internal
2 auditor has sufficient resources to perform the auditor's duties
3 and ensure that sufficient resources are available.

4 SECTION 10. Subchapter B, Chapter 2054, Government Code, is
5 amended by adding Section 2054.041 to read as follows:

6 Sec. 2054.041. ADDITIONAL BOARD OVERSIGHT. (a) The board
7 shall adopt a policy describing the board's role in setting a
8 strategic direction for the department. The policy must address
9 the board's role in developing new initiatives for and service
10 offerings by the department, including requiring the board to
11 evaluate and approve new initiatives for, or categories of,
12 services offered by the department under the department's various
13 programs.

14 (b) The board shall regularly evaluate the extent to which
15 the department fulfills the department's information resources
16 technology mission by providing cost-effective services and
17 meeting customer needs.

18 (c) The board shall regularly evaluate department
19 operations, including an evaluation of analytical data and
20 information regarding trends in department revenue and expenses, as
21 well as performance information.

22 SECTION 11. Subchapter C, Chapter 2054, Government Code, is
23 amended by adding Section 2054.0525 to read as follows:

24 Sec. 2054.0525. ASSISTANCE TO STATE AGENCIES. The
25 department on request shall advise and provide technical assistance
26 to a state agency to determine the agency's information resources
27 technology needs and to solve the agency's information resources

1 technology problems.

2 SECTION 12. Section 2054.0565(a), Government Code, is
3 amended to read as follows:

4 (a) The comptroller ~~[department]~~ may include terms in a
5 procurement contract entered into by the comptroller ~~[department]~~,
6 including a contract entered into under Section 2157.068, that
7 allow the contract to be used by another state agency, a political
8 subdivision of this state, a governmental entity of another state,
9 or an assistance organization as defined by Section 2175.001.

10 SECTION 13. Section 2054.057, Government Code, is amended
11 to read as follows:

12 Sec. 2054.057. TRAINING IN CONTRACT NEGOTIATION. (a) The
13 ~~[department, with the cooperation of the]~~ comptroller and other
14 appropriate state agencies~~[,]~~ shall develop and implement a program
15 to train state agency personnel in effectively negotiating
16 contracts for the purchase of information resources technologies.

17 (b) The comptroller ~~[department]~~ shall make the training
18 available to state agency personnel who are directly or indirectly
19 involved in contract negotiations, such as senior or operational
20 management, purchasers, users of the purchased technologies, and
21 personnel with relevant technical, legal, or financial knowledge.

22 (c) The comptroller ~~[department]~~ shall include in the
23 training:

24 (1) information on developing a structured purchasing
25 method that meets an agency's needs;

26 (2) information drawn from the state's previous
27 procurement experience about what is or is not advantageous for the

1 state;

2 (3) the perspective of state agencies with oversight
3 responsibilities related to the state's procurement of information
4 resources technologies; and

5 (4) other information that the comptroller
6 ~~department~~ considers to be useful.

7 (d) The comptroller ~~department~~ may use its own staff or
8 contract with private entities or other state agencies to conduct
9 the training.

10 SECTION 14. Subchapter C, Chapter 2054, Government Code, is
11 amended by adding Section 2054.061 to read as follows:

12 Sec. 2054.061. USE OF CONSULTANTS AND OUTSIDE STAFF. (a)
13 The department shall develop clear criteria for the appropriate use
14 of consultants and outside staff by the department to temporarily
15 augment the department's existing staff.

16 (b) The department shall annually analyze:

17 (1) the department's staffing needs;
18 (2) the need for and cost-effectiveness of contracting
19 for consultants and outside staff;

20 (3) whether the department could use department staff
21 to accomplish tasks proposed for the consultants and outside staff;
22 and

23 (4) whether and what type of training or additional
24 resources are necessary for the department to use the department's
25 own staff to accomplish tasks proposed for the consultants or
26 outside staff.

