

1-1 By: Cook (Senate Sponsor - Nichols) H.B. No. 2499
1-2 (In the Senate - Received from the House April 19, 2011;
1-3 April 26, 2011, read first time and referred to Committee on
1-4 Government Organization; May 12, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 12, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2499 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Department of
1-11 Information Resources and the transfer of certain department
1-12 functions to the comptroller of public accounts.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 572.054, Government Code, is amended by
1-15 adding Subsection (g-1) to read as follows:

1-16 (g-1) For purposes of this section, the Department of
1-17 Information Resources is a regulatory agency.

1-18 SECTION 2. Section 2054.005, Government Code, is amended to
1-19 read as follows:

1-20 Sec. 2054.005. SUNSET PROVISION. The Department of
1-21 Information Resources is subject to Chapter 325 (Texas Sunset Act).
1-22 Unless continued in existence as provided by that chapter, the
1-23 department is abolished and this chapter expires September 1, 2017
1-24 [2011].

1-25 SECTION 3. Sections 2054.021(a), (c), (g), and (h),
1-26 Government Code, are amended to read as follows:

1-27 (a) The department is governed by a board composed of seven
1-28 voting members appointed by the governor with the advice and
1-29 consent of the senate. One member must be employed by an
1-30 institution of higher education as defined by Section 61.003,
1-31 Education Code. Each member must have expertise in at least one of
1-32 the following areas:

1-33 (1) business or financial management;
1-34 (2) information technology;
1-35 (3) telecommunications; or
1-36 (4) any other area necessary for policymaking and
1-37 oversight of the department.

1-38 (c) Three [Two] groups each composed of three ex officio
1-39 members serve on the board on a rotating basis. The ex officio
1-40 members serve as nonvoting members of the board. [Only one group
1-41 serves at a time.] The first group is composed of the commissioner
1-42 of insurance, the executive commissioner of the Health and Human
1-43 Services Commission, and the executive director of a small state
1-44 agency [the Texas Department of Transportation]. [Members of the
1-45 first group serve for two-year terms that begin February 1 of every
1-46 other odd-numbered year and that expire on February 1 of the next
1-47 odd-numbered year.] The second group is composed of the executive
1-48 director of the Texas Department of Transportation, the
1-49 commissioner of education, and the executive director of a small
1-50 state agency. The third group is composed of the executive director
1-51 of the Texas Department of Criminal Justice, [and] the executive
1-52 director of the Parks and Wildlife Department, and the executive
1-53 director of a small state agency. Members of a [the second] group
1-54 serve on the board for two-year terms that begin February 1 of [the]
1-55 odd-numbered years [in which the terms of members of the first group
1-56 expire] and [that] expire on February 1 of the next odd-numbered
1-57 year. Only one group serves at a time. The governor shall appoint
1-58 the small state agency representative for each group. In this
1-59 subsection, "small state agency" means a state agency with fewer
1-60 than 100 employees.

1-61 (g) The training program must provide information to the
1-62 person regarding:

1-63 (1) this chapter and the board [the enabling

3-1 SECTION 7. Subchapter B, Chapter 2054, Government Code, is
3-2 amended by adding Sections 2054.0345 and 2054.0346 to read as
3-3 follows:

3-4 Sec. 2054.0345. DETERMINATION OF ADMINISTRATIVE FEES. (a)
3-5 The department shall adopt a process to determine the amount of the
3-6 administrative fee the department charges to administer any of its
3-7 programs, including fees charged for programs under Sections
3-8 2054.380 and 2170.057.

3-9 (b) The process must require that the amount of a fee
3-10 directly relate to the amount necessary for the department to
3-11 recover the cost of its operations, as determined by the
3-12 department's annual budget process.

3-13 (c) The department shall develop clear procedures directing
3-14 staff for each department program and the department's financial
3-15 staff to work together to determine the amount of administrative
3-16 fees. The procedures must require review and approval of all
3-17 administrative fees by the board, the executive director, and the
3-18 department's chief financial officer.

3-19 Sec. 2054.0346. REPORTING OF ADMINISTRATIVE FEES. (a) The
3-20 department shall report to the Legislative Budget Board all
3-21 administrative fees that the department sets under Section
3-22 2054.0345 each fiscal year. The report must include:

3-23 (1) the underlying analysis and methodology used to
3-24 determine the fee amounts; and

3-25 (2) the cost allocation charged to customers.

