

1-1 By: Williams S.B. No. 1109
1-2 (In the Senate - Filed March 3, 2011; March 16, 2011, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 29, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 29, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1109 By: Williams
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to state agency procurement and the comptroller's
1-11 procurement powers and duties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 2155.001, Government Code, is amended by
1-14 amending Subdivision (2) and adding Subdivision (3) to read as
1-15 follows:

1-16 (2) "Service" means the furnishing of skilled or
1-17 unskilled labor or professional work, but does not include a:

1-18 (A) professional service subject to Subchapter
1-19 A, Chapter 2254;

1-20 (B) service of a state agency employee;

1-21 (C) service procured by the Department of
1-22 Information Resources;

1-23 (D) consulting service or service of a consultant
1-24 as defined by Subchapter B, Chapter 2254; or

1-25 (E) ~~[(D)]~~ service of a public utility.

1-26 (3) "State agency" has the meaning assigned by Section
1-27 2151.002 unless otherwise provided by this chapter.

1-28 SECTION 2. Section 2155.002, Government Code, is amended to
1-29 read as follows:

1-30 Sec. 2155.002. COMPTROLLER [COMMISSION] FOCUS ON LARGE
1-31 EXPENDITURES. To the extent possible, the comptroller [commission]
1-32 shall focus [its efforts under this chapter and Chapters 2156,
1-33 2157, and 2158] on purchases and contracts that involve relatively
1-34 large amounts of money or that leverage state spending in the most
1-35 efficient manner.

1-36 SECTION 3. Section 2155.064, Government Code, is amended to
1-37 read as follows:

1-38 Sec. 2155.064. LEVERAGED [SCHEDULE AND BULK] PURCHASING.
1-39 To the greatest extent possible, the comptroller shall pursue
1-40 statewide contracts and attempt to leverage state spending to
1-41 achieve cost savings for this state [The commission may combine
1-42 orders in a system of schedule purchasing and shall attempt to
1-43 benefit from bulk purchasing].

1-44 SECTION 4. Section 2155.068, Government Code, is amended to
1-45 read as follows:

1-46 Sec. 2155.068. UNIFORM STANDARDS AND SPECIFICATIONS.
1-47 (a) The comptroller [commission] may coordinate uniform standards
1-48 and specifications for goods purchased by this state [the
1-49 commission]. The comptroller [commission] by rule may adopt
1-50 appropriate standards developed by a nationally recognized
1-51 standards-making association as part of its specifications and
1-52 standards program.

1-53 (b) On request of the comptroller, a state agency shall
1-54 cooperate with the comptroller [The commission shall enlist the
1-55 cooperation of other state agencies] in the establishment,
1-56 maintenance, and revision of uniform standards and specifications.

1-57 (c) The comptroller [commission] shall review contracts
1-58 administered by the comptroller [commission] to ensure that all
1-59 goods and services meet contract specifications.

1-60 (d) As part of the standards and specifications program, the
1-61 comptroller [commission] shall:

1-62 (1) review contracts for opportunities to recycle
1-63 waste produced at state buildings;

2-1 (2) develop and update a list of equipment and
2-2 appliances that meet the energy efficiency standards provided by
2-3 Section 2158.301; and

2-4 (3) assist state agencies in selecting products under
2-5 Section 2158.301, as appropriate.

2-6 SECTION 5. Section 2155.070, Government Code, is amended to
2-7 read as follows:

2-8 Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) A
2-9 state agency that determines that goods or services received under
2-10 a contract administered by the comptroller [~~commission~~] do not meet
2-11 specifications shall promptly notify the comptroller [~~commission~~]
2-12 in writing of the reasons for the determination. As soon as
2-13 possible, the comptroller [~~The commission~~] shall determine
2-14 [~~immediately make its own determination of~~] whether the goods and
2-15 services meet specifications.

