

## **BILL ANALYSIS**

Senate Research Center  
82R8594 KLA/YDB-D

S.B. 1720  
By: Duncan  
Finance  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

As the sole administrator of the treasury and the state's many financial resources, the Office of the Comptroller of Public Accounts (comptroller) relies on statutory authority and rulemaking power to manage those resources. As the dynamics of financial markets and our economic systems continue to evolve, the tools available to the comptroller often require adjustment to maximize the effectiveness of the agency's resource control. Being the sole administrator of the state's financial resources also places the comptroller in the unique position of working in concert with other state governmental entities that rely on the comptroller's expertise to adequately provide necessary financial support. This bill makes adjustments in various portions of the Texas statutes to facilitate the administration of the state's financial resources.

As proposed, S.B. 1720 amends current law relating to state fiscal matters and creates an offense.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the comptroller of public accounts (comptroller) is rescinded in SECTION 2.05 (Chapter 2115, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Facilities Commission (TFC) is transferred to the comptroller in SECTION 3.04 (Section 2155.068, Government Code), SECTION 3.08 (Section 2155.078, Government Code), and SECTION 3.14 (Section 2155.132, Government Code) of this bill.

Rulemaking authority is expressly granted to the comptroller in SECTION 3.12 (Section 2155.088, Government Code), SECTION 3.13 (Section 2155.131, Government Code), and SECTION 3.15 (Section 2155.1325, Government Code) of this bill.

Rulemaking authority previously granted to TFC is rescinded in SECTION 3.14 (Section 2155.132, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. VOTER REGISTRATION

SECTION 1.01. Amends Sections 18.065(b)-(d), Election Code, as follows:

(b) Deletes existing text requiring the secretary of state (SOS), on determining that a registrar is not in substantial compliance, to deliver written notice of the noncompliance to the comptroller of public accounts (comptroller), including in the notice the identity of the noncomplying registrar. Makes nonsubstantive changes.

(c) Requires SOS, on determining that a noncomplying registrar has corrected the violation and is in substantial compliance, to deliver written notice to the registrar, rather than to the registrar and to the comptroller, that the registrar is in substantial compliance.

(d) Deletes existing text requiring the comptroller to retain a notice received under this section on file until July 1 following the voting year in which it is received.

SECTION 1.02. Amends Section 19.001(a), Election Code, to require the registrar, before May 15 of each year, to prepare and submit to SOS, rather than to the comptroller, a statement containing certain information.

SECTION 1.03. Amends the heading to Section 19.002, Election Code, to read as follows:

Sec. 19.002. PAYMENTS.

SECTION 1.04. Amends Sections 19.002(b) and (d), Election Code, as follows:

(b) Requires SOS, rather than the comptroller, after June 1 of each year, to make payments, rather than issue warrants, pursuant to vouchers submitted by the registrar and approved by SO in amounts that in the aggregate do not exceed the registrar's entitlement.

(d) Prohibits SOS from making a payment under Subsection (b) if, on June 1 of the year in which the payment is to be made, the registrar is not in substantial compliance with Section 15.083 (Delivery of List to Secretary of State), 16.032 (Cancellation Following End of Suspense List Period), 18.042 (Preelection Registration Statement), or 18.065 or with rules implementing the registration service program, rather than prohibiting the comptroller from issuing a warrant if, on June 1 of the year in which the warrant is to be issued, the most recent notice received by the comptroller from SOS under Section 18.065 indicates that the registrar is not in substantial compliance with Section 15.083, 16.032, 18.042, or 18.065 or with rules implementing the registration service program.

SECTION 1.05. Amends the heading to Section 19.0025, Election Code, to read as follows:

Sec. 19.0025. ELECTRONIC ADMINISTRATION OF VOUCHERS AND PAYMENTS.

SECTION 1.06. Amends Section 19.0025(a), Election Code, to require SOS to establish and maintain an online electronic system for administering vouchers submitted and payments made, rather than warrants issued, under Section 19.002 (Issuance of Warrants by Comptroller).

SECTION 1.07. Repealer: Section 19.002(c) (relating to authorizing the comptroller to require additional proof to substantiate the information in the certified statement before issuing a warrant), Election Code.

SECTION 1.08. Effective date, this article: September 1, 2011.

