

By: Price, Cook, Raymond, Hunter, Kuempel H.B. No. 3241

Substitute the following for H.B. No. 3241:

By: Cook C.S.H.B. No. 3241

A BILL TO BE ENTITLED

1 AN ACT

2 relating to state agency contracting; creating an offense.

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

4 SECTION 1. Section 321.013, Government Code, is amended by
5 adding Subsections (k) and (l) to read as follows:

6 (k) In devising the audit plan under Subsection (c), the
7 State Auditor shall consider the performance of audits on contracts
8 entered into by the Health and Human Services Commission that
9 exceed \$100 million in annual value, including a contract between
10 the commission and a managed care organization. The State Auditor
11 shall collaborate with the financial managers in the Medicaid/CHIP
12 Division of the commission in performing an audit described by this
13 subsection. An audit described by this subsection:

14 (1) may be limited in scope to target an area of the
15 contract that the State Auditor determines poses the highest
16 financial risk to this state; and

17 (2) must determine whether the entity contracting with
18 the commission has spent state money in accordance with the
19 purposes authorized in the contract.

20 (1) The State Auditor may contract with a private auditor to
21 audit a contract under Subsection (k).

22 SECTION 2. Subchapter B, Chapter 403, Government Code, is
23 amended by adding Section 403.03057 to read as follows:

24 Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

1 (a) The comptroller, in cooperation with the governor's budget and
2 policy staff, shall conduct a study examining the feasibility and
3 practicality of consolidating state purchasing functions into
4 fewer state agencies or one state agency. The study must examine
5 the cost savings to this state that may be achieved through:

6 (1) abolishing offices or departments of state
7 agencies that have a dedicated office or department for purchasing;
8 and

9 (2) consolidating or reducing the number of vendors
10 authorized to contract with this state to allow this state to better
11 leverage its purchasing power.

12 (b) The comptroller shall prepare and deliver to the
13 governor, the lieutenant governor, and each member of the
14 legislature a report on the findings of the study conducted under
15 Subsection (a), including:

16 (1) a detailed projection of expected savings or costs
17 to this state in consolidating state purchasing;

18 (2) a report on the process for the legislature or the
19 executive branch to implement the consolidation of state
20 purchasing;

21 (3) a list of state agencies, including dedicated
22 offices or departments in those agencies, with purchasing
23 responsibilities; and

24 (4) the total cost to this state of the purchasing
25 responsibilities for each state agency, including the dedicated
26 office or department in the agency with purchasing responsibility.

27 (c) The comptroller shall prepare, deliver, and post on the

1 comptroller's Internet website the report required by this section
2 not later than December 31, 2016.

3 (d) This section expires January 1, 2018.

4 SECTION 3. Subchapter L, Chapter 441, Government Code, is
5 amended by adding Section 441.1855 to read as follows:

6 Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS
7 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a
8 state agency:

9 (1) shall retain in its records each contract entered
10 into by the state agency and all contract solicitation documents
11 related to the contract; and

12 (2) may destroy the contract and documents only after
13 the fourth anniversary of the date the contract is completed or
14 expires.

15 SECTION 4. Subchapter C, Chapter 572, Government Code, is
16 amended by adding Section 572.069 to read as follows:

17 Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER
18 OR EMPLOYEE RESTRICTED; CRIMINAL PENALTY. (a) A former state
19 officer or employee of a state agency who during the period of state
20 service or employment participated on behalf of a state agency in a
21 procurement or contract negotiation involving a person may not
22 accept employment from that person before the second anniversary of
23 the date the officer's or employee's service or employment with the
24 state agency ceased.

25 (b) An individual commits an offense if the individual
26 violates this section. An offense under this subsection is a Class
27 A misdemeanor.

1 SECTION 5. Section 2101.001(1), Government Code, is amended
2 to read as follows:

3 (1) "Enterprise resource planning" includes the
4 administration of a state agency's:

5 (A) general ledger;

6 (B) accounts payable;

7 (C) accounts receivable;

8 (D) budgeting;

9 (E) inventory;

10 (F) asset management;

11 (G) billing;

12 (H) payroll;

13 (I) projects;

14 (J) grants;

15 (K) human resources, including administration of
16 performance measures, time spent on tasks, and other personnel and
17 labor issues; and

18 (L) purchasing, including solicitations and
19 contracting.

