

## **BILL ANALYSIS**

C.S.H.B. 905  
By: Delisi  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

This legislation is in response to situations experienced by other states regarding certain performance-based contracts where a vendor has an obligation to act within the client's best interests regarding specialty item purchasing decisions. The root of the concerns – which can escalate into litigation – are that some vendors had various financial arrangements with certain product manufacturers and that these arrangements were thought to have influenced purchasing recommendations in a manner unfavorable to these states. The issue is rendered more complicated by claims that the financial arrangements made by the vendor with the product manufacturers are proprietary information that cannot be disclosed without causing harm to their competitiveness.

This legislation would make explicit that the state auditor will be able to review a vendor's performance under a contract to determine whether a vendor has acted in the state's best interests and that any information needed to perform this review shall be made available.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

CSHB 905 amends Section 321.020 of the Government Code, allowing agencies to employ private auditors if authorized to do so by the state auditor. This change to Section 321 applies only to contracts entered into, amended, extended, or renewed on or after the effective date of this Act. CSHB 905 amends Section 2262.002 of the Government Code to establish that, except as otherwise provided, this chapter does not apply to institutions of higher education or contracts of the Texas Department of Transportation that relate to highway construction or engineering. Further additions to this section state that an entity that is subject to audit or investigation must provide the auditor with access to any information the auditor considers relevant to evaluating the entity's performance, determining the state's rights or remedies under the contract, or evaluating whether the entity has acted in the best interest of the state. These additions apply to all state agency contracts, including those of institutions of higher education and of the Texas Department of Transportation relating to highway construction or engineering.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB 905 modifies HB 905 by adding an amendment to Section 321 of the Government Code, allowing agencies to employ private auditors if authorized to do so by the state auditor. This change to Section 321 applies only to contracts entered into, amended, extended, or renewed on or after the effective date of this Act.