2-16 (b) For purchases exempt from the comptroller's purchasing
2-17 authority, the comptroller may [~~The commission or a state agency,~~
2-18 ~~including an institution of higher education, has the authority to~~]
2-19 determine whether the purchased [~~that~~] goods and services [~~exempted~~
2-20 ~~from the commission's purchasing authority~~] meet or fail to meet
2-21 specifications. A state agency may also determine whether the
2-22 goods and services meet or fail to meet specifications.

2-23 (c) On determining that contract specifications or
2-24 conditions have not been met, the comptroller [~~commission~~] shall
2-25 act against the defaulting contractor, with the assistance of the
2-26 attorney general as necessary.

2-27 (d) If the comptroller [~~commission~~] receives repeated
2-28 complaints against a vendor, the comptroller [~~commission~~] shall
2-29 remove the vendor's name and the vendor's goods and services from
2-30 the comptroller's [~~commission's~~] bidders list for not longer than
2-31 one year. If complaints resume after the vendor is reinstated on
2-32 the bidders list, the comptroller [~~commission~~] may bar the vendor
2-33 from participating in state contracts for a period under Section
2-34 2155.077.

2-35 SECTION 6. Section 2155.072, Government Code, is amended to
2-36 read as follows:

2-37 Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS;
2-38 COMPTROLLER [~~COMMISSION~~] STUDIES. Each state fiscal year, the
2-39 comptroller [~~(a) The commission annually~~] shall consider one or
2-40 more services purchased by one or more state agencies for
2-41 development into statewide contracts. The comptroller shall
2-42 determine if a particular service may be leveraged for multiple
2-43 state agencies at a cost savings to this state compared to the cost
2-44 to this state of purchasing the service under individual state
2-45 agency contracts [~~select for study at least one service that is~~
2-46 ~~purchased by one or more state agencies~~]. The comptroller
2-47 [~~commission~~] shall consider awarding statewide contracts by region
2-48 [~~study a selected service to determine whether the state would~~
2-49 ~~benefit if the service were provided to appropriate state agencies~~
2-50 ~~under a regional or statewide contract. The commission shall give~~
2-51 ~~priority to studying services for which the commission has~~
2-52 ~~delegated the purchasing function to many state agencies~~].

2-53 [(b) ~~The commission is not required to enter into a~~
2-54 ~~statewide or regional contract for the provision of a service to~~
2-55 ~~state agencies if more than five bidders are willing to provide the~~
2-56 ~~service to the state under a statewide or regional contract.~~]

2-57 SECTION 7. Section 2155.074, Government Code, is amended to
2-58 read as follows:

2-59 Sec. 2155.074. PROCUREMENT MANUAL; BEST VALUE AND SOURCING
2-60 STANDARDS [~~STANDARD~~] FOR PURCHASE OF GOODS OR SERVICES. (a) The
2-61 comptroller shall publish and maintain a procurement manual for
2-62 state agencies to follow that incorporates the sourcing standards
2-63 of this section and the best practices for procurement. Before
2-64 publication, the procurement manual must be reviewed by the
2-65 contract advisory team established under Chapter 2262. Each state
2-66 agency shall comply with the procurement manual in its procurement
2-67 activities.

2-68 (b) For a purchase of goods and services under this chapter,
2-69 each state agency, including the comptroller [~~commission~~], shall

3-1 purchase goods and services that provide the best value for the
3-2 state.

3-3 (c) [~~(b)~~] In determining the best value for the state, the
3-4 purchase price and whether the goods or services meet
3-5 specifications are the most important considerations. However, the
3-6 comptroller [~~commission~~] or other state agency may, subject to
3-7 Subsection (d) [~~(c)~~] and Section 2155.075, consider other relevant
3-8 factors, including:

- 3-9 (1) installation costs;
- 3-10 (2) life cycle costs;
- 3-11 (3) the quality and reliability of the goods and
3-12 services;
- 3-13 (4) the delivery terms;
- 3-14 (5) indicators of probable vendor performance under
3-15 the contract such as past vendor performance, the vendor's
3-16 financial resources and ability to perform, the vendor's experience
3-17 or demonstrated capability and responsibility, and the vendor's
3-18 ability to provide reliable maintenance agreements and support;
- 3-19 (6) the cost of any employee training associated with
3-20 a purchase;
- 3-21 (7) the effect of a purchase on agency productivity;
- 3-22 (8) the vendor's anticipated economic impact to the
3-23 state or a subdivision of the state, including potential tax
3-24 revenue and employment; and
- 3-25 (9) other factors relevant to determining the best
3-26 value for the state in the context of a particular purchase.