20 SECTION 6. Section 2101.035, Government Code, is amended by
21 adding Subsection (i) to read as follows:

22 (i) State agencies shall report contract and purchasing
23 information in the uniform manner required by the comptroller.

24 SECTION 7. Section 2101.036, Government Code, is amended by
25 adding Subsection (e) to read as follows:

26 (e) Notwithstanding Subsection (d), a state agency in the
27 legislative branch may elect to participate in the enterprise

1 resource planning system developed under this section.

2 SECTION 8. Section 2155.078, Government Code, is amended by
3 amending Subsections (a) and (b) and adding Subsection (a-1) to
4 read as follows:

5 (a) The commission shall establish and administer a system
6 of training, continuing education, and certification for state
7 agency purchasing personnel. The training and continuing education
8 for state agency purchasing personnel must include ethics training.

9 The commission may establish and offer appropriate training to
10 vendors on a cost recovery basis. The commission may adopt rules to
11 administer this section, including rules relating to monitoring a
12 certified purchaser's compliance with the continuing education
13 requirements of this section.

14 (a-1) The training, continuing education, and certification
15 required under Subsection (a) must include:

16 (1) training on the selection of an appropriate
17 procurement method by project type; and

18 (2) training conducted by the Department of
19 Information Resources on purchasing technologies.

20 (b) Notwithstanding [Except as provided by] Subsection (n),
21 all state agency purchasing personnel, including agencies exempted
22 from the purchasing authority of the commission, must receive the
23 training and continuing education to the extent required by rule of
24 the commission. The training and continuing education must include
25 ethics training. A state agency employee who is required to receive
26 the training may not participate in purchases by the employing
27 agency unless the employee has received the required training or

1 received equivalent training from a national association
2 recognized by the commission. The equivalent training may count,
3 as provided by Subsection (k), toward the continuing education
4 requirements.

5 SECTION 9. Subchapter B, Chapter 2155, Government Code, is
6 amended by adding Sections 2155.089 and 2155.090 to read as
7 follows:

8 Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a
9 contract is completed or otherwise terminated, each state agency
10 shall review the vendor's performance under the contract.

11 (b) The state agency shall report to the comptroller, using
12 the tracking system described by Section 2155.090, on the results
13 of the review regarding a vendor's performance under a contract.

14 (c) This section does not apply to an enrollment contract
15 described by 1 T.A.C. Section 391.183 as that section existed on
16 September 1, 2015.

17 Sec. 2155.090. VENDOR PERFORMANCE TRACKING SYSTEM.

18 (a) The comptroller shall evaluate a vendor's performance based on
19 the information reported under Section 2155.089 and criteria
20 established by the comptroller.

21 (b) The comptroller shall establish an evaluation process
22 that allows vendors who receive an unfavorable performance review
23 to protest any classification given by the comptroller.

24 (c) The comptroller shall include the performance reviews
25 in a vendor performance tracking system.

26 (d) A state agency may use the vendor performance tracking
27 system to determine whether to award a contract to a vendor reviewed

1 in the database.

2 (e) The comptroller shall make the vendor performance
3 tracking system accessible to the public on the comptroller's
4 Internet website.

5 SECTION 10. Subchapter I, Chapter 2155, Government Code, is
6 amended by adding Section 2155.5035 to read as follows:

7 Sec. 2155.5035. USE OF SCHEDULE BY STATE AGENCY. (a) A
8 state agency purchasing goods or services under a contract listed
9 on the schedule:

10 (1) for a purchase with a value of \$50,000 or less, may
11 directly award a contract to a vendor included on the schedule
12 without submission of a request for pricing to other vendors on the
13 list;

14 (2) for a purchase with a value of more than \$50,000
15 but not more than \$150,000, shall submit a request for pricing to at
16 least three vendors included on the schedule in the category to
17 which the purchase relates;

18 (3) for a purchase with a value of more than \$150,000
19 but not more than \$1 million, shall submit a request for pricing to
20 at least six vendors included on the schedule in the category to
21 which the purchase relates or all vendors on the schedule if the
22 category has fewer than six vendors; and

23 (4) may not purchase under the contract goods or
24 services that have a total value exceeding \$1 million.