27 (c) In conjunction with the budget process, the department

1 shall provide the analysis to the board for approval. The
2 department may not hire or train any consultants or outside staff
3 unless it has been approved during this budget process.

4 SECTION 15. Subchapter C, Chapter 2054, Government Code, is
5 amended by adding Section 2054.062 to read as follows:

6 Sec. 2054.062. INFORMATION RESOURCES TECHNOLOGIES
7 CONSOLIDATION. (a) The department shall develop a consistent and
8 clear method of measuring the costs and progress of an information
9 resources technology consolidation initiative, including a
10 consolidation under Subchapter L.

11 (b) The department shall work with any entity involved in an
12 information resources technology consolidation to develop an
13 agreed on methodology for collecting and validating data to
14 determine a baseline assessment of costs. The department shall use
15 the data both in the department's initial cost projections and in
16 any later cost comparison. The department shall coordinate with
17 the internal auditor for guidance, subject to Section 2054.038(d),
18 on developing a methodology that provides an objective assessment
19 of costs and project status.

20 (c) Using the methodology agreed on under Subsection (b),
21 the department shall evaluate actual costs and cost savings related
22 to the consolidation. The department shall also evaluate the
23 progress of the department's information resources consolidation
24 projects compared to the initially projected timelines for
25 implementation. The evaluation results must break out the
26 information on both statewide and individual entity levels.

27 (d) The department shall annually report the evaluation

1 results to:

2 (1) the board;

3 (2) the Legislative Budget Board; and

4 (3) customers involved in the consolidation.

5 (e) The department shall post on the department's website
6 the report required by this section.

7 SECTION 16. Sections 2054.1015(b), (c), (d), and (e),
8 Government Code, are amended to read as follows:

9 (b) The comptroller ~~[department]~~ may require a state agency
10 to provide ~~[to the department]~~ a planned procurement schedule for
11 commodity items if the comptroller ~~[department]~~ determines that the
12 information in the schedule can be used to provide a benefit to the
13 state. If required by the comptroller ~~[department]~~, a state agency
14 must provide a planned procurement schedule for commodity items to
15 the comptroller and the department before the agency's operating
16 plan may be approved under Section 2054.102.

17 (c) The comptroller ~~[department]~~ shall use information
18 contained in the schedules to plan future vendor solicitations of
19 commodity items or for any other activity that provides a benefit to
20 the state.

21 (d) A state agency shall notify the comptroller
22 ~~[department]~~, the Legislative Budget Board, and the state auditor's
23 office if the agency makes a substantive change to a planned
24 procurement schedule for commodity items.

25 (e) The comptroller ~~[department]~~ shall specify hardware
26 configurations for state commodity items in its instructions for
27 the preparation of planned procurement schedules.

1 SECTION 17. Section 2054.122, Government Code, is amended
2 to read as follows:

3 Sec. 2054.122. COORDINATED TECHNOLOGY TRAINING. A state
4 agency each calendar quarter shall coordinate agency training for
5 the use of information resources technologies with training offered
6 or coordinated by the department or comptroller. The agency shall
7 use training offered or coordinated by the department or
8 comptroller if it meets agency requirements and is
9 cost-competitive.

10 SECTION 18. Section 2054.124, Government Code, is amended
11 to read as follows:

12 Sec. 2054.124. POWER MANAGEMENT SOFTWARE. (a) After
13 researching the software available, the comptroller ~~[department]~~
14 shall by competitive bid select power management software to be
15 used, if technically feasible, by state agencies to reduce the
16 amount of energy required to operate state computer networks and
17 networked personal computers.

18 (b) ~~(c)~~ An institution of higher education shall
19 purchase, lease, or otherwise acquire and use power management
20 software only if the comptroller ~~[department]~~, in consultation with
21 the Information Technology Council for Higher Education,
22 determines that the institution of higher education's use of power
23 management software would provide cost savings to this state. In
24 making a determination under this subsection, the comptroller
25 ~~[department]~~ must perform the analysis described by Section
26 2054.121(c) in the same manner as the department under that
27 subsection. The analysis must include an assessment of how the use

1 of power management software affects the security of electronic
2 data, including data protected from public disclosure by state or
3 federal law.