3-27 (d) [~~(c)~~] A state agency shall consult with and receive
3-28 approval from the comptroller [~~commission~~] before considering
3-29 factors other than price and meeting specifications when the agency
3-30 procures through competitive bidding goods or services with a value
3-31 that exceeds \$100,000.

3-32 (e) The comptroller shall:

- 3-33 (1) identify commercially available goods and
3-34 services needed or used by state agencies; and
- 3-35 (2) analyze and determine whether the goods and
3-36 services are better provided through a statewide contract.

3-37 (f) If the comptroller determines that a good or service
3-38 identified under Subsection (e) is better provided through a
3-39 statewide contract, the comptroller shall require state agencies to
3-40 engage in any process, including competitive bidding, developed by
3-41 the comptroller to develop and award one or more statewide
3-42 contracts for the good or service.

3-43 (g) In performing the comptroller's duties under this
3-44 chapter, the comptroller may:

- 3-45 (1) require a state agency to conduct a hearing,
3-46 study, review, or cost estimate, including an agency in-house cost
3-47 estimate or a management study, concerning any aspect of a good or
3-48 service identified under Subsection (e);
- 3-49 (2) develop and require state agencies to use methods
3-50 that accurately and fairly estimate and account for the cost of
3-51 obtaining the identified good or service;
- 3-52 (3) require that the identified good or service be
3-53 submitted to competitive bidding or another process that creates
3-54 competition;
- 3-55 (4) prescribe, after consulting affected state
3-56 agencies, the specifications and conditions of the purchase and the
3-57 procedures that must be followed for the procurement of the
3-58 identified good or service; and
- 3-59 (5) determine the terms of a contract for the
3-60 identified good or service.

3-61 SECTION 8. Subsection (a), Section 2155.078, Government
3-62 Code, is amended to read as follows:

3-63 (a) The comptroller [~~commission~~] shall establish and
3-64 administer a system of training, continuing education, and
3-65 certification for state agency purchasing personnel. The
3-66 comptroller [~~commission~~] may establish and offer appropriate
3-67 training to vendors on a cost recovery basis. The comptroller
3-68 [~~commission~~] may adopt rules to administer this section, including
3-69 rules relating to:

4-1 (1) monitoring a certified purchaser's compliance with
4-2 the continuing education requirements of this section; and
4-3 (2) suspending or revoking a purchaser's certification
4-4 for failure to comply with this chapter or comptroller rules.

4-5 SECTION 9. Section 2155.082, Government Code, is amended to
4-6 read as follows:

4-7 Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON
4-8 FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The
4-9 comptroller [commission] may provide open market purchasing
4-10 services on a fee-for-service basis for state agency purchases that
4-11 are delegated to an agency under Section 2155.131, 2155.132,
4-12 ~~[2155.133,]~~ or 2157.121 or that are exempted from the purchasing
4-13 authority of the comptroller [commission]. The comptroller
4-14 [commission] shall set the fees in an amount that recovers the
4-15 comptroller's [commission's] costs in providing the services.

4-16 (b) The comptroller [commission] shall publish a schedule
4-17 of ~~[its]~~ fees for services that are subject to this section. The
4-18 schedule must include the comptroller's [commission's] fees for:

- 4-19 (1) reviewing bid and contract documents for clarity,
4-20 completeness, and compliance with laws and rules;
- 4-21 (2) developing and transmitting invitations to bid;
- 4-22 (3) receiving and tabulating bids;
- 4-23 (4) evaluating and determining which bidder offers the
4-24 best value to the state;
- 4-25 (5) creating and transmitting purchase orders; and
- 4-26 (6) participating in agencies' request for proposal
4-27 processes.

