

## **BILL ANALYSIS**

C.S.H.B. 3560  
By: Swinford  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As its name suggests, the Texas Building and Procurement Commission currently has a variety of duties and powers that can be divided into two general categories: buildings and procurement. On the buildings side, the Legislature has delegated to this agency: charge and control of state buildings, grounds, and property; maintenance and repair of state buildings, grounds and property; construction of state buildings; and purchase and lease of state buildings, grounds, and property by or for the state. On the procurement side, the Legislature has delegated to this agency a variety of related duties, such as responsibility for: statewide purchases; oversight of the state's historically underutilized business program; travel; vehicle fleet; mail; printing; surplus and salvage property; serving as lead member of the statewide Contract Advisory Team; providing assistance to the State Council on Competitive Government and a variety of other tasks. The agency's executive director manages the agency's affairs under the direction of a seven-member appointed commission.

The comptroller of public accounts (comptroller) has varied duties and powers related to state procurements and payments and statewide financial accounting for state agencies and is a member of the statewide Contract Advisory Team and the State Council on Competitive Government, having previously housed and supported the Council.

Under this bill, the Texas Building and Procurement Commission is renamed the Texas Facilities Commission and retains its building and facilities related duties and powers. The bill transfers all other duties and powers of the Texas Building and Procurement Commission to the comptroller. This proposal is intended to increase efficiency of these central governmental operations and improve quality of services and goods to all state agencies, thereby enhancing quality of services and goods to taxpayers of this state. This proposal also intends to centralize and increase the accuracy and availability of detailed financial information on the state's purchasing expenditures for the providers and users of those goods and services. With this information in hand, the state can plan and implement future innovations to reduce costs and improve quality.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that rulemaking authority is expressly granted to the comptroller in SECTION 1.05 (Section 2155.0012, Government Code), SECTION 1.16 (Section 2156.0012, Government Code), SECTION 1.17 (Section 2157.0012, Government Code), SECTION 1.18 (Section 2158.0012, Government Code), SECTION 1.19 (Section 2161.0012, Government Code), SECTION 1.24 (Section 2163.0012, Government Code), SECTION 1.28 (Section 2170.0012, Government Code), SECTION 1.31 (Section 2172.0012, Government Code), Section 1.32 (Section 2175.0012, Government Code), SECTION 1.39 (Section 2177.0012, Government Code), and SECTION 1.100 (Section 271.082, Local Government Code).

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Facilities Commission in SECTION 1.25 (Section 2165.0012, Government Code).

It is the opinion of the committee that rulemaking authority previously granted to the Texas Building and Procurement Commission (also known previously as the General Services Commission) is transferred to the comptroller, in consultation with the State Auditor in SECTION 1.11 (Section 2155.325, Government Code), SECTION 1.13 (Section 2155.381,

Government Code), SECTION 1.14 (Section 2155.382, Government Code), SECTION 1.70 (Section 2251.003, Government Code).

It is the opinion of the committee that rulemaking authority previously granted to the Texas Building and Procurement Commission (also known previously as the General Services Commission) is transferred to the comptroller in SECTION 1.15 (Section 2155.503, Government Code), SECTION 1.30 (Section 2171.056, Government Code), SECTION 1.65 (Section 2113.103, Government Code), SECTION 1.80 (Section 34.001, Education Code), SECTION 1.109 (Section 223.041, Transportation Code).

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Ethics Commission in SECTION 1.06 (Section 2155.003, Government Code) and SECTION 3.09 (Section 2152.064, Government Code).

## **ANALYSIS**

### ARTICLE 1

With regard to the Texas Building and Procurement Commission (formerly known as the General Services Commission, State Board of Control, or State Purchasing and General Services Commission) provides for:

Renaming the agency as the Texas Facilities Commission and retention by the Texas Facilities Commission of all powers and duties related to:

- 1.) Charge and control of state buildings, grounds, or property;
- 2.) Maintenance or repair of state buildings, grounds, or property;
- 3.) Purchase or lease of state buildings, grounds or property by or for the state; or
- 4.) Child care services for state employees under Chapter 663, Government Code; and.

Except as otherwise provided by law, the transfer to the comptroller of all other powers and duties of the Texas Building and Procurement Commission, other than those retained by the Texas Facilities Commission.

Makes conforming changes to statutes governing state purchasing and facilities to reflect the name change of the Texas Building and Procurement Commission (TBPC) to the Texas Facilities Commission and the transfer of powers and duties to the comptroller; For purchasing-related powers and duties in which TBPC and the comptroller were both involved (such as purchase audits, approvals of forms and reporting requirements), deletes references to TBPC and makes conforming changes.

