

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 25, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

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

IN RE: HB3560 by Swinford (Relating to transferring to the comptroller the duties of the Texas Building and Procurement Commission that do not primarily concern state facilities and renaming the commission the Texas Facilities Commission.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3560, As Passed 2nd House: a negative impact of (\$1,682,194) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$677,125)
2009	(\$1,005,069)
2010	(\$979,626)
2011	(\$980,982)
2012	(\$982,374)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2007
2008	(\$677,125)	8.0
2009	(\$1,005,069)	13.0
2010	(\$979,626)	13.0
2011	(\$980,982)	13.0
2012	(\$982,374)	13.0

Fiscal Analysis

This bill would divide the duties and responsibilities of the Texas Building and Procurement Commission (TBPC) between the Comptroller of Public Accounts (Comptroller) and a new state agency, to be named the Texas Facilities Commission (TFC). Because the bill would provide for the transfer of existing appropriation authority and FTEs, there would be no fiscal impact to the state.

All powers and duties of TBPC that relate to the following areas would be performed by TFC:

1. charge and control of state buildings, grounds, or property;
2. maintenance or repair of state buildings, grounds, or property;
3. construction of a state building;
4. purchase or lease of buildings, grounds, or property by or for the state;

5. child care services for state employees;
6. and surplus and salvage property.

All other powers and duties of TBPC would be transferred to the Comptroller, including:

1. statewide procurement;
2. training and compliance;
3. statewide HUB program;
4. travel procurement;
5. fleet management; and
6. support services.

Based on TBPC's 2007 operating budget, the bill would transfer approximately \$13.6 million and 114 FTEs from TBPC to the Comptroller. The remaining appropriations authority (\$134.3 million) and FTEs (464) for TBPC would be redirected to TFC. All TBPC employees would become employees of either TFC or the Comptroller, as applicable. A management employee of TBPC would not automatically continue to hold a management position with the Comptroller after the transfer. To hold the management position on other than an interim basis the person would have to apply for the position with the applicable office.

All money, contracts, leases, rights, bonds, and obligations of TBPC would be transferred to TFC or the Comptroller, as applicable. All personal property, including records, in the custody of TBPC relating to transferred activities would become the property of TFC or the Comptroller, as applicable. All funds appropriated by the Legislature to TBPC, including funds for providing administrative support for transferred services, would be transferred to TFC or the Comptroller, as applicable.

The bill would increase the involvement of the Texas Ethics Commission in administering and enforcing statutory conflict of interest requirements related to state procurement operations. The Ethics Commission estimates that these activities would require an additional Attorney 3 position, costing \$81,455 in fiscal year 2008 and \$77,804 each year after.

The bill would increase the membership of the State Council on Competitive Government (CCG) by one, to include the state's land commissioner. The bill would also replace the TBPC presiding officer with the presiding officer of the Texas Facilities Commission as a member of the CCG. The bill would require the functions and responsibilities assigned to the Texas Facilities Commission to undergo Sunset review, with a report, containing evaluation and recommendations, presented to the 81st Legislature. The bill would require the functions and responsibilities transferred to the Comptroller to undergo Sunset review, with a report, containing evaluation and recommendations, presented to the 82nd Legislature. The Sunset Commission can conduct such studies within existing resources.

The bill also contains language concerning the Department of Information Resources' duties and responsibilities relating to telecommunications services for state government. No changes to DIR's current telecommunications activities are anticipated.

The state could realize savings in future years as a result of the passage of the proposed bill once the Comptroller has fully reviewed individual procurement program operations for reorganization or efficiency improvement opportunities. However, because the bill would transfer existing appropriation authority and FTEs, there are no anticipated savings in the 2008-09 biennium.

Amendment 2 (Senate, 2nd Reading) would create the Texas State Music History Museum. Amendment 2 would require the Music, Film, Television, and Multimedia Office (office) within the Office of the Governor to establish a request for proposal process and develop criteria to select contractors for the construction and operation of the museum.

The bill would permit the museum operator, who is selected by the office, to develop and produce films and musical recordings and retain royalties or receive revenue from the production, distribution, exhibition, or sale of those films and recordings. The bill would authorize the museum operator to license and sell music from the museum's website, host live musical performances and establish a museum membership program. The bill would permit the museum operator to operate a gift shop, food services, and ATMs as well as providing parking and tour services. The bill would require that all

money and securities received by the museum be held outside the treasury in the Texas State Music History Museum fund, managed by the Comptroller of Public Accounts.

Amendment 2 would require that to the extent possible, costs of operating the museum are to be paid from revenues generated by the museum. Amendment 2 would prohibit amounts from the General Revenue Fund from being appropriated for museum operations; therefore, no significant fiscal impact to the state is anticipated.