4-28 (c) The comptroller may engage a consultant to assist with a
4-29 particular procurement on behalf of a state agency and pay the
4-30 consultant from the cost savings realized by the state agency.

4-31 SECTION 10. Subsection (n), Section 2155.083, Government
4-32 Code, is amended to read as follows:

4-33 (n) Notwithstanding any other provision of this section, a
4-34 state agency that conducts covert law enforcement operations is not
4-35 required to post the specifications for covert equipment in the
4-36 state business daily [This section does not apply to a state agency
4-37 to which Section 51.9335 or 73.115, Education Code, applies].

4-38 SECTION 11. Section 2155.085, Government Code, is amended
4-39 to read as follows:

4-40 Sec. 2155.085. REVERSE AUCTION PROCEDURE. ~~[(a)]~~ The
4-41 comptroller may [commission shall]:

- 4-42 (1) purchase goods or services using the reverse
4-43 auction procedure whenever:
 - 4-44 (A) the procedure provides the best value to the
4-45 state; or
 - 4-46 (B) all purchasing methods provide equal value to
4-47 the state;
- 4-48 (2) offer historically underutilized businesses
4-49 assistance and training relating to the reverse auction procedure;
4-50 and
- 4-51 (3) advise historically underutilized businesses on
4-52 contracts available using the reverse auction procedure.

4-53 ~~[(b) The commission shall set a goal of purchasing at least~~
4-54 ~~20 percent of the dollar value of goods or services purchased by the~~
4-55 ~~commission using the reverse auction procedure.]~~

4-56 SECTION 12. Subchapter B, Chapter 2155, Government Code, is
4-57 amended by adding Section 2155.088 to read as follows:

4-58 Sec. 2155.088. PROCUREMENT PLANS FOR GOODS AND SERVICES.

4-59 (a) Not later than June 1 of each odd-numbered year, each state
4-60 agency shall provide a procurement plan to the comptroller that
4-61 identifies the major goods and services the agency plans to
4-62 purchase during the next fiscal biennium.

4-63 (b) The comptroller shall use the procurement plans to
4-64 schedule solicitations for proposals for goods and services used by
4-65 multiple state agencies.

4-66 (c) A state agency that makes a substantive change to its
4-67 procurement plan shall submit a revised copy of the plan to the
4-68 comptroller not later than the 30th day after the date of the
4-69 change.

5-1 (d) The comptroller may adopt rules to administer this
5-2 section.

5-3 SECTION 13. Section 2155.131, Government Code, is amended
5-4 to read as follows:

5-5 Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES.
5-6 (a) The comptroller [commission] may delegate purchasing
5-7 functions to a state agency.

5-8 (b) In delegating purchasing authority under this section
5-9 or Section 2155.132, the comptroller shall consider factors
5-10 relevant to a state agency's ability to perform purchasing
5-11 functions, including:

5-12 (1) the purchasing capabilities of the agency's
5-13 purchasing personnel and the existence of automated purchasing
5-14 tools at the agency;

5-15 (2) the certification levels held by the agency's
5-16 purchasing personnel;

5-17 (3) the results of the comptroller's procurement
5-18 review audits of an agency's purchasing practices; and

5-19 (4) whether the agency has adopted and published as
5-20 part of its purchasing rules protest procedures consistent with the
5-21 comptroller's protest procedures.

5-22 (c) The comptroller shall monitor the purchasing practices
5-23 of each state agency that the comptroller delegates purchasing
5-24 authority to under Subsection (b) or Section 2155.132 to ensure
5-25 that the certification levels of the agency's purchasing personnel
5-26 and the quality of the agency's purchasing practices continue to
5-27 warrant the delegated purchasing authority. The comptroller may
5-28 revoke for any cause, including the agency's failure to comply with
5-29 Section 2155.074, all or part of the delegated purchasing
5-30 authority. The comptroller shall adopt rules to administer this
5-31 subsection.