25 (b) The price listed for a good or service under a multiple
26 award contract is a maximum price. A state agency may negotiate a
27 lower price for goods or services under a contract listed on a

1 schedule developed under this chapter.

2 SECTION 11. Section 2155.504, Government Code, is amended
3 to read as follows:

4 Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES.

5 (a) A ~~state agency or~~ local government may purchase goods or
6 services directly from a vendor under a contract listed on a
7 schedule developed under this subchapter. A purchase authorized by
8 this section satisfies any requirement of state law relating to
9 competitive bids or proposals and satisfies any applicable
10 requirements of Chapter 2157.

11 (b) The price listed for a good or service under a multiple
12 award contract is a maximum price. A ~~An agency or~~ local
13 government may negotiate a lower price for goods or services under a
14 contract listed on a schedule developed under this subchapter.

15 SECTION 12. Section 2157.068, Government Code, is amended
16 by adding Subsections (e-1) and (e-2) to read as follows:

17 (e-1) A state agency contracting to purchase a commodity
18 item shall use the list maintained as required by Subsection (e) as
19 follows:

20 (1) for a contract with a value of \$50,000 or less, the
21 agency may directly award the contract to a vendor included on the
22 list without submission of a request for pricing to other vendors on
23 the list;

24 (2) for a contract with a value of more than \$50,000
25 but not more than \$150,000, the agency must submit a request for
26 pricing to at least three vendors included on the list in the
27 category to which the contract relates; and

1 (3) for a contract with a value of more than \$150,000
2 but not more than \$1 million, the agency must submit a request for
3 pricing to at least six vendors included on the list in the category
4 to which the contract relates or all vendors on the schedule if the
5 category has fewer than six vendors.

6 (e-2) A state agency may not enter into a contract to
7 purchase a commodity item if the value of the contract exceeds \$1
8 million.

9 SECTION 13. Subchapter B, Chapter 2157, Government Code, is
10 amended by adding Section 2157.0685 to read as follows:

11 Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN
12 SERVICES. (a) In this section, "statement of work" means a
13 document that states the requirements for a contract, including
14 deliverables, performance specifications, and other requirements,
15 specific to the vendor under that contract that are not specified in
16 a contract awarded by the department under Section 2157.068 for
17 contracts more than \$50,000.

18 (b) For a contract awarded by the department under Section
19 2157.068 that requires a state agency to develop and execute a
20 statement of work to initiate services under the contract, the
21 state agency must:

22 (1) consult with the department before submission of
23 the statement of work to a vendor; and

24 (2) post each statement of work entered into by the
25 agency on the agency's Internet website in the manner required by
26 department rule.

27 (c) A statement of work executed by a state agency under a

1 contract awarded by the department under Section 2157.068 is not
2 valid and money may not be paid to the vendor under the terms of the
3 statement of work unless the department first signs the statement
4 of work.

5 SECTION 14. Subchapter Z, Chapter 2252, Government Code, is
6 amended by adding Section 2252.9011 to read as follows:

7 Sec. 2252.9011. EMPLOYMENT OF OR CONTRACTS WITH FORMER OR
8 RETIRED PRIVATE VENDOR EMPLOYEES. A state agency may not hire, or
9 enter into an employment contract, a professional services contract
10 under Chapter 2254, or a consulting services contract under Chapter
11 2254 with, an individual who is a former or retired employee of a
12 private vendor under which the individual will perform services for
13 the agency related to the individual's former duties for the vendor
14 for which the vendor contracted with the agency before the second
15 anniversary of the last date on which the individual was employed by
16 the private vendor.

17 SECTION 15. Section 2261.001(a), Government Code, is
18 amended to read as follows:

19 (a) This chapter, other than Subchapter F, applies only to
20 each procurement of goods or services made by a state agency that is
21 neither made by the comptroller nor made under purchasing authority
22 delegated to the agency by or under Section 51.9335 or 73.115,
23 Education Code, or Section 2155.131 or 2155.132.