4 SECTION 19. Subchapter L, Chapter 2054, Government Code, is
5 amended by adding Section 2054.392 to read as follows:

6 Sec. 2054.392. STATEWIDE TECHNOLOGY ACCOUNT. The
7 comptroller shall establish in the state treasury the statewide
8 technology account. The account is a revolving fund account for the
9 administration of this subchapter. The account is the depository
10 for all money received from entities served under this subchapter.
11 Money in the account may be used only for the operation and
12 management of a statewide technology center or for any other
13 purpose specified by the legislature.

14 SECTION 20. Chapter 2054, Government Code, is amended by
15 adding Subchapters N and O to read as follows:

16 SUBCHAPTER N. MAJOR OUTSOURCED CONTRACTS

17 Sec. 2054.501. MAJOR OUTSOURCED CONTRACT DEFINED; RULE.
18 The board by rule shall define what constitutes a major outsourced
19 contract with regard to contracts the department executes with
20 entities other than this state or a political subdivision of this
21 state. The definition must include as a major outsourced contract:

22 (1) outsourced contracts entered into under
23 Subchapter I and Subchapter L of this chapter or Chapter 2170; and
24 (2) contracts that exceed a monetary threshold, other
25 than those described by Subdivision (1).

26 Sec. 2054.502. BOARD APPROVAL AND OVERSIGHT OF MAJOR
27 OUTSOURCED CONTRACTS. (a) The department must receive approval

1 from the board before:

2 (1) entering into a major outsourced contract; or

3 (2) amending any major outsourced contract, if the
4 amendment has significant statewide impact.

5 (b) The board shall establish one or more subcommittees to
6 monitor the department's major outsourced contracts.

7 Sec. 2054.503. MANAGEMENT PLANS FOR MAJOR OUTSOURCED
8 CONTRACTS. (a) The department shall specify procedures for
9 administering, monitoring, and overseeing each major outsourced
10 contract by creating a management plan for each contract. In each
11 management plan, the department shall specify the department's
12 approach to managing and mitigating the risks inherent in each
13 contract.

14 (b) Department staff who perform contract administration
15 and program duties shall jointly develop the management plans with
16 input from executive management and the board. Each management plan
17 must be approved by the executive director.

18 (c) Each management plan must establish clear lines of
19 accountability and coordination of contract activities. The plan
20 must provide details about implementing the program that is the
21 subject of the contract as well as procedures for monitoring
22 contractor performance, identifying and mitigating risks related
23 to the contract, and involving and communicating with customers who
24 will be served by any programs implemented through the contract. As
25 appropriate, the plan must define an approach for transitioning
26 from one major outsourced contract to another major outsourced
27 contract.

1 (d) The department shall revise each management plan:

2 (1) as necessary to keep current during the
3 contracting process; and

4 (2) when the department renews, amends, or resolicits
5 a major outsourced contract to ensure the plan remains updated and
6 incorporates any changes resulting from a new contract.

7 Sec. 2054.504. CUSTOMER INVOLVEMENT IN MAJOR OUTSOURCED
8 CONTRACTS. The department shall establish formal procedures to
9 ensure customer involvement in decision making regarding each of
10 the department's major outsourced contracts, including initial
11 analysis, solicitation development, and contract award and
12 implementation, that affect those customers.

13 SUBCHAPTER O. ADDITIONAL PROVISIONS ON CONTRACTING

14 Sec. 2054.531. DEFINITION. In this subchapter, "contract
15 management guide" means the guide developed under this subchapter.