3-26 (b) The department shall post on the department's website
3-27 information about each administrative fee the department charges,
3-28 including a description of how the fee is determined. The
3-29 department must update this information when a contract amendment
3-30 or other action results in a major change to the costs incurred or
3-31 the price paid by the department or a customer of the department.

3-32 SECTION 8. Subchapter B, Chapter 2054, Government Code, is
3-33 amended by adding Section 2054.037 to read as follows:

3-34 Sec. 2054.037. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
3-35 RESOLUTION. (a) The board shall develop and implement a policy to
3-36 encourage the use of:

3-37 (1) negotiated rulemaking procedures under Chapter
3-38 2008 for the adoption of department rules; and
3-39 (2) appropriate alternative dispute resolution
3-40 procedures under Chapter 2009 to assist in the resolution of
3-41 internal and external disputes under the department's
3-42 jurisdiction.

3-43 (b) The department's procedures relating to alternative
3-44 dispute resolution must conform, to the extent possible, to any
3-45 model guidelines issued by the State Office of Administrative
3-46 Hearings for the use of alternative dispute resolution by state
3-47 agencies.

3-48 (c) The department shall:
3-49 (1) coordinate the implementation of the policy
3-50 adopted under Subsection (a);
3-51 (2) provide training as needed to implement the
3-52 procedures for negotiated rulemaking or alternative dispute
3-53 resolution; and
3-54 (3) collect data concerning the effectiveness of those
3-55 procedures.

3-56 SECTION 9. Subchapter B, Chapter 2054, Government Code, is
3-57 amended by adding Sections 2054.038, 2054.039, and 2054.040 to read
3-58 as follows:

3-59 Sec. 2054.038. INTERNAL AUDITOR; POWERS AND DUTIES. (a)
3-60 The board shall:

3-61 (1) appoint an internal auditor who reports directly
3-62 to the board and serves at the will of the board; and
3-63 (2) provide staff and other resources to the internal
3-64 auditor as appropriate.

3-65 (b) The internal auditor shall prepare an annual audit plan
3-66 using risk assessment techniques to rank high-risk functions in the
3-67 department. The internal auditor shall submit the annual audit
3-68 plan to the board for consideration and approval. The board may
3-69 change the plan as necessary or advisable.

4-1 (c) The internal auditor may bring before the board an issue
4-2 outside of the annual audit plan that requires the immediate
4-3 attention of the board.

4-4 (d) The internal auditor may not be assigned any operational
4-5 or management responsibilities that impair the ability of the
4-6 internal auditor to make an independent examination of the
4-7 department's operations. The internal auditor may provide guidance
4-8 or other advice before an operational or management decision is
4-9 made but may not make the decision, approve the decision, or
4-10 otherwise violate this subsection.

4-11 (e) The department shall give the internal auditor
4-12 unrestricted access to the activities and records of the department
4-13 unless restricted by other law.

4-14 Sec. 2054.039. OPEN MEETINGS EXCEPTION FOR INTERNAL
4-15 AUDITOR. A meeting between the board and the department's internal
4-16 auditor to discuss issues related to fraud, waste, or abuse is not
4-17 required to be an open meeting under Chapter 551.

4-18 Sec. 2054.040. AUDIT SUBCOMMITTEE. (a) The board shall
4-19 maintain an audit subcommittee of the board. The subcommittee
4-20 shall oversee the department's internal auditor and any other audit
4-21 issues that the board considers appropriate.

4-22 (b) The subcommittee shall evaluate whether the internal
4-23 auditor has sufficient resources to perform the auditor's duties
4-24 and ensure that sufficient resources are available.

4-25 SECTION 10. Subchapter B, Chapter 2054, Government Code, is
4-26 amended by adding Section 2054.041 to read as follows:

4-27 Sec. 2054.041. ADDITIONAL BOARD OVERSIGHT. (a) The board
4-28 shall adopt a policy describing the board's role in setting a
4-29 strategic direction for the department. The policy must address
4-30 the board's role in developing new initiatives for and service
4-31 offerings by the department, including requiring the board to
4-32 evaluate and approve new initiatives for, or categories of,
4-33 services offered by the department under the department's various
4-34 programs.