24 SECTION 16. Chapter 2261, Government Code, is amended by
25 adding Subchapter F to read as follows:

1 SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR
2 CERTAIN CONTRACTS

3 Sec. 2261.251. APPLICABILITY OF SUBCHAPTER.

4 Notwithstanding Section 2261.001, this subchapter applies to the
5 Texas Department of Transportation and to an institution of higher
6 education acquiring goods or services under Section 51.9335 or
7 73.115, Education Code.

8 Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF

9 INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency
10 employee or official who is involved in procurement or in contract
11 management for a state agency shall disclose to the agency any
12 potential conflict of interest specified by state law or agency
13 policy that is known by the employee or official with respect to any
14 contract with a private vendor or bid for the purchase of goods or
15 services from a private vendor by the agency.

16 (b) A state agency may not enter into a contract for the
17 purchase of goods or services with a private vendor with whom any of
18 the following agency employees or officials have a financial
19 interest:

20 (1) a member of the agency's governing body;

21 (2) the governing official, executive director,
22 general counsel, chief procurement officer, or procurement
23 director of the agency; or

24 (3) a family member related to an employee or official
25 described by Subdivision (1) or (2) within the second degree by
26 affinity or consanguinity.

27 (c) A state agency employee or official has a financial

1 interest in a person if the employee or official:

2 (1) owns or controls, directly or indirectly, an
3 ownership interest of at least one percent in the person, including
4 the right to share in profits, proceeds, or capital gains; or
5 (2) could reasonably foresee that a contract with the
6 person could result in a financial benefit to the employee or
7 official.

8 (d) A financial interest prohibited by this section does not
9 include a retirement plan, a blind trust, insurance coverage, or an
10 ownership interest of less than one percent in a corporation.

11 Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS;
12 ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each
13 contract for the purchase of goods or services from a private
14 vendor, each state agency shall post on its Internet website:

15 (1) each contract the agency enters into, including
16 contracts entered into without inviting, advertising for, or
17 otherwise requiring competitive bidding before selection of the
18 contractor, until the contract expires or is completed;

19 (2) the statutory or other authority under which a
20 contract that is not competitively bid under Subdivision (1) is
21 entered into without compliance with competitive bidding
22 procedures; and

23 (3) the request for proposals related to a
24 competitively bid contract included under Subdivision (1) until the
25 contract expires or is completed.

26 (b) A state agency monthly may post contracts described by
27 Subsection (a) that are valued at less than \$15,000.

1 (c) Each state agency by rule shall establish a procedure to
2 identify each contract that requires enhanced contract or
3 performance monitoring and submit information on the contract to
4 the agency's governing body or, if the agency is not governed by a
5 multimember governing body, the officer who governs the agency.
6 The agency's contract management office or procurement director
7 shall immediately notify the agency's governing body or governing
8 official, as appropriate, of any serious issue or risk that is
9 identified with respect to a contract monitored under this
10 subsection.

11 (d) This section does not apply to a memoranda of
12 understanding, interagency contract, interlocal agreement, or
13 contract for which there is not a cost.

14 Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION.

15 (a) For each contract for the purchase of goods or services that
16 has a value exceeding \$1 million, a state agency shall develop and
17 implement contract reporting requirements that provide information
18 on:

19 (1) compliance with financial provisions and delivery
20 schedules under the contract;

21 (2) corrective action plans required under the
22 contract and the status of any active corrective action plan; and

23 (3) any liquidated damages assessed or collected under
24 the contract.

25 (b) Each state agency shall verify:

26 (1) the accuracy of any information reported under
27 Subsection (a) that is based on information provided by a

1 contractor; and

2 (2) the delivery time of goods or services scheduled
3 for delivery under the contract.

4 (c) Except as provided by Subsection (d), a state agency may
5 enter into a contract for the purchase of goods or services that has
6 a value exceeding \$1 million only if:

7 (1) the governing body of the state agency approves
8 the contract and the approved contract is signed by the presiding
9 officer of the governing body; or

10 (2) for a state agency that is not governed by a
11 multimember governing body, the officer who governs the agency
12 approves and signs the contract.

13 (d) The governing body or governing official of a state
14 agency, as appropriate, may delegate to the executive director of
15 the agency the approval and signature authority under Subsection
16 (c).

