

By: Carona

S.B. No. 1579

A BILL TO BE ENTITLED

AN ACT

relating to software acquisitions by state agencies.

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

SECTION 1. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.114 to read as follows:

Sec. 2054.114. ACQUISITION OF SOFTWARE. (a) In this section:

(1) "Open source software" means software that guarantees the user, without further cost:

(A) unrestricted use of the software for any purpose;

(B) unrestricted access to the respective source code;

(C) exhaustive inspection of the working mechanisms of the software;

(D) use of the internal mechanisms and arbitrary portions of the software to adapt them to the needs of the user;

(E) freedom to make and distribute copies of the software; and

(F) freedom to modify the software and to distribute the modified software under the same license as the original software.

(2) "Open standards" means specifications for the encoding and transfer of computer data that:

1 (A) are available for all to read and implement;

2 (B) do not lock the user into a particular vendor
3 or group;

4 (C) are free for all to implement with no royalty
5 or fee except for a fee or fees required by the standards
6 organization for certification of compliance;

7 (D) do not favor one implementer over another for
8 any reason other than the technical standards compliance of an
9 implementation; and

10 (E) do not prohibit the implementation of
11 extensions but may employ license terms that prevent subversion of
12 the standard through predatory practices.

13 (3) "Proprietary software" means software that does
14 not fulfill all of the guarantees provided by open source software.

15 (b) For all new software acquisitions, a state agency shall:

16 (1) consider acquiring open source software products
17 in addition to proprietary software products;

18 (2) except as provided by Subdivisions (4) and (5),
19 acquire software products primarily on a value-for-money basis;

20 (3) provide justification whenever a proprietary
21 software product is acquired instead of open source software;

22 (4) avoid the acquisition of products that do not
23 comply with open standards for interoperability or data storage;
24 and

25 (5) avoid the acquisition of products that are known
26 to make unauthorized transfers of information to, or permit
27 unauthorized control of or modification to the state government's

1 computer systems by, parties outside the control of the state
2 government.

3 SECTION 2. Section 2054.056, Government Code, is amended to
4 read as follows:

5 Sec. 2054.056. COMPUTER SERVICES. (a) The department may
6 provide computer services under interagency contracts to state
7 agencies that choose to contract with the department.

8 (b) If the contracted service is for the acquisition of
9 software, the department shall comply with Section 2054.114.

10 SECTION 3. Section 2055.052, Government Code, is amended to
11 read as follows:

12 Sec. 2055.052. GENERAL POWERS AND DUTIES. (a) The office
13 shall:

14 (1) establish and support standard business practices
15 for electronic government projects;

16 (2) coordinate and establish standards for
17 implementation of electronic government projects;

18 (3) identify and incorporate best practices for
19 electronic government projects in such areas as:

20 (A) the procurement of hardware, software, and
21 technology services;

22 (B) project support;

23 (C) implementation strategies;

24 (D) project planning and scheduling;

25 (E) quality assurance;

26 (F) overall team coordination;

27 (G) status reporting; and

1 (H) technical standards; and
2 (4) provide risk management and quality assurance
3 services for electronic government projects.

4 (b) In this section, "best practices" includes compliance
5 with Section 2054.114.

6 SECTION 4. Section 2155.062, Government Code, is amended by
7 adding Subsection (e) to read as follows:

8 (e) In purchasing software, the commission shall comply
9 with Section 2054.114.

10 SECTION 5. Section 2157.003, Government Code, is amended to
11 read as follows:

12 Sec. 2157.003. DETERMINING BEST VALUE FOR PURCHASES OF
13 AUTOMATED INFORMATION SYSTEMS. "Best value" for purposes of this
14 chapter means the lowest overall cost of an automated information
15 system. In determining the lowest overall cost for a purchase or
16 lease of an automated information system under this chapter, the
17 commission or a state agency shall consider factors including:

- 18 (1) the purchase price;
- 19 (2) the compatibility to facilitate the exchange of
20 existing data;
- 21 (3) the capacity for expanding and upgrading to more
22 advanced levels of technology;
- 23 (4) quantitative reliability factors;
- 24 (5) the level of training required to bring persons
25 using the system to a stated level of proficiency;
- 26 (6) the technical support requirements for the
27 maintenance of data across a network platform and the management of

1 the network's hardware and software;

2 (7) the compliance with applicable Department of
3 Information Resources statewide standards validated by criteria
4 adopted by the department by rule; and

5 (8) applicable factors listed in Sections 2054.114,
6 2155.074, and 2155.075.