4-35 (b) The board shall regularly evaluate the extent to which
4-36 the department fulfills the department's information resources
4-37 technology mission by providing cost-effective services and
4-38 meeting customer needs.

4-39 (c) The board shall regularly evaluate department
4-40 operations, including an evaluation of analytical data and
4-41 information regarding trends in department revenue and expenses, as
4-42 well as performance information.

4-43 SECTION 11. Subchapter C, Chapter 2054, Government Code, is
4-44 amended by adding Section 2054.0525 to read as follows:

4-45 Sec. 2054.0525. ASSISTANCE TO STATE AGENCIES. The
4-46 department on request shall advise and provide technical assistance
4-47 to a state agency to determine the agency's information resources
4-48 technology needs and to solve the agency's information resources
4-49 technology problems.

4-50 SECTION 12. Section 2054.0565(a), Government Code, is
4-51 amended to read as follows:

4-52 (a) The comptroller [department] may include terms in a
4-53 procurement contract entered into by the comptroller [department],
4-54 including a contract entered into under Section 2157.068, that
4-55 allow the contract to be used by another state agency, a political
4-56 subdivision of this state, a governmental entity of another state,
4-57 or an assistance organization as defined by Section 2175.001.

4-58 SECTION 13. Section 2054.057, Government Code, is amended
4-59 to read as follows:

4-60 Sec. 2054.057. TRAINING IN CONTRACT NEGOTIATION. (a) The
4-61 [department, with the cooperation of the] comptroller and other
4-62 appropriate state agencies[+] shall develop and implement a program
4-63 to train state agency personnel in effectively negotiating
4-64 contracts for the purchase of information resources technologies.

4-65 (b) The comptroller [department] shall make the training
4-66 available to state agency personnel who are directly or indirectly
4-67 involved in contract negotiations, such as senior or operational
4-68 management, purchasers, users of the purchased technologies, and
4-69 personnel with relevant technical, legal, or financial knowledge.

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

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

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

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

(4) other information that the comptroller [department] considers to be useful.

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

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

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

(b) The department shall annually analyze:

(1) the department's staffing needs;

(2) the need for and cost-effectiveness of contracting for consultants and outside staff;

(3) whether the departmental tasks proposed for the

to accomplish tasks proposed for the consultants and outside staff; and

(4) whether and what type of training or additional

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

(c) In conjunction with the budget process, the department shall provide the analysis to the board for approval. The department may not hire or train any consultants or outside staff unless it has been approved during this budget process.

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

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

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

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

(d) The department shall annually report the evaluation results to:

(1) the board;
(2) the Legislative Budget Board; and
(3) the State Auditor.

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

the report required by this section.
SECTION 16. Sections 2054.1015(b), (c), (d), and (e), Government Code, are amended to read as follows:

(b) The comptroller [department] may require a state agency

6-1 to provide [~~to the department~~] a planned procurement schedule for
 6-2 commodity items if the comptroller [~~department~~] determines that the
 6-3 information in the schedule can be used to provide a benefit to the
 6-4 state. If required by the comptroller [~~department~~], a state agency
 6-5 must provide a planned procurement schedule for commodity items to
 6-6 the comptroller and the department before the agency's operating
 6-7 plan may be approved under Section 2054.102.

6-8 (c) The comptroller [~~department~~] shall use information
 6-9 contained in the schedules to plan future vendor solicitations of
 6-10 commodity items or for any other activity that provides a benefit to
 6-11 the state.

6-12 (d) A state agency shall notify the comptroller
 6-13 [~~department~~], the Legislative Budget Board, and the state auditor's
 6-14 office if the agency makes a substantive change to a planned
 6-15 procurement schedule for commodity items.

6-16 (e) The comptroller [~~department~~] shall specify hardware
 6-17 configurations for state commodity items in its instructions for
 6-18 the preparation of planned procurement schedules.

6-19 SECTION 17. Section 2054.122, Government Code, is amended
 6-20 to read as follows:

6-21 Sec. 2054.122. COORDINATED TECHNOLOGY TRAINING. A state
 6-22 agency each calendar quarter shall coordinate agency training for
 6-23 the use of information resources technologies with training offered
 6-24 or coordinated by the department or comptroller. The agency shall
 6-25 use training offered or coordinated by the department or
 6-26 comptroller if it meets agency requirements and is
 6-27 cost-competitive.