Amendment 6 (Senate, 2nd Reading) 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 be obliged 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.

Amendment 6 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.

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: (1) 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; (2) conduct a full and fair cost comparison to determine whether a private entity could perform the service or function with a comparable or better level of quality at a cost savings to the state; and, (3) prepare a business case with justification for the proposed contract or amendment, the anticipated return on investment in terms of cost savings and efficiency for the proposed contract or proposed contract extension or amendment. The amendment would allow state agencies to contract with the Council on Competitive Government to perform this comparison.

Amendment 6 would add the Council on Competitive Government as a member of the CAT and require the CAT to develop and publish a uniform set of definitions and forms that state agencies may use in the different stages of the contracting process.

Amendment 6 would require the Texas Building and Procurement Commission (TBPC) to establish a state office of contract management (office) to identify, review, and provide assistance on "high-risk" contracts undertaken by state agencies. The bill defines "high-risk" contracts as those agency contracts with a value at or greater than \$10 million or that meet other non-financial high risk factors identified by the office. The Commission would also have the ability to waive contracts from required review and approval if the contract in question is determined to carry a low-risk to the state.

The office would be required to approve identified "high-risk" contracts at three points in the contract management process: (1) prior to the public release of solicitation documents; (2) prior to the execution of a final contract; and (3) prior to making a payment, or series of payments, that equal half of the contract value.

A contract not approved at any of the three points noted would be referred to the Legislative Budget Board (LBB) and the governor for further review and comment. With the approval of those entities, the office may recommend the cancellation of a solicitation or a contract under review if the contract

is not in the best interests of the state or places a state entity at unacceptable risk if executed.

Amendment 6 would apply to contracts considered by state agencies, excluding contracts by the Texas Department of Transportation (TXDOT), Health and Human Services' enrollment contracts, and contracts executed by institutions of higher education.

Methodology

To meet the requirements of **Amendment 6 (Senate, 2nd Reading)**, TBPC would need to revise agency rules, contract management guidelines, and procurement and contracting forms developed by the agency. It is assumed that these additional duties and responsibilities could be absorbed within existing state resources.

To implement the additional responsibilities required by the creation of the office of contract management, TBPC would require additional resources. In fiscal year 2005, state agencies, excluding TXDOT, executed 123 contracts valued at \$10 million or more. In fiscal year 2006 that total increased only slightly to 130. It is assumed that no more than half of applicable agency contracts would be identified as high risk and be subject to the office's review and approval. This would result in the office reviewing 65 contracts per year.

Based on this work load, it is assumed that TBPC would require a total of 12 full-time equivalents by the second year of program operations. The 12 employees would include the following classifications: Director II (1); Contract Administration Manager I (2); Contract Specialist IV (5); Attorney II (1); Attorney I (1); Administrative Assistant III (1); and (Administrative Assistant I (1). Annual salaries for these positions range from \$29,779 to \$80,886. Seven of the employees listed would be available to be assigned specific individual contract reviews, handling an average of 9 contracts each per year, with the remaining personnel serving in support roles for all office operations. The positions required, and the cost of those positions, would remain the same when transferred to the Comptroller of Public Accounts.

It is also assumed that the Council on Competitive Government, as a new member of CAT and with other new responsibilities in outlined in the amendment, would require an additional FTE (Contract Specialist IV) with an annual salary of \$47,382. The costs associated with this new FTE are \$68,111 in fiscal year 2008 and \$64,944 in fiscal year 2009. The position required, and the cost of the position, would remain the same when transferred to the Comptroller of Public Accounts.

Total costs are higher in fiscal year 2009 than fiscal year 2008 due to the development time required to establish, staff, and initiate office operations. It is expected that the office would be fully staffed and operational by the beginning of fiscal year 2010.

The other provisions of HB 3560, including the other six amendments, carry no significant fiscal impact.

Local Government Impact

Local governments that use the TBPC's certification processes and programs to identify HUBs would have no additional costs (e.g. the city of Waco). Larger cities and counties that already have certification processes in place are likely to have the means to quickly and affordably create an online searchable database (e.g. Dallas County and the city of Houston).

Local governments that certify HUBs or conduct certifications and do not have a searchable database already created would incur some costs. For example, the city of LaMarque reported initial costs of \$65,500 in fiscal year 2008 for new staff, capital outlay, and operational costs. These costs would fall to \$54,271 and would consist mostly of salary, benefits, and telephone and software maintenance

Source Agencies:

LBB Staff: JOB, MN, JI, KY