5-32 (d) The comptroller by rule shall prescribe:

5-33 (1) the procedures a state agency must follow in
5-34 making a delegated purchase; and

5-35 (2) the procedures by which a state agency may use the
5-36 comptroller's services for delegated purchases under Section
5-37 2155.082.

5-38 SECTION 14. Section 2155.132, Government Code, is amended
5-39 to read as follows:

5-40 Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY
5-41 AMOUNT. (a) A state agency is delegated the authority to purchase
5-42 goods and services if the purchase does not exceed \$15,000. If the
5-43 comptroller [commission] determines that a state agency has not
5-44 followed the comptroller's [commission's] rules or the laws related
5-45 to the delegated purchases, the comptroller [commission] shall
5-46 report the comptroller's [its] determination to the members of the
5-47 state agency's governing body and to the governor, lieutenant
5-48 governor, speaker of the house of representatives, and Legislative
5-49 Budget Board.

5-50 (b) The comptroller [commission] by rule may delegate to a
5-51 state agency the authority to purchase goods and services if the
5-52 purchase exceeds \$15,000. [In delegating purchasing authority
5-53 under this subsection or Section 2155.131, the commission shall
5-54 consider factors relevant to a state agency's ability to perform
5-55 purchasing functions, including:

5-56 [(1) the capabilities of the agency's purchasing staff
5-57 and the existence of automated purchasing tools at the agency;

5-58 [(2) the certification levels held by the agency's
5-59 purchasing personnel;

5-60 [(3) the results of the commission's procurement
5-61 review audits of an agency's purchasing practices; and

5-62 [(4) whether the agency has adopted and published
5-63 protest procedures consistent with those of the commission as part
5-64 of its purchasing rules.]

5-65 (c) [The commission shall monitor the purchasing practices
5-66 of state agencies that are making delegated purchases under
5-67 Subsection (b) or Section 2155.131 to ensure that the certification
5-68 levels of the agency's purchasing personnel and the quality of the
5-69 agency's purchasing practices continue to warrant the amount of

6-1 ~~delegated authority provided by the commission to the agency. The~~
6-2 ~~commission may revoke for cause all or part of the purchasing~~
6-3 ~~authority that the commission delegated to a state agency. The~~
6-4 ~~commission shall adopt rules to administer this subsection.~~

6-5 ~~[(d) The commission by rule:~~
6-6 ~~(1) shall prescribe procedures for a delegated~~
6-7 ~~purchase; and~~

6-8 ~~(2) shall prescribe procedures by which agencies may~~
6-9 ~~use the commission's services for delegated purchases, in~~
6-10 ~~accordance with Section 2155.082.~~

6-11 ~~[(e)]~~ Competitive bidding, whether formal or informal, is
6-12 required for a purchase by a state agency if the purchase:

- 6-13 (1) exceeds \$5,000; and
- 6-14 (2) is made under a written contract.

6-15 (d) ~~[(f)]~~ Goods purchased under this section may not
6-16 include:

6-17 (1) an item for which a statewide contract has been
6-18 awarded by the comptroller ~~[under the contract purchase procedure]~~,
6-19 unless the quantity purchased is less than any ~~[the]~~ minimum
6-20 quantity specified in the contract;

6-21 (2) an item required by statute to be purchased from a
6-22 particular source, including through the program administered
6-23 under Chapter 122, Human Resources Code, or from the Texas
6-24 Correctional Industries under Chapter 497; or

6-25 (3) a scheduled item that has been designated for
6-26 purchase by the comptroller ~~[commission]~~.

6-27 (e) ~~[(g)]~~ A large purchase may not be divided into small lot
6-28 purchases to circumvent ~~[meet]~~ the dollar limits prescribed by this
6-29 section. The comptroller ~~[commission]~~ may not require that
6-30 unrelated purchases be combined into one purchase order to exceed
6-31 the dollar limits prescribed by this section.