6-28 SECTION 18. Section 2054.124, Government Code, is amended
 6-29 to read as follows:

6-30 Sec. 2054.124. POWER MANAGEMENT SOFTWARE. (a) After
 6-31 researching the software available, the comptroller [~~department~~]
 6-32 shall by competitive bid select power management software to be
 6-33 used, if technically feasible, by state agencies to reduce the
 6-34 amount of energy required to operate state computer networks and
 6-35 networked personal computers.

6-36 (b) [~~(c)~~] An institution of higher education shall
 6-37 purchase, lease, or otherwise acquire and use power management
 6-38 software only if the comptroller [~~department~~], in consultation with
 6-39 the Information Technology Council for Higher Education,
 6-40 determines that the institution of higher education's use of power
 6-41 management software would provide cost savings to this state. In
 6-42 making a determination under this subsection, the comptroller
 6-43 [~~department~~] must perform the analysis described by Section
 6-44 2054.121(c) in the same manner as the department under that
 6-45 subsection. The analysis must include an assessment of how the use
 6-46 of power management software affects the security of electronic
 6-47 data, including data protected from public disclosure by state or
 6-48 federal law.

6-49 SECTION 19. Section 2054.376(b), Government Code, is
 6-50 amended to read as follows:

6-51 (b) This subchapter does not apply to:

6-52 (1) the Department of Public Safety's use for criminal
 6-53 justice or homeland security purposes of a federal database or
 6-54 network;

6-55 (2) a Texas equivalent of a database or network
 6-56 described by Subdivision (1) that is managed by the Department of
 6-57 Public Safety;

6-58 (3) the uniform statewide accounting system, as that
 6-59 term is used in Subchapter C, Chapter 2101;

6-60 (4) the state treasury cash and treasury management
 6-61 system; [~~or~~]

6-62 (5) a database or network managed by the comptroller
 6-63 to:

6-64 (A) collect and process multiple types of taxes
 6-65 imposed by the state; or

6-66 (B) manage or administer fiscal, financial,
 6-67 revenue, and expenditure activities of the state under Chapter 403
 6-68 and Chapter 404;

6-69 (6) a database or network managed by the Department of

Agriculture; or (7) a database or network managed by the General Land Office.

SECTION 20. Subchapter L, Chapter 2054, Government Code, is amended by adding Section 2054.392 to read as follows:

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

SECTION 21. Chapter 2054, Government Code, is amended by adding Subchapters N and O to read as follows:

SUBCHAPTER N. MAJOR OUTSOURCED CONTRACTS

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

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

Sec. 2054.502. BOARD APPROVAL AND OVERSIGHT OF MAJOR OUTSOURCED CONTRACTS. (a) The department must receive approval from the board before:

(1) entering into a major outsourced contract; or
(2) amending any major outsourced contract, if the
amendment has significant statewide impact.

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

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

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

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

(d) The department shall revise each management plan:
(1) as necessary to keep current during the
contracting process; and

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

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

SUBCHAPTER O. ADDITIONAL PROVISIONS ON CONTRACTING

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

8-1 Sec. 2054.532. RULES. In addition to the rules adopted
8-2 under Subchapter N for major outsourced contracts, the board by
8-3 rule shall establish approval requirements for all other contracts,
8-4 including a monetary threshold above which board approval is
8-5 required before the contract may be executed.

8-6 Sec. 2054.533. CONFLICT OF INTEREST IN CONTRACTING. (a) A
8-7 department employee may not:

8-8 (1) have an interest in, or in any manner be connected
8-9 with, a contract or bid for a purchase of goods or services by the
8-10 department; or

8-11 (2) in any manner, including by rebate or gift,
8-12 directly or indirectly accept or receive from a person to whom a
8-13 contract may be awarded anything of value or a promise, obligation,
8-14 or contract for future reward or compensation.

8-15 (b) A department employee who violates Subsection (a)(2) is
8-16 subject to dismissal.

8-17 (c) The board shall adopt rules to implement this section.

8-18 (d) The department shall train staff in the requirements of
8-19 this section and Section 572.054 and incorporate the requirements
8-20 into the contract management guide and the department's internal
8-21 policies, including employee manuals.