16 Sec. 2054.532. RULES. In addition to the rules adopted
17 under Subchapter N for major outsourced contracts, the board by
18 rule shall establish approval requirements for all other contracts,
19 including a monetary threshold above which board approval is
20 required before the contract may be executed.

21 Sec. 2054.533. CONFLICT OF INTEREST IN CONTRACTING. (a) A
22 department employee may not:

23 (1) have an interest in, or in any manner be connected
24 with, a contract or bid for a purchase of goods or services by the
25 department; or

26 (2) in any manner, including by rebate or gift,
27 directly or indirectly accept or receive from a person to whom a

1 contract may be awarded anything of value or a promise, obligation,
2 or contract for future reward or compensation.

3 (b) A department employee who violates Subsection (a)(2) is
4 subject to dismissal.

5 (c) The board shall adopt rules to implement this section.

6 (d) The department shall train staff in the requirements of
7 this section and Section 572.054 and incorporate the requirements
8 into the contract management guide and the department's internal
9 policies, including employee manuals.

10 Sec. 2054.534. CONTRACT MANAGEMENT TRAINING POLICY. (a)
11 The department shall develop a policy for training department staff
12 in contract management.

13 (b) The policy must establish contract management training
14 requirements for all staff involved in contract management,
15 including contract managers, program staff, and executive
16 management.

17 (c) The policy must specify the department's overall
18 approach to procuring and managing contracts, as well as
19 contract-specific procedures developed in the contract management
20 guide and under Subchapter N.

21 Sec. 2054.535. CONTRACT MANAGEMENT GUIDE; RULES. (a) The
22 department shall develop and periodically update a contract
23 management guide to provide an overall, consistent approach on
24 procurement and management of major outsourced contracts under
25 Subchapter N and other contracts. In updating the guide, the
26 department shall make changes based on contract experiences and
27 account for changing conditions to guide the updates.

1 (b) The department shall coordinate with the department's
2 internal auditor, subject to Section 2054.038(d), as needed for
3 assistance and guidance in developing procedures in the contract
4 management guide for monitoring contracts and individual
5 contractors.

6 (c) The board may adopt rules necessary to develop or update
7 the contract management guide.

8 (d) The contract management guide must provide information
9 regarding the department's:

10 (1) general approach to business case analysis,
11 procurement planning, contract solicitation, contract execution,
12 and contract monitoring and oversight;

13 (2) ethics standards and policies, including those
14 required by Section 2054.533; and

15 (3) approach to changing a program's internal
16 structure or model for delivering services to customers.

17 (e) The contract management guide must:

18 (1) establish clear lines of accountability, staff
19 roles and responsibilities, and decision-making authority for
20 program staff, contract management staff, executive management,
21 customers, and the board;

22 (2) include the procedures established under Section
23 2054.504 regarding customer involvement; and

24 (3) establish the department's process for evaluating
25 and managing risk during each stage of contract procurement,
26 implementation, and management.

27 (f) The contract management guide must describe the

1 expectations and standards for obtaining and using customer input
2 during all contract management phases.

3 SECTION 21. Sections 2155.502(a), (b), and (c), Government
4 Code, are amended to read as follows:

5 (a) The comptroller [~~commission~~] shall develop a schedule
6 of multiple award contracts that have been previously awarded using
7 a competitive process by:

8 (1) the federal government, including the federal
9 General Services Administration; or

10 (2) any other governmental entity in any state.

11 (b) In developing a schedule under Subsection (a) [~~or (e)~~],
12 the comptroller [~~commission or department, as appropriate,~~] shall
13 modify any contractual terms, with the agreement of the parties to
14 the contract, as necessary to comply with any federal or state
15 requirements, including rules adopted under this subchapter.

16 (c) The comptroller [~~commission~~] may not list a multiple
17 award contract on a schedule developed under Subsection (a) if the
18 goods or services provided by that contract:

19 (1) are available from only one vendor; or

20 (2) are telecommunications services, facilities, or
21 equipment [~~or~~

22 [~~(3) are commodity items as defined by Section~~
23 ~~2157.068(a)~~].