6-32 (f) ~~[(h)]~~ A state agency making a purchase under this
6-33 section for which competitive bidding is required shall ~~[must]~~:

6-34 (1) ~~[attempt to]~~ obtain at least three competitive
6-35 bids from:

6-36 (A) sources listed on the master bidders list
6-37 that normally offer for sale the goods being purchased; or

6-38 (B) if three vendors are not available on the
6-39 master bidders list, vendors in the applicable industry; and

6-40 (2) comply with Subchapter E.

6-41 SECTION 15. Subchapter C, Chapter 2155, Government Code, is
6-42 amended by adding Section 2155.1325 to read as follows:

6-43 Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) A
6-44 state agency that is preparing a solicitation for proposals for a
6-45 purchase of goods or services with a purchase price that exceeds
6-46 \$100,000 that is delegated under this chapter or other law shall
6-47 submit to the comptroller a copy of the draft solicitation with a
6-48 statement of the procurement strategy for the purchase.

6-49 (b) The comptroller may review the draft solicitation and
6-50 procurement strategy to determine whether the state agency is
6-51 following the best value and sourcing standards of Section 2155.074
6-52 to the greatest extent possible. The comptroller may:

6-53 (1) recommend changes to the draft solicitation or
6-54 procurement strategy, provided the written recommended changes are
6-55 submitted to the state agency not later than the 30th day after the
6-56 date the comptroller receives the draft solicitation and
6-57 procurement strategy from the state agency;

6-58 (2) partner with the state agency to ensure that the
6-59 standards of this chapter are followed;

6-60 (3) partner with the state agency to award a statewide
6-61 contract that results from the solicitation; or

6-62 (4) require the state agency to engage a consultant to
6-63 assist with the solicitation to be paid from the cost savings
6-64 realized under the contract, as authorized by Section 2155.082.

6-65 (c) A state agency that receives the comptroller's
6-66 recommended changes under Subsection (b)(1) shall:

6-67 (1) accept the recommended changes; or

6-68 (2) submit alternative suggestions to the comptroller
6-69 for review in accordance with this section.

7-1 (d) The comptroller may adopt rules to administer this
7-2 section.

7-3 SECTION 16. Subchapter D, Chapter 2155, Government Code, is
7-4 amended by adding Section 2155.205 to read as follows:

7-5 Sec. 2155.205. ACCESS BY OTHER GOVERNMENTAL ENTITIES. The
7-6 comptroller may allow a governmental entity of another state to
7-7 access the comptroller's statewide contracts.

7-8 SECTION 17. Subsection (a), Section 2155.385, Government
7-9 Code, is amended to read as follows:

7-10 (a) The comptroller [~~If authorized by rule adopted by the~~
7-11 ~~comptroller under Section 403.023, the commission~~] may contract
7-12 with one or more credit card issuers for state agencies to use
7-13 credit cards to pay for purchases. [~~The commission may not enter~~
7-14 ~~into a contract that conflicts with the comptroller's rules.~~]

7-15 SECTION 18. Section 2054.158, Government Code, is amended
7-16 to read as follows:

7-17 Sec. 2054.158. QUALITY ASSURANCE TEAM. The state auditor,
7-18 comptroller, Legislative Budget Board, and department shall:

7-19 (1) create a quality assurance team to perform the
7-20 duties specified in this chapter and other law; and

7-21 (2) specify in writing the responsibilities of the
7-22 state auditor, comptroller, Legislative Budget Board, and
7-23 department in performing the duties.

7-24 SECTION 19. Subsection (c), Section 2151.0041, Government
7-25 Code, is amended to read as follows:

7-26 (c) Unless otherwise provided by the legislature by law, on
7-27 September 1, 2013:

7-28 (1) the powers and duties transferred to the
7-29 comptroller under Section 2151.004(d) and under House Bill 3560,
7-30 Acts of the 80th Legislature, Regular Session, 2007, are
7-31 transferred to the Texas Facilities Commission;

7-32 (2) a reference in law to the comptroller relating to a
7-33 power or duty transferred under this subsection means the Texas
7-34 Facilities Commission;