8-22 Sec. 2054.534. CONTRACT MANAGEMENT TRAINING POLICY. (a)
8-23 The department shall develop a policy for training department staff
8-24 in contract management.

8-25 (b) The policy must establish contract management training
8-26 requirements for all staff involved in contract management,
8-27 including contract managers, program staff, and executive
8-28 management.

8-29 (c) The policy must specify the department's overall
8-30 approach to procuring and managing contracts, as well as
8-31 contract-specific procedures developed in the contract management
8-32 guide and under Subchapter N.

8-33 Sec. 2054.535. CONTRACT MANAGEMENT GUIDE; RULES. (a) The
8-34 department shall develop and periodically update a contract
8-35 management guide to provide an overall, consistent approach on
8-36 procurement and management of major outsourced contracts under
8-37 Subchapter N and other contracts. In updating the guide, the
8-38 department shall make changes based on contract experiences and
8-39 account for changing conditions to guide the updates.

8-40 (b) The department shall coordinate with the department's
8-41 internal auditor, subject to Section 2054.038(d), as needed for
8-42 assistance and guidance in developing procedures in the contract
8-43 management guide for monitoring contracts and individual
8-44 contractors.

8-45 (c) The board may adopt rules necessary to develop or update
8-46 the contract management guide.

8-47 (d) The contract management guide must provide information
8-48 regarding the department's:

8-49 (1) general approach to business case analysis,
8-50 procurement planning, contract solicitation, contract execution,
8-51 and contract monitoring and oversight;

8-52 (2) ethics standards and policies, including those
8-53 required by Section 2054.533; and

8-54 (3) approach to changing a program's internal
8-55 structure or model for delivering services to customers.

8-56 (e) The contract management guide must:

8-57 (1) establish clear lines of accountability, staff
8-58 roles and responsibilities, and decision-making authority for
8-59 program staff, contract management staff, executive management,
8-60 customers, and the board;

8-61 (2) include the procedures established under Section
8-62 2054.504 regarding customer involvement; and

8-63 (3) establish the department's process for evaluating
8-64 and managing risk during each stage of contract procurement,
8-65 implementation, and management.

8-66 (f) The contract management guide must describe the
8-67 expectations and standards for obtaining and using customer input
8-68 during all contract management phases.

8-69 SECTION 22. Sections 2155.502(a), (b), and (c), Government

9-1 Code, are amended to read as follows:

9-2 (a) The comptroller [commission] shall develop a schedule
9-3 of multiple award contracts that have been previously awarded using
9-4 a competitive process by:

9-5 (1) the federal government, including the federal
9-6 General Services Administration; or

9-7 (2) any other governmental entity in any state.

9-8 (b) In developing a schedule under Subsection (a) [~~or (e)~~],
9-9 the comptroller [commission or department, as appropriate] shall
9-10 modify any contractual terms, with the agreement of the parties to
9-11 the contract, as necessary to comply with any federal or state
9-12 requirements, including rules adopted under this subchapter.

9-13 (c) The comptroller [commission] may not list a multiple
9-14 award contract on a schedule developed under Subsection (a) if the
9-15 goods or services provided by that contract:

9-16 (1) are available from only one vendor; or

9-17 (2) are telecommunications services, facilities, or
9-18 equipment [~~, or~~]

9-19 [~~(3) are commodity items as defined by Section~~
9-20 ~~2157.068(a)~~].

9-21 SECTION 23. Section 2155.503, Government Code, is amended
9-22 to read as follows:

9-23 Sec. 2155.503. RULES. (a) The comptroller [~~and the~~
9-24 ~~department~~] shall adopt rules to implement this subchapter. The
9-25 rules must:

9-26 (1) establish standard terms for contracts listed on a
9-27 schedule; and

9-28 (2) maintain consistency with existing purchasing
9-29 standards.

9-30 (b) The comptroller [~~and the department~~] shall consult with
9-31 the attorney general in developing rules under this section.

9-32 SECTION 24. Section 2157.004, Government Code, is amended
9-33 to read as follows:

9-34 Sec. 2157.004. TRANSFERS AND LOANS. A state agency that
9-35 acquires a telecommunications device, system, or service or an
9-36 automated information system by interagency transfer, contract, or
9-37 loan, or by public loan, shall comply with the requirements that
9-38 apply to that acquisition under [eff] Chapter 2054 and this chapter.