7 SECTION 6. Subsections (a) and (e), Section 2157.068,
8 Government Code, are amended to read as follows:

9 (a) In this section:

10 (1) "Commodity software items" means commercial
11 software for personal computers, including open source software,
12 that is generally available to businesses or the public and for
13 which the department determines that a reasonable demand exists in
14 state agencies.

15 (2) "Department" means the Department of Information
16 Resources.

17 (3) "Open source software" has the meaning assigned by
18 Section 2054.114(a)(1).

19 (e) The department may adopt rules regulating a purchase by
20 a state agency of a commodity software item under this section,
21 including a requirement that, notwithstanding other provisions of
22 this chapter, the agency must make the purchase in accordance with a
23 contract developed by the department unless the agency obtains a
24 waiver from the department. Any rules adopted under this section
25 must comply with Section 2054.114.

26 SECTION 7. Subsection (c), Section 2157.125, Government
27 Code, is amended to read as follows:

1 (c) In determining which proposal under this subchapter
2 offers the best value for the state, the commission or other state
3 agency shall, when applicable and subject to Sections 2054.114,
4 2155.074, and 2155.075, consider factors including:

5 (1) the installation cost;

6 (2) the overall life of the system or equipment;

7 (3) the cost of acquisition, operation, and
8 maintenance of hardware included with, associated with, or required
9 for the system or equipment during the state's ownership or lease;

10 (4) the cost of acquisition, operation, and
11 maintenance of software included with, associated with, or required
12 for the system or equipment during the state's ownership or lease;

13 (5) the estimated cost of other supplies needed
14 because of the acquisition;

15 (6) the estimated cost of employee training needed
16 because of the acquisition;

17 (7) the estimated cost of necessary additional
18 permanent employees because of the acquisition; and

19 (8) the estimated increase in employee productivity
20 because of the acquisition.

21 SECTION 8. Section 2177.051, Government Code, is amended by
22 adding Subsection (i) to read as follows:

23 (i) A contract for the procurement of software under this
24 section shall comply with Section 2054.114.

25 SECTION 9. Section 487.303, Government Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) The purchase of software under this section must be made

1 in compliance with Section 2054.114.

2 SECTION 10. Subsection (e), Section 531.0273, Government
3 Code, is amended to read as follows:

4 (e) The advisory committee appointed under Subsection (d)
5 shall advise the commission with respect to the implementation of
6 the commission's duties under Subsection (a)(1) and:

7 (1) shall advise the commission about:

8 (A) overall goals and objectives for information
9 resources management for all health and human services agencies;

10 (B) coordination of agency information resources
11 management plans;

12 (C) development of short-term and long-term
13 strategies for:

14 (i) implementing information resources
15 management policies, procedures, and technical standards; and

16 (ii) ensuring compatibility of information
17 resources systems across health and human services agencies as
18 technology changes;

19 (D) information resources training and skill
20 development for health and human services agency employees and
21 policies to facilitate recruitment and retention of trained
22 employees;

23 (E) standards for determining:

24 (i) the circumstances in which obtaining
25 information resources services under contract is appropriate;

26 (ii) the information resources services
27 functions that must be performed by health and human services

1 agency information resources services employees; and

2 (iii) the information resources services
3 skills that must be maintained by health and human services agency
4 information resources services employees;

5 (F) optimization of the use of information
6 resources technology that is in place at health and human services
7 agencies; and

8 (G) existing and potential future information
9 resources technologies and practices and the usefulness of those
10 technologies and practices to health and human services agencies;
11 and

12 (2) shall review and make recommendations to the
13 commission relating to the consolidation and improved efficiency of
14 information resources management functions, including:

15 (A) cooperative leasing of information resources
16 systems equipment;

17 (B) consolidation of data centers;

18 (C) improved network operations;

19 (D) technical support functions, including help
20 desk services, call centers, and data warehouses;

21 (E) administrative applications;

22 (F) purchases of standard software in compliance
23 with Section 2054.114;

24 (G) joint training efforts;

25 (H) recruitment and retention of trained agency
26 employees;

27 (I) video conferencing; and

1 (J) other related opportunities for improved
2 efficiency.

3 SECTION 11. This Act takes effect January 1, 2004, and
4 applies only to a contract for the acquisition of software by a
5 state agency that is entered into on or after that date. A contract
6 for the acquisition of software entered into by a state agency
7 before January 1, 2004, is governed by the law in effect on the date
8 the contract was entered into, and the former law is continued in
9 effect for that purpose.