## ARTICLE 2. CERTAIN POWERS AND DUTIES OF THE COMPTROLLER OF PUBLIC ACCOUNTS

SECTION 2.01. Amends Section 403.0551(d), Government Code, to redefine "compensation."

SECTION 2.02. Amends Section 403.304, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes information made confidential by this section, Chapter 552 (Public Information) of this code, or Section 22.27 (Confidential Information), Tax Code, to be disclosed in a certain manner, including in connection with a protest filed pursuant to Section 403.303 (Protest).

(c) Provides that a person to whom confidential information is disclosed as authorized by Subsection (b) commits an offense if the person discloses the information in a manner not authorized by that subsection or to a person not authorized by that subsection to receive the information. Provides that an offense under this subsection is a Class B misdemeanor.

SECTION 2.03. Amends Section 404.022(h), Government Code, to authorize the comptroller to execute a simplified version of a depository agreement with an eligible institution desiring to

hold state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, rather than to hold \$98,000 or less in state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

SECTION 2.04. Amends Section 411.109(a), Government Code, to entitle the comptroller to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that the comptroller believes is necessary for the enforcement or administration of Chapter 151 (Limited Sales, Excise, and Use Taxes), 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), 154 (Cigarette Tax), 155 (Cigars and Tobacco Products Tax), or 162 (Motor Fuel Taxes), Tax Code, rather than Chapter 151, 152, 153 [repealed], 154, or 155, Tax Code, including criminal history record information that relates to a person who meets certain criteria.

SECTION 2.05. Repealer: Chapter 2115 (Recovery of Certain State Agency Overpayments), Government Code.

SECTION 2.06. Provides that Section 403.0551(d), Government Code, as amended by this article, applies to a deduction made on or after the effective date of this Act for an indebtedness to a state agency regardless of the date the indebtedness accrued, or the dates of the pay period for which the compensation from which the indebtedness is deducted is earned.

### ARTICLE 3. STATE PURCHASING

SECTION 3.01. Amends Section 2155.001, Government Code, by amending Subdivision (2) and adding Subdivision (3) to redefine, respectively, "service" and define "state agency."

SECTION 3.02. Amends Section 2155.002, Government Code, as follows:

Sec. 2155.002. New heading: **COMPTROLLER FOCUS ON LARGE EXPENDITURES**. Requires the comptroller, to the extent possible, to focus on purchases and contracts that involve relatively large amounts of money or that leverage state spending in the most efficient manner, rather than requiring the Texas Facilities Commission (TFC) to focus its efforts under this chapter and Chapters 2156 (Purchasing Methods), 2157 (Purchasing: Purchase of Automated Information Systems), and 2158 (Purchasing: Miscellaneous Provisions for Purchase of Certain Goods and Services) on purchases and contracts that involve relatively large amounts of money.

SECTION 3.03. Amends Section 2155.064, Government Code, as follows:

Sec. 2155.064. New heading: **LEVERAGED PURCHASING**. Requires the comptroller, to the greatest extent possible, to pursue statewide contracts and attempt to leverage state spending to achieve cost savings for this state. Deletes existing text authorizing TFC to combine orders in a system of schedule purchasing and shall attempt to benefit from bulk purchasing.

SECTION 3.04. Amends Section 2155.068, Government Code, as follows:

Sec. 2155.068. **UNIFORM STANDARDS AND SPECIFICATIONS**. (a) Authorizes the comptroller, rather than TFC, to coordinate uniform standards and specifications for goods purchased by this state, rather than TFC. Authorizes the comptroller by rule to adopt appropriate standards developed by a nationally recognized standards-making association as part of its specifications and standards program. Makes a conforming change.

(b) Requires a state agency, on request of the comptroller, to cooperate with the comptroller in the establishment, maintenance, and revision of uniform standards and specifications, rather than requiring TFC to enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications.

(c)-(d) Makes conforming changes.

SECTION 3.05. Amends Section 2155.070, Government Code, as follows:

Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) Requires a state agency that determines that goods or services received under a contract administered by the comptroller do not meet specifications to promptly notify the comptroller in writing of the reasons for the determination. Requires the comptroller, as soon as possible, to determine, rather than to immediately make its own determination of, whether the goods and services meet specifications. Makes conforming changes.