9-39 SECTION 25. Section 2157.068, Government Code, is amended
9-40 to read as follows:

9-41 Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY
9-42 COMMODITY ITEMS. (a) In this section, "commodity items" means
9-43 commercial software, hardware, or technology services, other than
9-44 telecommunications services, that are generally available to
9-45 businesses or the public and for which the comptroller [department]
9-46 determines that a reasonable demand exists in two or more state
9-47 agencies. The term includes seat management, through which a state
9-48 agency transfers its personal computer equipment and service
9-49 responsibilities to a private vendor to manage the personal
9-50 computing needs for each desktop in the state agency, including all
9-51 necessary hardware, software, and support services.

9-52 (b) The comptroller [department] shall negotiate with
9-53 vendors to attempt to obtain a favorable price for all of state
9-54 government on licenses for commodity items, based on the aggregate
9-55 volume of purchases expected to be made by the state. The terms and
9-56 conditions of a license agreement between a vendor and the
9-57 comptroller [department] under this section may not be less
9-58 favorable to the state than the terms of similar license agreements
9-59 between the vendor and retail distributors.

9-60 (c) In contracting for commodity items under this section,
9-61 the comptroller [department] shall make good faith efforts to
9-62 provide contracting opportunities for, and to increase contract
9-63 awards to, historically underutilized businesses and persons with
9-64 disabilities' products and services available under Chapter 122,
9-65 Human Resources Code.

9-66 (d) The comptroller [department] may charge a reasonable
9-67 administrative fee to a state agency, political subdivision of this
9-68 state, or governmental entity of another state that purchases
9-69 commodity items through the comptroller [department] in an amount

10-1 that is sufficient to recover costs associated with the
 10-2 administration of this section. The comptroller shall develop a
 10-3 clear procedure for calculating the fee under this subsection,
 10-4 including procedures for review and approval of the fee.

10-5 (e) The comptroller [department] shall compile and maintain
 10-6 a list of commodity items available for purchase through the
 10-7 comptroller [department] that have a lower price than the prices
 10-8 for commodity items otherwise available to state agencies under
 10-9 this chapter. The comptroller [department] shall make the list
 10-10 available on the comptroller's website [world wide web or on a
 10-11 suitable successor to the world wide web if the technological
 10-12 developments involving the Internet make it advisable to do so].

10-13 (f) The comptroller [department] may adopt rules regulating
 10-14 a purchase by a state agency of a commodity item under this section,
 10-15 including a requirement that, notwithstanding other provisions of
 10-16 this chapter, the agency must make the purchase in accordance with a
 10-17 contract developed by the comptroller [department] unless the
 10-18 agency obtains:

10-19 (1) an exemption from the comptroller [department]; or
 10-20 (2) express prior approval from the Legislative Budget
 10-21 Board for the expenditure necessary for the purchase.

10-22 (g) The Legislative Budget Board's approval of a biennial
 10-23 operating plan under Section 2054.102 is not an express prior
 10-24 approval for purposes of Subsection (f)(2). A state agency must
 10-25 request an exemption from the comptroller [department] under
 10-26 Subsection (f)(1) before seeking prior approval from the
 10-27 Legislative Budget Board under Subsection (f)(2).

10-28 (h) The comptroller [department] shall, in cooperation with
 10-29 state agencies, establish guidelines for the classification of
 10-30 commodity items under this section. The comptroller [department]
 10-31 may determine when a statewide vendor solicitation for a commodity
 10-32 item will reduce purchase prices for a state agency.

10-33 (i) Unless the agency has express statutory authority to
 10-34 employ a best value purchasing method other than a purchasing
 10-35 method designated by the comptroller [commission] under Section
 10-36 2157.006(a)(2), a state agency shall use a purchasing method
 10-37 provided by Section 2157.006(a) when purchasing a commodity item
 10-38 if:

10-39 (1) the agency has obtained an exemption from the
 10-40 comptroller [department] or approval from the Legislative Budget
 10-41 Board under Subsection (f); or

10-42 (2) the agency is otherwise exempt from this section.