Establishes conflict of interest provisions for the comptroller, the comptroller's chief clerk and other comptroller employees, and also for commission members, employees, or appointees of the Texas Facilities Commission; Gives the Texas Ethics Commission the authority to administer, enforce, and adopt rules relating to these conflict of interest provisions; Authorizes the Texas Ethics Commission to prepare written opinions regarding these provisions in accordance with its enabling legislation;

Includes the state auditor in various provisions relating to the auditing of purchases and invoicing procedures, and consultation of the comptroller with the auditor on various purchasing related rules;

Adds the Land Commissioner to the State Council on Competitive Government;

In transferring powers and duties of TBPC to the comptroller, expressly grants the comptroller rulemaking authority to administer the transferred functions;

With regard to powers and duties retained by the Texas Facilities Commission, expressly grants the commission rulemaking authority to administer retained functions;

Provides that employees of TBPC who primarily perform duties that will be retained by the Texas Facilities Commission will remain as employees of the Texas Facilities Commission; all other employees of TBPC will be transferred to the comptroller;

Provides transition provisions for handling rules, forms, policies, procedures, decisions, court cases, administrative proceedings, contracts, negotiations, money, contracts, leases, rights, bonds, and obligations, personal property, records, and appropriated funds;

Requires a memorandum of understanding between the comptroller and the Texas Facilities Commission governing the transfer of powers, duties, property, employees, appropriations, and other items.

With regard to various functions related to purchasing and other powers and duties not retained by the Texas Facilities Commission, changes references to TBPC (or predecessor agencies) to be references to the comptroller in various statutes.

## ARTICLE 2

With regard to functions related to telecommunications and technology-related purchasing, changes references to TBPC (or predecessor agencies) to be references to the Department of Information Resources (DIR). For processes in which both TBPC and DIR were involved, deletes statutory references to TBPC.

## ARTICLE 3

Makes other conforming changes to miscellaneous statutes;

Establishes conflict of interest provisions for commission members, employees, or appointees of the Texas Facilities Commission with regard to functions retained by the commission and gives the Texas Ethics Commission the authority to administer, enforce, and adopt rules relating to conflict of interest provisions for those functions; Authorizes the Texas Ethics Commission to prepare written opinions regarding these provisions in accordance with the Commission's enabling authority; and

Establishes that use by a legislative branch entity of purchasing service of the comptroller or another state agency does not subject the entity to a rule, statute, or provision of a contract requiring disclosure of certain purchasing-related information.

## ARTICLE 4

Requires the executive director of the Texas Facilities Commission, the state auditor, and the General Land Office to conduct an in-depth study of the functions of the Texas Facilities Commission and to submit a report to the governor, lieutenant governor, and speaker. This provision expires January 1, 2009.

## ARTICLE 5

Provides for an effective date of September 1, 2007.

### **EFFECTIVE DATE**

September 1, 2007

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

Articles and sections are rearranged in the committee substitute.

The original bill abolishes the Texas Building and Procurement Commission and transfers its building and facilities related powers and duties to the General Land Office and all other powers and duties to the Comptroller of Public Accounts. The committee substitute renames the Texas Building and Procurement Commission as the Texas Facilities Commission and leaves building and facilities-related functions, including child care services for state employees, with the Texas Facilities Commission, while transferring all other functions (primarily procurement-related functions) to the comptroller.

To address checks and balances, the committee substitute adds provisions not in the original bill about purchase audits by the state auditor and consultation by the comptroller with the state auditor on its adoption of various purchasing related rules.

The original bill did not specifically address conflict of interest provisions as they relate to the comptroller and the General Land Office. The committee substitute expressly applies these provisions to the comptroller, the chief clerk of the comptroller and other comptroller employees, as well as to the Texas Facilities Commission, its members, employees and appointees; the original bill did not include these provisions. The committee substitute expressly authorizes the Texas Ethics Commission to administer and enforce these provisions and prepare written opinions regarding these provisions in accordance with the Commission's enabling authority; the original bill did not include these provisions.

The committee substitute adds provisions not in the original bill requiring the comptroller to provide offices for the State Council on Competitive Government and provide the Council with legal, technical, administrative and other support duties, transferring any administrative powers or duties of TBPC with respect to the Council to the comptroller.

The original bill provided that certain powers and duties for child care services for state employees under Chapter 663, Government Code, would transfer to the comptroller while others would transfer to the General Land Office; the committee substitute provides that all powers and duties for child care services for state employees remain with the Texas Facilities Commission.

The original bill deleted the presiding officer of TBPC from membership on the State Council on Competitive Government. The committee substitute includes on the Council the presiding officer of the Texas Facilities Commission and the Land Commissioner of the General Land Office.

With regard to powers and duties transferred to the comptroller, the committee substitute expressly provides the comptroller with rulemaking authority to effectively administer those provisions; the original bill did not contain these provisions.

The original bill required the comptroller and the General Land Office to adopt a memorandum of understanding regarding the transferred powers, duties, property, employees, appropriations and other transferred items. The committee substitute requires the comptroller and the Texas Facilities Commission to adopt a memorandum of understanding.

The committee substitute contains a provision not included in the original bill that requires a joint interim study of the functions of the Texas Facilities Commission.