

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

- 2-1 ~~legislation that created the department and its policymaking body]~~
- 2-2 to which the person is appointed to serve;
- 2-3 (2) the programs operated by the department;
- 2-4 (3) the role and functions of the department;
- 2-5 (4) the rules of the department, with an emphasis on
- 2-6 the rules that relate to disciplinary and investigatory authority;
- 2-7 (5) the current budget for the department;
- 2-8 (6) the results of the most recent formal audit of the
- 2-9 department;
- 2-10 (7) the requirements of the:
- 2-11 (A) open meetings law, Chapter 551;
- 2-12 (B) open records law, Chapter 552; and
- 2-13 (C) administrative procedure law, Chapter 2001;
- 2-14 (8) the requirements of the conflict of interest laws
- 2-15 and other laws relating to public officials; ~~and]~~
- 2-16 (9) any applicable ethics policies adopted by the
- 2-17 department or the Texas Ethics Commission; and
- 2-18 (10) contract management training.

2-19 (h) A person appointed to the board under Subsection (a) is

2-20 entitled to reimbursement for travel expenses incurred in attending

2-21 the training program, as provided by the General Appropriations Act

2-22 and as if the person were a member of the board.

2-23 SECTION 4. Section 2054.022(c), Government Code, is amended

2-24 to read as follows:

2-25 (c) An employee of the department, other than the executive

2-26 director, ~~[+]~~

2-27 ~~[(1) may not participate in the department's bidding~~

2-28 ~~process, including the proposal development related to a contract~~

2-29 ~~and the negotiation of a contract, if:~~

- 2-30 ~~[(A) the employee receives more than five percent~~
- 2-31 ~~of the employee's income from any likely bidder on the contract; or~~
- 2-32 ~~[(B) the employee's spouse is employed by any~~
- 2-33 ~~likely bidder on the contract; and~~

2-34 ~~[(2)]~~ may not:

2-35 (1) ~~[(A)]~~ be a person required to register as a

2-36 lobbyist under Chapter 305 because of the person's activities for

2-37 compensation on behalf of a business entity that has, or on behalf

2-38 of a trade association of business entities that have, a

2-39 substantial interest in the information resources technologies

2-40 industry; or

2-41 (2) ~~[(B)]~~ be employed by a state agency as a

2-42 consultant on information resources technologies.

2-43 SECTION 5. Section 2054.0285(b), Government Code, is

2-44 amended to read as follows:

2-45 (b) The executive director has authority for certain ~~[all]~~

2-46 aspects of information technology for state agencies, including:

- 2-47 (1) the use of technology to support state goals;
- 2-48 (2) functional support to state agencies;
- 2-49 (3) ~~[technology purchases,~~
- 2-50 ~~[(4)]~~ deployment of new technology;
- 2-51 (4) ~~[(5)]~~ delivery of technology services; and
- 2-52 (5) ~~[(6)]~~ provision of leadership on technology

2-53 issues.

2-54 SECTION 6. Subchapter B, Chapter 2054, Government Code, is

2-55 amended by adding Section 2054.0331 to read as follows:

2-56 Sec. 2054.0331. CUSTOMER ADVISORY COMMITTEE. (a) The

2-57 board shall appoint a customer advisory committee under Section

2-58 2054.033.

2-59 (b) The advisory committee is composed of customers who

2-60 receive services from each of the department's key programs and of

2-61 members of the public, including at least:

- 2-62 (1) one member representing a state agency with fewer
- 2-63 than 100 employees;
- 2-64 (2) one member appointed by the Information Technology
- 2-65 Council for Higher Education; and
- 2-66 (3) one public member.

2-67 (c) The advisory committee shall report to and advise the

2-68 board on the status of the department's delivery of critical

2-69 statewide services.

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[7] 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.

5-1 (c) The comptroller [~~department~~] shall include in the
5-2 training:
5-3 (1) information on developing a structured purchasing
5-4 method that meets an agency's needs;
5-5 (2) information drawn from the state's previous
5-6 procurement experience about what is or is not advantageous for the
5-7 state;
5-8 (3) the perspective of state agencies with oversight
5-9 responsibilities related to the state's procurement of information
5-10 resources technologies; and
5-11 (4) other information that the comptroller
5-12 [~~department~~] considers to be useful.

5-13 (d) The comptroller [~~department~~] may use its own staff or
5-14 contract with private entities or other state agencies to conduct
5-15 the training.

5-16 SECTION 14. Subchapter C, Chapter 2054, Government Code, is
5-17 amended by adding Section 2054.061 to read as follows:

5-18 Sec. 2054.061. USE OF CONSULTANTS AND OUTSIDE STAFF. (a)
5-19 The department shall develop clear criteria for the appropriate use
5-20 of consultants and outside staff by the department to temporarily
5-21 augment the department's existing staff.

5-22 (b) The department shall annually analyze:
5-23 (1) the department's staffing needs;
5-24 (2) the need for and cost-effectiveness of contracting
5-25 for consultants and outside staff;

5-26 (3) whether the department could use department staff
5-27 to accomplish tasks proposed for the consultants and outside staff;
5-28 and

5-29 (4) whether and what type of training or additional
5-30 resources are necessary for the department to use the department's
5-31 own staff to accomplish tasks proposed for the consultants or
5-32 outside staff.