10-43 SECTION 26. Subchapter B, Chapter 2157, Government Code, is
 10-44 amended by adding Section 2157.0685 to read as follows:

10-45 Sec. 2157.0685. REPORTING OF ADMINISTRATIVE FEES FOR
 10-46 COMMODITY ITEMS. (a) The comptroller shall report to the
 10-47 Legislative Budget Board any administrative fee the comptroller
 10-48 sets under Section 2157.068 for each fiscal year. The report must
 10-49 include the underlying analysis and methodology used to determine
 10-50 the fee amounts.

10-51 (b) The comptroller shall post on the comptroller's website
 10-52 information about the fee, including a description of how the fee is
 10-53 determined. The comptroller must update this information when a
 10-54 contract amendment or other action results in a major change to the
 10-55 costs incurred or the price paid by the comptroller or a customer of
 10-56 the comptroller.

10-57 SECTION 27. Subchapter B, Chapter 2157, Government Code, is
 10-58 amended by adding Section 2157.069 to read as follows:

10-59 Sec. 2157.069. CLEARING FUND ACCOUNT. The comptroller
 10-60 shall establish in the state treasury the clearing fund account.
 10-61 The account is a revolving fund account for the administration of
 10-62 Section 2157.068. The account is the depository for all money
 10-63 received from entities served under that section. Money in the
 10-64 account may be used only to administer that section or for any other
 10-65 purpose specified by the legislature.

10-66 SECTION 28. Section 2157.121, Government Code, is amended
 10-67 to read as follows:

10-68 Sec. 2157.121. ACQUISITION THROUGH COMPETITIVE SEALED
 10-69 PROPOSALS. (a) The comptroller [commission] or other state agency

11-1 may acquire a telecommunications device, system, or service or an
 11-2 automated information system by using competitive sealed proposals
 11-3 if the comptroller [commission] determines that competitive sealed
 11-4 bidding and informal competitive bidding are not practical or are
 11-5 disadvantageous to the state.

11-6 (b) A state agency, other than the department under
 11-7 Subsection (c), shall send its proposal specifications and criteria
 11-8 to the comptroller [commission] for approval or request the
 11-9 comptroller [commission] to develop the proposal specifications
 11-10 and criteria.

11-11 (c) The department may acquire a telecommunications device,
 11-12 system, or service [or an automated information system] by using
 11-13 competitive sealed proposals without regard to whether the
 11-14 comptroller [commission] makes the determination required under
 11-15 Subsection (a) for other state agencies. This subsection applies
 11-16 only to an acquisition under Subchapter H, Chapter 2054, or under
 11-17 Chapter 2170.

11-18 SECTION 29. Section 2157.181(a), Government Code, is
 11-19 amended to read as follows:

11-20 (a) The comptroller [commission, with the concurrence of
 11-21 the department,] may negotiate with vendors preapproved terms and
 11-22 conditions to be included in contracts relating to the purchase or
 11-23 lease of [a telecommunication device, system, or service or] an
 11-24 automated information system awarded to a vendor by a state agency.

11-25 SECTION 30. Section 2157.182, Government Code, is amended
 11-26 to read as follows:

11-27 Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND
 11-28 CONDITIONS; RENEGOTIATION. (a) Preapproved terms and conditions
 11-29 to which a vendor, [the commission], and the comptroller
 11-30 [department] agree are valid for two years after the date of the
 11-31 agreement and must provide that the terms and conditions are to be
 11-32 renegotiated before the end of the two years.

11-33 (b) The comptroller [commission and the department jointly]
 11-34 shall establish procedures to ensure that terms and conditions are
 11-35 renegotiated before they expire in a contract between the vendor
 11-36 and a state agency.

11-37 SECTION 31. Section 2157.184, Government Code, is amended
 11-38 to read as follows:

11-39 Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS.
 11-40 The comptroller [commission and the department jointly] shall
 11-41 establish procedures to notify state agencies and potential vendors
 11-42 of the provisions of this subchapter regarding preapproved terms
 11-43 and conditions.

11-44 SECTION 32. Sections 2054.024(c), 2155.501(1),
 11-45 2155.502(e), 2157.0611, and 2157.181(b), Government Code, are
 11-46 repealed.