(b) Authorizes the comptroller, for purchases exempt from the comptroller's purchasing authority, to determine whether the purchased goods and services meet or fail to meet specifications, rather than providing that TFC or a state agency, including an institution of higher education, has the authority to determine that goods and services exempted from the TFC's purchasing authority meet or fail to meet specifications. Authorizes a state agency to also determine whether the goods and services meet or fail to meet specifications.

(c)-(d) Makes conforming changes.

SECTION 3.06. Amends Section 2155.072, Government Code, as follows:

Sec. 2155.072. New heading: STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMPTROLLER STUDIES. Deletes existing Subsection (a) designation. Requires the comptroller, each state fiscal year, to consider one or more services purchased by one or more state agencies for development into statewide contracts. Requires the comptroller to determine if a particular service may be leveraged for multiple state agencies at a cost savings to this state compared to the cost to this state of purchasing the service under individual state agency contracts. Requires the comptroller to consider awarding statewide contracts by region. Deletes existing text requiring TFC to annually select for study at least one service that is purchased by one or more state agencies. Deletes existing text requiring TFC to study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. Deletes existing text requiring TFC to give priority to studying services for which the commission has delegated the purchasing function to many state agencies.

Deletes existing Subsection (b) providing that TFC is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

SECTION 3.07. Amends Section 2155.074, Government Code, as follows:

Sec. 2155.074. New heading: PROCUREMENT MANUAL; BEST VALUE AND SOURCING FOR PURCHASE OF GOODS OR SERVICES. (a) Requires the comptroller to publish and maintain a procurement manual for state agencies to follow that incorporates the sourcing standards of this section and the best practices for procurement. Requires that the procurement manual, before publication, be reviewed by the contract advisory team established under Chapter 2262 (Statewide Contract Management). Requires each state agency to comply with the procurement manual in its procurement activities.

(b) Redesignates existing Subsection (a) as Subsection (b). Makes a conforming change.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes conforming changes.

(d) Redesignates existing Subsection (c) as Subsection (d). Makes a conforming change.

(e) Requires the comptroller to identify commercially available goods and services needed or used by state agencies, and analyze and determine whether the goods and services are better provided through a statewide contract.

(f) Requires the comptroller, if the comptroller determines that a good or service identified under Subsection (e) is better provided through a statewide contract, to require state agencies to engage in any process, including competitive bidding, developed by the comptroller to develop and award one or more statewide contracts for the good or service.

(g) Authorizes the comptroller, in performing the comptroller's duties under this chapter, to:

(1) require a state agency to conduct a hearing, study, review, or cost estimate, including an agency in-house cost estimate or a management study, concerning any aspect of a good or service identified under Subsection (e);

(2) develop and require state agencies to use methods that accurately and fairly estimate and account for the cost of obtaining the identified good or service;

(3) require that the identified good or service be submitted to competitive bidding or another process that creates competition;

(4) prescribe, after consulting affected state agencies, the specifications and conditions of the purchase and the procedures that must be followed for the procurement of the identified good or service; and

(5) determine the terms of a contract for the identified good or service.

SECTION 3.08. Amends Section 2155.078(a), Government Code, as follows:

(a) Authorizes the comptroller to adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section, and suspending or revoking a purchaser's certification for failure to comply with this chapter or comptroller rules. Makes conforming changes.

SECTION 3.09. Amends Section 2155.082, Government Code, as follows:

Sec. 2155.082. New heading: PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) Authorizes the comptroller to provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131 (Delegation of Authority to State Agencies), 2155.132 (Purchases Less than Specified Monetary Amount), or 2157.121 (Acquisition Through Competitive Sealed Proposals), rather than under Section 2155.131, 2155.132, 2155.133 [repealed], or 2157.121, or that are exempted from the purchasing authority of the comptroller. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

(c) Authorizes the comptroller to engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

SECTION 3.10. Amends Section 2155.083(n), Government Code, as follows:

(n) Provides that, notwithstanding any other provision of this section, a state agency that conducts covert law enforcement operations is not required to post the specifications for covert equipment in the state business daily. Deletes existing text providing that this section does not apply to a state agency to which Section 51.9335 (Acquisition of Goods and Services) or 73.115 (Acquisition of Goods and Services), Education Code, applies.