5-33 (c) In conjunction with the budget process, the department
5-34 shall provide the analysis to the board for approval. The
5-35 department may not hire or train any consultants or outside staff
5-36 unless it has been approved during this budget process.

5-37 SECTION 15. Subchapter C, Chapter 2054, Government Code, is
5-38 amended by adding Section 2054.062 to read as follows:

5-39 Sec. 2054.062. INFORMATION RESOURCES TECHNOLOGIES
5-40 CONSOLIDATION. (a) The department shall develop a consistent and
5-41 clear method of measuring the costs and progress of an information
5-42 resources technology consolidation initiative, including a
5-43 consolidation under Subchapter L.

5-44 (b) The department shall work with any entity involved in an
5-45 information resources technology consolidation to develop an
5-46 agreed on methodology for collecting and validating data to
5-47 determine a baseline assessment of costs. The department shall use
5-48 the data both in the department's initial cost projections and in
5-49 any later cost comparison. The department shall coordinate with
5-50 the internal auditor for guidance, subject to Section 2054.038(d),
5-51 on developing a methodology that provides an objective assessment
5-52 of costs and project status.

5-53 (c) Using the methodology agreed on under Subsection (b),
5-54 the department shall evaluate actual costs and cost savings related
5-55 to the consolidation. The department shall also evaluate the
5-56 progress of the department's information resources consolidation
5-57 projects compared to the initially projected timelines for
5-58 implementation. The evaluation results must break out the
5-59 information on both statewide and individual entity levels.

5-60 (d) The department shall annually report the evaluation
5-61 results to:

5-62 (1) the board;
5-63 (2) the Legislative Budget Board; and
5-64 (3) customers involved in the consolidation.

5-65 (e) The department shall post on the department's website
5-66 the report required by this section.

5-67 SECTION 16. Sections 2054.1015(b), (c), (d), and (e),
5-68 Government Code, are amended to read as follows:

5-69 (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

7-1 Agriculture; or
7-2 (7) a database or network managed by the General Land
7-3 Office.

7-4 SECTION 20. Subchapter L, Chapter 2054, Government Code, is
7-5 amended by adding Section 2054.392 to read as follows:

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

7-14 SECTION 21. Chapter 2054, Government Code, is amended by
7-15 adding Subchapters N and O to read as follows:

7-16 SUBCHAPTER N. MAJOR OUTSOURCED CONTRACTS

7-17 Sec. 2054.501. MAJOR OUTSOURCED CONTRACT DEFINED; RULE.
7-18 The board by rule shall define what constitutes a major outsourced
7-19 contract with regard to contracts the department executes with
7-20 entities other than this state or a political subdivision of this
7-21 state. The definition must include as a major outsourced contract:

7-22 (1) outsourced contracts entered into under
7-23 Subchapter I and Subchapter L of this chapter or Chapter 2170; and

7-24 (2) contracts that exceed a monetary threshold, other
7-25 than those described by Subdivision (1).

7-26 Sec. 2054.502. BOARD APPROVAL AND OVERSIGHT OF MAJOR
7-27 OUTSOURCED CONTRACTS. (a) The department must receive approval
7-28 from the board before:

7-29 (1) entering into a major outsourced contract; or

7-30 (2) amending any major outsourced contract, if the
7-31 amendment has significant statewide impact.

7-32 (b) The board shall establish one or more subcommittees to
7-33 monitor the department's major outsourced contracts.

7-34 Sec. 2054.503. MANAGEMENT PLANS FOR MAJOR OUTSOURCED
7-35 CONTRACTS. (a) The department shall specify procedures for
7-36 administering, monitoring, and overseeing each major outsourced
7-37 contract by creating a management plan for each contract. In each
7-38 management plan, the department shall specify the department's
7-39 approach to managing and mitigating the risks inherent in each
7-40 contract.

7-41 (b) Department staff who perform contract administration
7-42 and program duties shall jointly develop the management plans with
7-43 input from executive management and the board. Each management plan
7-44 must be approved by the executive director.

7-45 (c) Each management plan must establish clear lines of
7-46 accountability and coordination of contract activities. The plan
7-47 must provide details about implementing the program that is the
7-48 subject of the contract as well as procedures for monitoring
7-49 contractor performance, identifying and mitigating risks related
7-50 to the contract, and involving and communicating with customers who
7-51 will be served by any programs implemented through the contract. As
7-52 appropriate, the plan must define an approach for transitioning
7-53 from one major outsourced contract to another major outsourced
7-54 contract.

7-55 (d) The department shall revise each management plan:

7-56 (1) as necessary to keep current during the
7-57 contracting process; and

7-58 (2) when the department renews, amends, or resolicits
7-59 a major outsourced contract to ensure the plan remains updated and
7-60 incorporates any changes resulting from a new contract.

7-61 Sec. 2054.504. CUSTOMER INVOLVEMENT IN MAJOR OUTSOURCED
7-62 CONTRACTS. The department shall establish formal procedures to
7-63 ensure customer involvement in decision making regarding each of
7-64 the department's major outsourced contracts, including initial
7-65 analysis, solicitation development, and contract award and
7-66 implementation, that affect those customers.

7-67 SUBCHAPTER O. ADDITIONAL PROVISIONS ON CONTRACTING

7-68 Sec. 2054.531. DEFINITION. In this subchapter, "contract
7-69 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 [of] 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 * * * * *