17 (e) A highway construction or maintenance contract that is
18 awarded by the Texas Department of Transportation under Subchapter
19 A, Chapter 223, Transportation Code, is not required to be signed by
20 a member of the Texas Transportation Commission or the executive
21 director of the department. This exception does not apply to
22 expedited highway improvement contracts under Subchapter C,
23 Chapter 223, Transportation Code, a comprehensive development
24 agreement entered into under Subchapter E, Chapter 223,
25 Transportation Code, a design-build contract entered into under
26 Subchapter F, Chapter 223, Transportation Code, or any other
27 contract entered into by the Texas Department of Transportation.

1 Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.

2 For each state agency contract for the purchase of goods or services
3 that has a value exceeding \$5 million, the contract management
4 office or procurement director of the agency must:

5 (1) verify in writing that the solicitation and
6 purchasing methods and contractor selection process comply with
7 state law and agency policy; and

8 (2) submit to the governing body of the agency, or
9 governing official of the agency if the agency is not governed by a
10 multimember governing body, information on any potential issue that
11 may arise in the solicitation, purchasing, or contractor selection
12 process.

13 Sec. 2261.256. RISK ANALYSIS PROCEDURE; CONTRACT
14 MANAGEMENT HANDBOOK. (a) Each state agency shall develop and
15 comply with a risk analysis procedure. The procedure must provide
16 for:

17 (1) assessing the risk of fraud, abuse, or waste in the
18 contractor selection process, contract provisions, and payment and
19 reimbursement rates and methods for the different types of goods
20 and services for which the agency contracts; and

21 (2) identifying contracts that require enhanced
22 contract monitoring.

23 (b) Each state agency shall publish a contract management
24 handbook that establishes consistent contracting policies and
25 practices to be followed by the agency and that is consistent with
26 the comptroller's contract management guide. The agency handbook
27 may include standard contract provisions and formats for the agency

1 to incorporate in contracts.

2 Sec. 2261.257. CONTRACT DATABASE. (a) Each state agency
3 that becomes a participant in the centralized accounting and
4 payroll systems as authorized by Sections 2101.035 and 2101.036
5 shall use the system to identify and record each contract entered
6 into by the agency as specified by the rules, policies, or
7 procedures developed by the comptroller.

8 (b) The comptroller shall provide as necessary information
9 and state agency contract data contained in the centralized
10 accounting and payroll systems to other state agencies with
11 oversight duties, including the Legislative Budget Board, the state
12 auditor's office, and the Department of Information Resources.

13 SECTION 17. Section 2262.101, Government Code, as amended
14 by Chapters 676 (H.B. 1965) and 1227 (S.B. 1681), Acts of the 83rd
15 Legislature, Regular Session, 2013, is reenacted and amended to
16 read as follows:

17 Sec. 2262.101. CREATION; DUTIES. (a) The Contract
18 Advisory Team is created to assist state agencies in improving
19 contract management practices by:

20 (1) reviewing and making recommendations on the
21 solicitation documents and contract documents for contracts of
22 state agencies that have a value of at least \$10 million;

23 (2) reviewing any findings or recommendations made by
24 the state auditor, including those made under Section 2262.052(b),
25 regarding a state agency's compliance with the contract management
26 guide;

27 (3) providing recommendations to the comptroller

1 regarding:

2 (A) the development of the contract management

3 guide; and

4 (B) the training under Section 2262.053;

5 (4) providing recommendations and assistance to state
6 agency personnel throughout the contract management process;

7 (5) coordinating and consulting with the quality
8 assurance team established under Section 2054.158 on all contracts
9 relating to a major information resources project; ~~and~~

10 (6) ~~(+4)~~ developing and recommending policies and
11 procedures to improve state agency contract management practices;

12 (7) ~~(+5)~~ developing and recommending procedures to
13 improve state agency contracting practices by including
14 consideration for best value; ~~and~~

15 (8) ~~(+6)~~ creating and periodically performing a risk
16 assessment to determine the appropriate level of management and
17 oversight of contracts by state agencies; and

18 (9) after being notified by a state agency of a change
19 order, contract amendment, contract renewal or extension, or other
20 proposed action that would result in a change to the monetary value
21 of a contract reviewed under Subdivision (1) by more than 20
22 percent, reviewing the justification for the change order, contract
23 amendment, contract renewal or extension, or other proposed action,
24 as applicable, to:

25 (A) determine whether the justification is
26 reasonable considering the circumstances; and

27 (B) if the team determines the justification is

1 not reasonable, contact the state agency for additional
2 justification, and if not satisfactory, forward the contract to the
3 comptroller for notification under Subsection (h).