24 SECTION 22. Section 2155.503, Government Code, is amended
25 to read as follows:

26 Sec. 2155.503. RULES. (a) The comptroller [~~and the~~
27 ~~department~~] shall adopt rules to implement this subchapter. The

1 rules must:

2 (1) establish standard terms for contracts listed on a
3 schedule; and

4 (2) maintain consistency with existing purchasing
5 standards.

6 (b) The comptroller ~~[and the department]~~ shall consult with
7 the attorney general in developing rules under this section.

8 SECTION 23. Section 2157.004, Government Code, is amended
9 to read as follows:

10 Sec. 2157.004. TRANSFERS AND LOANS. A state agency that
11 acquires a telecommunications device, system, or service or an
12 automated information system by interagency transfer, contract, or
13 loan, or by public loan, shall comply with the requirements that
14 apply to that acquisition under [eff] Chapter 2054 and this chapter.

15 SECTION 24. Section 2157.068, Government Code, is amended
16 to read as follows:

17 Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY
18 COMMODITY ITEMS. (a) In this section, "commodity items" means
19 commercial software, hardware, or technology services, other than
20 telecommunications services, that are generally available to
21 businesses or the public and for which the comptroller ~~[department]~~
22 determines that a reasonable demand exists in two or more state
23 agencies. The term includes seat management, through which a state
24 agency transfers its personal computer equipment and service
25 responsibilities to a private vendor to manage the personal
26 computing needs for each desktop in the state agency, including all
27 necessary hardware, software, and support services.

1 (b) The comptroller [department] shall negotiate with
2 vendors to attempt to obtain a favorable price for all of state
3 government on licenses for commodity items, based on the aggregate
4 volume of purchases expected to be made by the state. The terms and
5 conditions of a license agreement between a vendor and the
6 comptroller [department] under this section may not be less
7 favorable to the state than the terms of similar license agreements
8 between the vendor and retail distributors.

9 (c) In contracting for commodity items under this section,
10 the comptroller [department] shall make good faith efforts to
11 provide contracting opportunities for, and to increase contract
12 awards to, historically underutilized businesses and persons with
13 disabilities' products and services available under Chapter 122,
14 Human Resources Code.

15 (d) The comptroller [department] may charge a reasonable
16 administrative fee to a state agency, political subdivision of this
17 state, or governmental entity of another state that purchases
18 commodity items through the comptroller [department] in an amount
19 that is sufficient to recover costs associated with the
20 administration of this section. The comptroller shall develop a
21 clear procedure for calculating the fee under this subsection,
22 including procedures for review and approval of the fee.

23 (e) The comptroller [department] shall compile and maintain
24 a list of commodity items available for purchase through the
25 comptroller [department] that have a lower price than the prices
26 for commodity items otherwise available to state agencies under
27 this chapter. The comptroller [department] shall make the list

1 available on the comptroller's website [~~world wide web or on a~~
2 ~~suitable successor to the world wide web if the technological~~
3 ~~developments involving the Internet make it advisable to do so~~].

4 (f) The comptroller [~~department~~] may adopt rules regulating
5 a purchase by a state agency of a commodity item under this section,
6 including a requirement that, notwithstanding other provisions of
7 this chapter, the agency must make the purchase in accordance with a
8 contract developed by the comptroller [~~department~~] unless the
9 agency obtains:

10 (1) an exemption from the comptroller [~~department~~]; or
11 (2) express prior approval from the Legislative Budget
12 Board for the expenditure necessary for the purchase.

13 (g) The Legislative Budget Board's approval of a biennial
14 operating plan under Section 2054.102 is not an express prior
15 approval for purposes of Subsection (f)(2). A state agency must
16 request an exemption from the comptroller [~~department~~] under
17 Subsection (f)(1) before seeking prior approval from the
18 Legislative Budget Board under Subsection (f)(2).