SECTION 3.11. Amends Section 2155.085, Government Code, as follows:

Sec. 2155.085. REVERSE AUCTION PROCEDURE. Deletes existing Subsection (a) designation. Authorizes the comptroller, rather than requires TFC, to perform certain actions.

Deletes existing Subsection (b) requiring TFC to set a goal of purchasing at least 20 percent of the dollar value of goods or services purchased by TFC using the reverse auction procedure.

SECTION 3.12. Amends Subchapter B, Chapter 2155, Government Code, by adding Section 2155.088, as follows:

Sec. 2155.088. PROCUREMENT PLANS FOR GOODS AND SERVICES. (a) Requires each state agency, not later than June 1 of each odd-numbered year, to provide a procurement plan to the comptroller that identifies the major goods and services the agency plans to purchase during the next fiscal biennium.

(b) Requires the comptroller to use the procurement plans to schedule solicitations for proposals for goods and services used by multiple state agencies.

(c) Requires a state agency that makes a substantive change to its procurement plan to submit a revised copy of the plan to the comptroller not later than the 30th day after the date of the change.

(d) Authorizes the comptroller to adopt rules to administer this section.

SECTION 3.13. Amends Section 2155.131, Government Code, as follows:

Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Requires the comptroller, in delegating purchasing authority under this section or Section 2155.132, to consider factors relevant to a state agency's ability to perform purchasing functions, including:

(1) the purchasing capabilities of the agency's purchasing personnel and the existence of automated purchasing tools at the agency;

(2) the certification levels held by the agency's purchasing personnel;

(3) the results of the comptroller's procurement review audits of an agency's purchasing practices; and

(4) whether the agency has adopted and published as part of its purchasing rules protest procedures consistent with the comptroller's protest procedures.

(c) Requires the comptroller to monitor the purchasing practices of each state agency that the comptroller delegates purchasing authority to under Subsection (b) or Section 2155.132 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices

continue to warrant the delegated purchasing authority. Authorizes the comptroller to revoke for any cause, including the agency's failure to comply with Section 2155.074, all or part of the delegated purchasing authority. Requires the comptroller to adopt rules to administer this subsection.

(d) Requires the comptroller by rule to prescribe the procedures a state agency must follow in making a delegated purchase, and the procedures by which a state agency may use the comptroller's services for delegated purchases under Section 2155.082.

SECTION 3.14. Amends Section 2155.132, Government Code, as follows:

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT.

(a) Makes conforming and nonsubstantive changes.

(b) Authorizes the comptroller, rather than TFC, by rule to delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$15,000. Deletes existing text requiring TFC, in delegating purchasing authority under this subsection or Section 2155.131, to consider factors relevant to a state agency's ability to perform purchasing functions, including the capabilities of the agency's purchasing staff and the existence of automated purchasing tools at the agency, the certification levels held by the agency's purchasing personnel, the results of the TFC's procurement review audits of an agency's purchasing practices, and whether the agency has adopted and published protest procedures consistent with those of TFC as part of its purchasing rules.

(c) Deletes existing text requiring TFC to monitor the purchasing practices of state agencies that are making delegated purchases under Subsection (b) or Section 2155.131 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices continue to warrant the amount of delegated authority provided by TFC to the agency. Deletes existing text requiring TFC to revoke for cause all or part of the purchasing authority that TFC delegated to a state agency. Deletes existing text requiring TFC to adopt rules to administer this subsection.

Deletes existing text of Subsection (d) requiring TFC by rule to prescribe procedures for a delegated purchase and to prescribe procedures by which agencies may use TFC's services for delegated purchases, in accordance with Section 2155.082.

(c) Redesignates existing Subsection (e) as Subsection (c). Makes no further changes to this subsection.

(d) Redesignates existing Subsection (f) as Subsection (d). Prohibits goods purchased under this section from including:

(1) an item for which a statewide contract has been awarded by the comptroller, rather than under the contract purchase procedure, unless the quantity purchased is less than any minimum quantity, rather than the minimum quality, specified in the contract;

(2) an item required by statute to be purchased from a particular source, including through the program administered under Chapter 122 (Texas Council on Purchasing from People with Disabilities), Human Resources Code, or from the Texas Correctional Industries under Chapter 497 (Industry and Agriculture; Labor of Inmates); or

(3) a scheduled item that has been designated for purchase by the comptroller, rather than TFC.

