

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 12, 2015

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB20 by Nelson (Relating to state agency contracting; authorizing fees; creating an offense.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB20, Committee Report 2nd House, Substituted: a negative impact of (\$4,817,212) through the biennium ending August 31, 2017.

In addition to cost shown above, there would be an indeterminate fiscal impact for activities related to vendor performance tracking system. Depending on rules adopted by the Comptroller, the cost may be significant.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	(\$2,633,606)
2017	(\$2,183,606)
2018	(\$888,000)
2019	(\$888,000)
2020	(\$888,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund	Change in Number of State Employees from FY 2015
1		
2016	(\$2,633,606)	10.0
2017	(\$2,183,606)	10.0
2018	(\$888,000)	10.0
2019	(\$888,000)	10.0
2020	(\$888,000)	10.0

Fiscal Analysis

The bill would amend the Government Code to require the State Auditor's Office to consider auditing contracts entered by the Health and Human Services Commission that exceed \$100 million in annual value.

The bill would require the Comptroller of Public Accounts (CPA), in cooperation with the Governor's budget and policy staff, to conduct a study examining the feasibility and practicality of consolidating state purchasing functions and reducing the number of vendors authorized to contract with the state.

The bill would amend the Government Code to require agencies to retain records related to contracts for at least seven years after the expiration of the contract.

The bill would create a Class A misdemeanor for the employment of former state employees and officers within the first two years after state employment if those employees participated as a decision maker or an evaluation team member in a procurement related to the hiring entity.

The bill would amend the Government Code to specify that purchasing information reported by state agencies in the statewide uniform accounting system should include solicitation and contracting information, as defined by CPA.

The bill would require institutions of higher education to participate in the training and certification process offered by CPA to state agencies.

The bill would require agencies to submit a certain number of requests for pricing on purchases made through multiple award contract schedules at CPA and the Department of Information Resources (DIR) depending on the value of the goods, services, and contracts. Agencies would be prohibited from making purchases for services in a single fiscal year in excess of \$1 million under a single contract in a multiple award schedule. Agencies would also be required to receive approval for statements of work on DIR information technology commodity contracts worth more than \$50,000.

The bill would amend the Government Code to allow CPA to contract with entities that administer cooperative purchasing programs and agreements.

The bill would require agencies to comply with certain reporting requirements for each contract with a value exceeding \$1 million, and to comply with certain additional requirements for each contract with a value exceeding \$5 million. Agencies would be required to develop a risk analysis procedure and identify certain types of contracts for enhanced contract or performance monitoring. The bill would also require agencies, including the Texas Department of Transportation (TxDOT), to post online a list of the contracts the entities have entered along with the statutory authorities and request for proposals associated with the procurements.

The bill would amend the Government Code to require agencies to use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the system. CPA would be required to develop an evaluation process to rate vendors on an "A" through "F" scale; agencies would be prohibited from procuring from vendors that received a grade lower than a "C" from CPA. The tracking system would be accessible to the public on CPA's website. Additionally, CPA would be required to bar vendors from participating in state contracts if more than two contracts between the vendor and the state have been terminated by the state.

Methodology

According to CPA, the new debarment and vendor rating requirements will likely lead to significant protests and litigation. The costs associated with these protests and litigation will depend on agency performance evaluations of vendors and the evaluation criteria developed by CPA. Therefore, the potential cost impact of vendor protests and litigation cannot be determined at this time. Given the large number of vendors that hold contracts with the state, the costs could be significant. Likewise, the potential fiscal impacts on state agencies from prohibiting certain vendors from participating in contracts cannot be determined at this time but could be significant.

This estimate assumes CPA would incur additional administrative costs of \$1.8 million in General Revenue to hire 10.0 FTEs in the 2016-17 biennium for legal support for new procurements, ensuring compliance with procurement requirements, and rating vendors in the vendor performance tracking system. Additionally, the CPA would also incur costs of \$0.45 million in General Revenue in 2016-17 to contract for assistance to study state procurement.

TxDOT estimates a cost in the 2016-17 biennium to develop a system for identifying and hosting 50,000 contracts on its website annually. This analysis assumes that on-going business costs to maintain this system in fiscal year 2018 and beyond could be absorbed by the agency using existing resources.

In addition to the costs reported by the CPA, both institutions of higher education and state agencies reported some costs associated with implementation of the provisions of the bill, including the verification of contract monitoring information provided by contractors, developing and implementing a risk analysis procedure to identify contracts that require enhanced contract and performance monitoring, and the additional reporting requirements. For purposes of this fiscal note, it assumed that these costs are not significant and could be absorbed by the institutions and agencies.

DIR estimates there would be a cost associated with implementing provisions of the bill including reviewing statements of work for information technology commodity purchases over \$50,000. It is anticipated that these cost could be absorbed within existing resources. The agency also anticipates a loss of revenue out of appropriated receipts generated from administrative fees charged to customers of DIR's cooperative contracts program due to the \$1 million cap on contracts offered through the program. The agency anticipates that administrative fees would be increased to offset the loss of revenue from purchases through the program. To the extent administrative fees are not increased, there would likely be a reduction in FTEs at DIR.

Local Government Impact

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution, and confinement could likely be absorbed with existing resources. Revenue from fines imposed and collected is not anticipated to have a significant fiscal impact.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 303 Facilities Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 313 Department of Information Resources, 320 Texas Workforce Commission, 323 Teacher Retirement System, 327 Employees Retirement System, 405 Department of Public Safety, 454 Department of

Insurance, 529 Health and Human Services Commission, 580 Water Development Board, 582 Commission on Environmental Quality, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration, 301 Office of the Governor, 450 Department of Savings and Mortgage Lending, 720 The University of Texas System Administration

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