11-47 SECTION 33. (a) Not later than September 1, 2011, the
 11-48 governor shall appoint the initial members of the governing board
 11-49 of the Department of Information Resources under Section 2054.021,
 11-50 Government Code, as amended by this Act. The governor shall
 11-51 appoint:

11-52 (1) two members whose terms expire February 1, 2013;
 11-53 (2) two members whose terms expire February 1, 2015;
 11-54 and

11-55 (3) three members whose terms expire February 1, 2017.

11-56 (b) The terms of the current members of the board expire
 11-57 September 1, 2011.

11-58 SECTION 34. (a) Not later than September 1, 2011, the
 11-59 first group of ex officio members shall begin serving or be
 11-60 appointed under Section 2054.021(c), Government Code, as amended by
 11-61 this Act.

11-62 (b) The governor shall appoint to the first group an ex
 11-63 officio member from a state agency with fewer than 100 employees
 11-64 under Section 2054.021(c), Government Code, as amended by this Act.
 11-65 When that member is appointed, the term of the executive director of
 11-66 the Texas Department of Transportation expires.

11-67 (c) The commissioner of insurance and the executive
 11-68 commissioner of the Health and Human Services Commission shall
 11-69 continue to serve in the first group under Section 2054.021(c),

12-1 Government Code, as amended by this Act, until February 1, 2013.

12-2 SECTION 35. (a) In this section, "department" means the
12-3 Department of Information Resources.

12-4 (b) On the effective date of this Act, the powers and duties
12-5 of the department under Section 2157.068, Government Code, or other
12-6 law relating to information and communications technology
12-7 cooperative contracts are transferred to the comptroller.

12-8 (c) The department shall work in cooperation with and at the
12-9 direction of the comptroller to facilitate the transfer described
12-10 by this section.

12-11 (d) A rule, form, policy, procedure, or decision of the
12-12 department that is related to a power or duty transferred under
12-13 Subsection (b) of this section continues in effect as a rule, form,
12-14 policy, procedure, or decision of the comptroller until superseded
12-15 by an act of the comptroller.

12-16 (e) A court case, administrative proceeding, contract
12-17 negotiation, or other proceeding involving the department that is
12-18 related to a power or duty transferred under Subsection (b) of this
12-19 section is transferred without change in status to the comptroller,
12-20 and the comptroller assumes, without a change in status, the
12-21 position of the department in a negotiation or proceeding relating
12-22 to a power or duty transferred under Subsection (b) of this section
12-23 to which the department is a party.

12-24 (f) All department employees who primarily perform duties
12-25 related to a power or duty transferred under Subsection (b) of this
12-26 section, including employees who provide administrative support
12-27 for those powers or duties, are transferred to the office of the
12-28 comptroller. A management employee of the department who is
12-29 transferred to the office of the comptroller under this section
12-30 does not automatically continue to hold the person's management
12-31 position. To hold the management position on other than an interim
12-32 basis, the person must apply for the position with the comptroller.

12-33 (g) All personal property, including records, in the
12-34 custody of the department related to a power or duty transferred
12-35 under Subsection (b) of this section is transferred to and becomes
12-36 the property of the comptroller.

12-37 (h) All contracts, memoranda of understanding, leases, and
12-38 rights of the department related to a power or duty transferred
12-39 under Subsection (b) of this section are transferred to the
12-40 comptroller.

12-41 (i) All money appropriated by the legislature to the
12-42 department related to a power or duty transferred under Subsection
12-43 (b) of this section, including money for providing administrative
12-44 support, is transferred to the comptroller.

12-45 SECTION 36. A contract transferred under Section 35 of this
12-46 Act may not be canceled by the comptroller except as provided by the
12-47 terms of the contract.

12-48 SECTION 37. Sections 2054.502 and 2054.533, Government
12-49 Code, as added by this Act, apply only to a contract for which a
12-50 solicitation of bids or proposals or similar expressions of
12-51 interest is published on or after September 1, 2011. A contract for
12-52 which a solicitation of bids or proposals or similar expressions of
12-53 interest is published before September 1, 2011, is governed by the
12-54 law in effect on the date the state agency first publishes the
12-55 solicitation of bids or proposals or similar expressions of
12-56 interest, and the former law is continued in effect for that
12-57 purpose.

12-58 SECTION 38. This Act takes effect September 1, 2011.

12-59 * * * * *