4 (b) The risk assessment created and performed ~~[reviewed]~~
5 under Subsection (a)(8) [a](6) must include ~~[, but is not limited~~
6 ~~to]~~ the following criteria:

7 (1) the amount of appropriations to the agency;
8 (2) total contract value as a percentage of
9 appropriations to the agency; and ~~[or]~~

10 (3) the impact of the functions and duties of the state
11 agency on the health, safety, and well-being of residents
12 ~~[citizens]~~.

13 (c) The comptroller shall oversee the activities of the
14 team, including ensuring that the team carries out its duties under
15 Subsections (a)(1), [Subsection] (a)(5), and (a)(7).

16 (d) A state agency shall:

17 (1) comply with a recommendation made under Subsection
18 (a)(1); or

19 (2) submit a written explanation regarding why the
20 recommendation is not applicable to the contract under review.

21 (e) The team may review documents under Subsection (a)(1)
22 only for compliance with contract management and best practices
23 principles and may not make a recommendation regarding the purpose
24 or subject of the contract.

25 (f) The team may develop an expedited process for reviewing
26 solicitations under Subsection (a)(1) for contracts:

27 (1) that the team identifies as posing a low risk of

1 loss to the state; or

2 (2) for which templates will be used more than once by
3 a state agency.

4 (g) A state agency that notifies the team of a change order,
5 contract amendment, contract renewal or extension, or other
6 proposed action under Subsection (a)(9) must include with the
7 notification a justification for the proposed action in the form
8 and containing the information specified by the team.

9 (h) The comptroller shall, for each contract of a state
10 agency forwarded under Subsection (a)(9), notify:

11 (1) the governing body of the agency or the single
12 state officer who governs the agency;

13 (2) the Legislative Budget Board; and

14 (3) each member of the senate and house of
15 representatives.

16 SECTION 18. Section 2262.102(a), Government Code, is
17 amended to read as follows:

18 (a) The team consists of the following nine [~~six~~] members:

19 (1) one member from the Health and Human Services
20 Commission;

21 (2) one member from the comptroller's office;

22 (3) one member from the Department of Information
23 Resources;

24 (4) one member from the Texas Facilities Commission;

25 (5) one member from the governor's office; [~~and~~]

26 (6) one member from a small state agency;

27 (7) one member from the Texas Department of

1 Transportation;

2 (8) one member from the Texas Education Agency; and

3 (9) one member from the Texas Commission on
4 Environmental Quality.

5 SECTION 19. Subchapter C, Chapter 2262, Government Code, is
6 amended by adding Section 2262.105 to read as follows:

7 Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET
8 BOARD. The contract advisory team shall submit a quarterly report
9 to the Legislative Budget Board on:

10 (1) the number of solicitation documents and contracts
11 reviewed by the team in the preceding quarter; and

12 (2) whether state agencies accepted or rejected the
13 team's recommendations and any reasons provided by the state
14 agencies for rejecting the recommendations.

15 SECTION 20. Section 51.9335(d), Education Code, is amended
16 to read as follows:

17 (d) Subject to Section 51.9337, Subtitle D, Title 10,
18 Government Code, and Subchapter B, Chapter 2254, Government Code,
19 do not apply to the acquisition of goods and services under this
20 section, except that an institution of higher education must comply
21 with any provision of those laws, or a rule adopted under a
22 provision of those laws, relating to contracting with historically
23 underutilized businesses or relating to the procurement of goods
24 and services from persons with disabilities. An institution of
25 higher education may, but is not required to, acquire goods or
26 services as provided by Subtitle D, Title 10, Government Code.