19 (h) The comptroller [~~department~~] shall, in cooperation with
20 state agencies, establish guidelines for the classification of
21 commodity items under this section. The comptroller [~~department~~]
22 may determine when a statewide vendor solicitation for a commodity
23 item will reduce purchase prices for a state agency.

24 (i) Unless the agency has express statutory authority to
25 employ a best value purchasing method other than a purchasing
26 method designated by the comptroller [~~commission~~] under Section
27 2157.006(a)(2), a state agency shall use a purchasing method

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1 provided by Section 2157.006(a) when purchasing a commodity item
2 if:

3 (1) the agency has obtained an exemption from the
4 comptroller [department] or approval from the Legislative Budget
5 Board under Subsection (f); or

6 (2) the agency is otherwise exempt from this section.

7 SECTION 25. Subchapter B, Chapter 2157, Government Code, is
8 amended by adding Section 2157.0685 to read as follows:

15 (b) The comptroller shall post on the comptroller's website
16 information about the fee, including a description of how the fee is
17 determined. The comptroller must update this information when a
18 contract amendment or other action results in a major change to the
19 costs incurred or the price paid by the comptroller or a customer of
20 the comptroller.

21 SECTION 26. Subchapter B, Chapter 2157, Government Code, is
22 amended by adding Section 2157.069 to read as follows:

1 account may be used only to administer that section or for any other
2 purpose specified by the legislature.

3 SECTION 27. Section 2157.121, Government Code, is amended
4 to read as follows:

5 Sec. 2157.121. ACQUISITION THROUGH COMPETITIVE SEALED
6 PROPOSALS. (a) The comptroller [~~commission~~] or other state agency
7 may acquire a telecommunications device, system, or service or an
8 automated information system by using competitive sealed proposals
9 if the comptroller [~~commission~~] determines that competitive sealed
10 bidding and informal competitive bidding are not practical or are
11 disadvantageous to the state.

12 (b) A state agency, other than the department under
13 Subsection (c), shall send its proposal specifications and criteria
14 to the comptroller [~~commission~~] for approval or request the
15 comptroller [~~commission~~] to develop the proposal specifications
16 and criteria.

17 (c) The department may acquire a telecommunications device,
18 system, or service [~~or an automated information system~~] by using
19 competitive sealed proposals without regard to whether the
20 comptroller [~~commission~~] makes the determination required under
21 Subsection (a) for other state agencies. This subsection applies
22 only to an acquisition under Subchapter H, Chapter 2054, or under
23 Chapter 2170.

24 SECTION 28. Section 2157.181(a), Government Code, is
25 amended to read as follows:

26 (a) The comptroller [~~commission, with the concurrence of~~
27 ~~the department,~~] may negotiate with vendors preapproved terms and

1 conditions to be included in contracts relating to the purchase or
2 lease of ~~[a telecommunication device, system, or service or]~~ an
3 automated information system awarded to a vendor by a state agency.

4 SECTION 29. Section 2157.182, Government Code, is amended
5 to read as follows:

6 Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND
7 CONDITIONS; RENEgotiation. (a) Preapproved terms and conditions
8 to which a vendor~~[, the commission,]~~ and the comptroller
9 ~~[department]~~ agree are valid for two years after the date of the
10 agreement and must provide that the terms and conditions are to be
11 renegotiated before the end of the two years.

12 (b) The comptroller ~~[commission and the department jointly]~~
13 shall establish procedures to ensure that terms and conditions are
14 renegotiated before they expire in a contract between the vendor
15 and a state agency.

16 SECTION 30. Section 2157.184, Government Code, is amended
17 to read as follows:

18 Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS.
19 The comptroller ~~[commission and the department jointly]~~ shall
20 establish procedures to notify state agencies and potential vendors
21 of the provisions of this subchapter regarding preapproved terms
22 and conditions.