(e) Redesignates existing Subsection (g) as Subsection (e). Prohibits a large purchase from being divided into small lot purchases to circumvent, rather than meet, the dollar limits prescribed by this section. Makes a conforming change.

(f) Redesignates existing Subsection (h) as Subsection (f). Requires a state agency making a purchase under this section for which competitive bidding is required to perform certain actions, including obtain, rather than attempt to obtain, at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased, or, if three vendors are not available on the master bidders list, vendors in the applicable industry.

SECTION 3.15. Amends Subchapter C, Chapter 2155, Government Code, by adding Section 2155.1325, as follows:

Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) Requires a state agency that is preparing a solicitation for proposals for a purchase of goods or services with a purchase price that exceeds \$100,000 that is delegated under this chapter or other law to submit to the comptroller a copy of the draft solicitation with a statement of the procurement strategy for the purchase.

(b) Authorizes the comptroller to review the draft solicitation and procurement strategy to determine whether the state agency is following the best value and sourcing standards of Section 2155.074 to the greatest extent possible. Authorizes the comptroller to:

(1) recommend changes to the draft solicitation or procurement strategy, provided the written recommended changes are submitted to the state agency not later than the 30th day after the date the comptroller receives the draft solicitation and procurement strategy from the state agency;

(2) partner with the state agency to ensure the standards of this chapter are followed;

(3) partner with the state agency to award a statewide contract that results from the solicitation; or

(4) require the state agency to engage a consultant to assist with the solicitation to be paid from the cost savings realized under the contract, as authorized by Section 2155.082.

(c) Requires a state agency that receives the comptroller's recommended changes under Subsection (b)(1) to accept the recommended changes, or submit alternative suggestions to the comptroller for review in accordance with this section.

(d) Authorizes the comptroller to adopt rules to administer this section.

SECTION 3.16. Amends Subchapter D, Chapter 2155, Government Code, by adding Section 2155.205, as follows:

Sec. 2155.205. ACCESS BY OTHER GOVERNMENTAL ENTITIES. Authorizes the comptroller to allow a governmental entity of another state to access the comptroller's statewide contracts.

SECTION 3.17. Amends Section 2155.385(a), Government Code, as follows:

(a) Authorizes the comptroller to contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases, rather than authorizing TFC, if authorized by rule adopted by the comptroller under Section 403.023 (Credit, Charge, and Debit Cards), to contract with one or more credit card issuers for state agencies to use

credit cards to pay for purchases. Deletes existing text prohibiting TFC from entering into a contract that conflicts with the comptroller's rules.

SECTION 3.18. Amends Section 2054.158, Government Code, to require the state auditor, comptroller, attorney general, Legislative Budget Board (LBB), and Department of Information Resources (DIR) to perform certain actions, including to specify in writing the responsibilities of the state auditor, comptroller, attorney general, LBB, and DIR in performing the duties.

SECTION 3.19. Amends Section 2151.0041(c), Government Code, to delete existing text providing that, unless otherwise provided by the legislature by law, on September 1, 2013, Sections 2155.086 (Procedures for Awarding Certain Contracts) and 2155.087 (Statewide Procurement Advisory Council), Government Code, expire. Makes nonsubstantive changes.

SECTION 3.20. Amends Section 2166.406(i), Government Code, to delete existing text requiring that notice of the request for qualifications be given in the manner provided by Section 2156.002 (Solicitation of Bids Through Public Notice).

SECTION 3.21. Amends Section 51.927(i), Education Code, to delete existing text requiring that notice of the request for qualifications be given in the manner provided by Section 2156.002, Government Code.

SECTION 3.22. Repealers: Sections 2155.086 (Procedures for Awarding Certain Contracts), 2155.087 (Statewide Procurement Advisory Council), 2155.138 (Exemption of Goods or Services of Blind or Visually Impaired Persons), 2155.141 (Purchases for Auxiliary Enterprise not Within Commission's Purchasing Authority), and 2156.002 (Solicitation of Bids Through Public Notice), Government Code.

#### ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date, except as otherwise provided by this Act:

- (1) immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; or
- (2) September 1, 2011, if this Act does not receive the vote necessary for immediate effect.