

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 18, 2005**

**TO:** Honorable David Swinford, Chair, House Committee on State Affairs

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB12** by Zaffirini (Relating to contracting and ethics issues of governmental entities; providing a civil penalty.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would develop a training program, which would include an abbreviated version for members of governing bodies of state agencies.

Each state agency would have to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC may solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

In addition, if a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the agency shall create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and

penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

This bill would require school districts, state agencies, institutions of higher education, municipalities, and counties to provide preference in awarding contracts to vendors that provide health benefits coverage to their employees and employees' dependents.

The Texas Building and Procurement Commission would need to revise agency rules, revise contract management guidelines, and revise other procurement forms developed by the agency. It is assumed that these additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

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