23 SECTION 31. Sections 2054.024(c), 2155.501(1),
24 2155.502(e), 2157.0611, and 2157.181(b), Government Code, are
25 repealed.

26 SECTION 32. (a) Not later than September 1, 2011, the
27 governor shall appoint the initial members of the governing board

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1 of the Department of Information Resources under Section 2054.021,
2 Government Code, as amended by this Act. The governor shall
3 appoint:

4 (1) two members whose terms expire February 1, 2013;
5 (2) two members whose terms expire February 1, 2015;

6 and

7 (3) three members whose terms expire February 1, 2017.

8 (b) The terms of the current members of the board expire
9 September 1, 2011.

10 SECTION 33. (a) Not later than September 1, 2011, the
11 first group of ex officio members shall begin serving or be
12 appointed under Section 2054.021(c), Government Code, as amended by
13 this Act.

14 (b) The governor shall appoint to the first group an ex
15 officio member from a state agency with 100 or fewer employees under
16 Section 2054.021(c), Government Code, as amended by this Act. When
17 that member is appointed, the term of the executive director of the
18 Texas Department of Transportation expires.

19 (c) The commissioner of insurance and the executive
20 commissioner of the Health and Human Services Commission shall
21 continue to serve in the first group under Section 2054.021(c),
22 Government Code, as amended by this Act, until February 1, 2013.

23 SECTION 34. (a) In this section, "department" means the
24 Department of Information Resources.

25 (b) On the effective date of this Act, the powers and duties
26 of the department under Section 2157.068, Government Code, or other
27 law relating to information and communications technology

1 cooperative contracts are transferred to the comptroller.

2 (c) The department shall work in cooperation with and at the
3 direction of the comptroller to facilitate the transfer described
4 by this section.

5 (d) A rule, form, policy, procedure, or decision of the
6 department that is related to a power or duty transferred under
7 Subsection (b) of this section continues in effect as a rule, form,
8 policy, procedure, or decision of the comptroller until superseded
9 by an act of the comptroller.

10 (e) A court case, administrative proceeding, contract
11 negotiation, or other proceeding involving the department that is
12 related to a power or duty transferred under Subsection (b) of this
13 section is transferred without change in status to the comptroller,
14 and the comptroller assumes, without a change in status, the
15 position of the department in a negotiation or proceeding relating
16 to a power or duty transferred under Subsection (b) of this section
17 to which the department is a party.

18 (f) All department employees who primarily perform duties
19 related to a power or duty transferred under Subsection (b) of this
20 section, including employees who provide administrative support
21 for those powers or duties, are transferred to the office of the
22 comptroller. A management employee of the department who is
23 transferred to the office of the comptroller under this section
24 does not automatically continue to hold the person's management
25 position. To hold the management position on other than an interim
basis, the person must apply for the position with the comptroller.

27 (g) All personal property, including records, in the

1 custody of the department related to a power or duty transferred
2 under Subsection (b) of this section is transferred to and becomes
3 the property of the comptroller.

4 (h) All contracts, memoranda of understanding, leases, and
5 rights of the department related to a power or duty transferred
6 under Subsection (b) of this section are transferred to the
7 comptroller.

8 (i) All money appropriated by the legislature to the
9 department related to a power or duty transferred under Subsection
10 (b) of this section, including money for providing administrative
11 support, is transferred to the comptroller.

12 SECTION 35. Sections 2054.502 and 2054.533, Government
13 Code, as added by this Act, apply only to a contract for which a
14 solicitation of bids or proposals or similar expressions of
15 interest is published on or after September 1, 2011. A contract for
16 which a solicitation of bids or proposals or similar expressions of
17 interest is published before September 1, 2011, is governed by the
18 law in effect on the date the state agency first publishes the
19 solicitation of bids or proposals or similar expressions of
20 interest, and the former law is continued in effect for that
21 purpose.

22 SECTION 36. This Act takes effect September 1, 2011.