27 SECTION 21. Subchapter Z, Chapter 51, Education Code, is

1 amended by adding Section 51.9337 to read as follows:

2 Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED
3 STANDARDS. (a) An institution of higher education may not
4 exercise the acquisition authority granted by Section 51.9335 or
5 73.115 unless the institution complies with this section. An
6 institution that is determined under Subsection (j) to not be in
7 compliance with this section is subject to the laws governing
8 acquisition of goods and services by state agencies, including
9 Subtitle D, Title 10, Government Code, and Chapter 2254, Government
10 Code.

11 (b) The board of regents of an institution of higher
12 education by rule shall establish for each institution under the
13 management and control of the board:

14 (1) a code of ethics for the institution's officers and
15 employees, including provisions governing officers and employees
16 authorized to execute contracts for the institution or to exercise
17 discretion in awarding contracts, subject to Subsection (c);

18 (2) policies for the internal investigation of
19 suspected defalcation, misappropriation, and other fiscal
20 irregularities and an institutional or systemwide compliance
21 program designed to promote ethical behavior and ensure compliance
22 with all applicable policies, laws, and rules governing higher
23 education, including research and health care to the extent
24 applicable;

25 (3) a contract management handbook that provides
26 consistent contracting policies and practices and contract review
27 procedures, including a risk analysis procedure, subject to

1 Subsection (d);
2 (4) contracting delegation guidelines, subject to
3 Subsections (e) and (f);
4 (5) training for officers and employees authorized to
5 execute contracts for the institution or to exercise discretion in
6 awarding contracts, including training in ethics, selection of
7 appropriate procurement methods, and information resources
8 purchasing technologies; and
9 (6) internal audit protocols, subject to Subsection
10 (g).

11 (c) The code of ethics governing an institution of higher
12 education must include:

13 (1) general standards of conduct and a statement that
14 each officer or employee is expected to obey all federal, state, and
15 local laws and is subject to disciplinary action for a violation of
16 those laws;

17 (2) policies governing conflicts of interest,
18 conflicts of commitment, and outside activities, ensuring that the
19 primary responsibility of officers and employees is to accomplish
20 the duties and responsibilities assigned to that position;

21 (3) a conflict of interest policy that prohibits
22 employees from having a direct or indirect financial or other
23 interest, engaging in a business transaction or professional
24 activity, or incurring any obligation that is in substantial
25 conflict with the proper discharge of the employee's duties related
26 to the public interest;

27 (4) a conflict of commitment policy that prohibits an

1 employee's activities outside the institution from interfering
2 with the employee's duties and responsibilities to the institution;

3 (5) a policy governing an officer's or employee's
4 outside activities, including compensated employment and board
5 service, that clearly delineates the nature and amount of
6 permissible outside activities and that includes processes for
7 disclosing the outside activities and for obtaining and documenting
8 institutional approval to perform the activities;

9 (6) a policy that prohibits an officer or employee
10 from acting as an agent for another person in the negotiation of the
11 terms of an agreement relating to the provision of money, services,
12 or property to the institution;

13 (7) a policy governing the use of institutional
14 resources; and

15 (8) a policy providing for the regular training of
16 officers and employees on the policies described by this
17 subsection.

18 (d) An institution of higher education shall establish
19 contract review procedures and a contract review checklist that
20 must be reviewed and approved by the institution's legal counsel
21 before implementation. The review procedures and checklist must
22 include:

23 (1) a description of each step of the procedure that an
24 institution must use to evaluate and process contracts;

25 (2) a checklist that describes each process that must
26 be completed before contract execution; and

27 (3) a value threshold that initiates the required

1 review by the institution's legal counsel unless the contract is a
2 standard contract previously approved by the counsel.

3 (e) An institution of higher education's policies governing
4 contracting authority must clearly specify the types and values of
5 contracts that must be approved by the board of regents and the
6 types and values of contracts for which contracting authority is
7 delegated by the board to the chief executive officer and by the
8 chief executive officer to other officers and employees of the
9 institution. An officer or employee may not execute a document for
10 the board unless the officer or employee has authority to act for
11 the board and the authority is exercised in compliance with
12 applicable conditions and restrictions.

13 (f) An institution of higher education may not enter into a
14 contract with a value of more than \$1 million, including any
15 amendment, extension, or renewal of the contract that increases the
16 value of the original contract to more than \$1 million, unless the
17 institution's board of regents approves the contract, expressly
18 delegates authority to exceed that amount, or expressly adopts an
19 exception for that contract. The board must approve any amendment,
20 extension, or renewal of a contract with a value that exceeds 25
21 percent of the value of the original contract approved by the board
22 unless the authority to exceed the approved amount is expressly
23 delegated by the board or an exception is expressly adopted by the
24 board for that contract.

25 (g) The board of regents of an institution of higher
26 education shall adopt standards for internal audits conducted by
27 the institution to provide a systematic, disciplined approach to

1 evaluate and improve the effectiveness of the institution's risk
2 management, control, and governance processes related to contracts
3 and to require risk-based testing of contract administration. The
4 internal auditor must have full and unrestricted access to all
5 institutional property, personnel, and records. An internal
6 auditor must report directly to the board of regents in accordance
7 with Chapter 2102, Government Code.

8 (h) The chief auditor of an institution of higher education
9 shall annually assess whether the institution has adopted the rules
10 and policies required by this section and shall submit a report of
11 findings to the state auditor. In auditing the purchase of goods
12 and services by the institution, the state auditor shall determine
13 whether an institution has adopted the required rules and policies.

14 (i) If the state auditor determines that an institution of
15 higher education has failed to adopt the required rules and
16 policies, the auditor shall report that failure to the legislature
17 and to the institution's board of regents and shall, in
18 consultation with the institution, adopt a remediation plan to
19 bring the institution into compliance. If the institution fails to
20 comply within the time established by the state auditor, the
21 auditor shall find the institution to be in noncompliance and
22 report that finding to the legislature and comptroller.

23 (j) In accordance with a schedule adopted by the state
24 auditor in consultation with the comptroller, the authority of an
25 institution of higher education to acquire goods and services as
26 provided by Section 51.9335 or 73.115 is suspended if the
27 institution fails to comply with the remediation plan under

1 Subsection (i) within the time established by the state auditor. As
2 a result of the suspension, the laws, including Subtitle D, Title
3 10, Government Code, and Chapter 2254, Government Code, governing
4 acquisition of goods and services by state agencies from which the
5 institution is otherwise exempt, shall apply to the institution's
6 acquisition of goods and services.

7 SECTION 22. Sections 73.115(e) and (f), Education Code, are
8 amended to read as follows:

9 (e) To the extent of any conflict, this section prevails
10 over any other law relating to the purchasing of goods and services
11 other than Section 51.9337 and [except] a law relating to
12 contracting with historically underutilized businesses.

13 (f) Except as otherwise provided by this section and Section
14 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254,
15 Government Code, do not apply to purchases of goods and services
16 made under this section.

17 SECTION 23. Section 2155.502(d), Government Code, is
18 repealed.

19 SECTION 24. (a) As soon as is practicable after the
20 effective date of this Act, the executive directors of the Texas
21 Department of Transportation, the Texas Education Agency, and the
22 Texas Commission on Environmental Quality shall each appoint a
23 member to the contract advisory team as required by Section
24 2262.102, Government Code, as amended by this Act.

25 (b) As soon as is practicable after the effective date of
26 this Act, the comptroller of public accounts, and each affected
27 state agency as necessary, shall adopt the rules and procedures and

C.S.H.B. No. 3241

1 take the actions necessary to implement the changes in law made by
2 this Act.

3 SECTION 25. To the extent of any conflict, this Act prevails
4 over another Act of the 84th Legislature, Regular Session, 2015,
5 relating to nonsubstantive additions to and corrections in enacted
6 codes.

7 SECTION 26. Section 572.069, Government Code, as added by
8 this Act, applies only to a state officer or employee whose service
9 or employment with a state agency ceases on or after the effective
10 date of this Act.

11 SECTION 27. The changes in law made by this Act apply only
12 to a contract entered into on or after the effective date of this
13 Act. A contract entered into before that date is governed by the
14 law in effect immediately before the effective date of this Act, and
15 the former law is continued in effect for that purpose.

16 SECTION 28. This Act takes effect September 1, 2015.