7-35 (3) a rule or form adopted by the comptroller relating
7-36 to a power or duty transferred under this subsection is a rule or
7-37 form of the Texas Facilities Commission and remains in effect until
7-38 altered by the commission;

7-39 (4) all obligations, contracts, proceedings, cases,
7-40 negotiations, funds, and employees of the comptroller relating to a
7-41 power or duty transferred under this subsection are transferred to
7-42 the Texas Facilities Commission;

7-43 (5) all property and records in the custody of the
7-44 comptroller relating to a power or duty transferred under this
7-45 subsection and all funds appropriated by the legislature for
7-46 purposes related to a power or duty transferred under this
7-47 subsection are transferred to the Texas Facilities Commission; and

7-48 (6) Section 122.0011, Human Resources Code, and the
7-49 following provisions of the Government Code expire:

7-50 (A) Sections 2151.004(c) and (d);

7-51 (B) Section 2155.0011;

7-52 (C) [~~Section 2155.086,~~

7-53 [~~(D) Section 2155.087,~~

7-54 [~~(E)] Section 2156.0011;~~

7-55 (D) [~~(F)] Section 2157.0011;~~

7-56 (E) [~~(G)] Section 2158.0011;~~

7-57 (F) [~~(H)] Section 2161.0011;~~

7-58 (G) [~~(I)] Section 2163.0011;~~

7-59 (H) [~~(J)] Section 2170.0011;~~

7-60 (I) [~~(K)] Section 2171.0011;~~

7-61 (J) [~~(L)] Section 2172.0011;~~

7-62 (K) [~~(M)] Section 2176.0011; and~~

7-63 (L) [~~(N)] Section 2262.0011.~~

7-64 SECTION 20. Subsection (i), Section 2166.406, Government
7-65 Code, is amended to read as follows:

7-66 (i) An energy savings performance contract shall be let
7-67 according to the procedures established for procuring certain
7-68 professional services by Section 2254.004. [~~Notice of the request~~
7-69 ~~for qualifications shall be given in the manner provided by Section~~

8-1 ~~2156.002.~~] The State Energy Conservation Office shall establish
8-2 guidelines and an approval process for awarding energy savings
8-3 performance contracts. The guidelines adopted under this
8-4 subsection must require that the cost savings projected by an
8-5 offeror be reviewed by a licensed professional engineer who has a
8-6 minimum of three years of experience in energy calculation and
8-7 review, is not an officer or employee of an offeror for the contract
8-8 under review, and is not otherwise associated with the contract. In
8-9 conducting the review, the engineer shall focus primarily on the
8-10 proposed improvements from an engineering perspective, the
8-11 methodology and calculations related to cost savings, increases in
8-12 revenue, and, if applicable, efficiency or accuracy of metering
8-13 equipment. An engineer who reviews a contract shall maintain the
8-14 confidentiality of any proprietary information the engineer
8-15 acquires while reviewing the contract. An energy savings
8-16 performance contract may not be entered into unless the contract
8-17 has been approved by the State Energy Conservation Office.
8-18 Sections 1001.053 and 1001.407, Occupations Code, apply to work
8-19 performed under the contract.

8-20 SECTION 21. Subsection (i), Section 51.927, Education Code,
8-21 is amended to read as follows:

8-22 (i) An energy savings performance contract shall be let
8-23 according to the procedures established for procuring certain
8-24 professional services by Section 2254.004, Government Code.
8-25 ~~[Notice of the request for qualifications shall be given in the~~
8-26 ~~manner provided by Section 2156.002, Government Code.]~~ The Texas
8-27 Higher Education Coordinating Board, in consultation with the State
8-28 Energy Conservation Office with regard to energy and water
8-29 conservation measures, shall establish guidelines and an approval
8-30 process for awarding energy savings performance contracts. The
8-31 guidelines must require that the cost savings projected by an
8-32 offeror be reviewed by a licensed professional engineer who has a
8-33 minimum of three years of experience in energy calculation and
8-34 review, is not an officer or employee of an offeror for the contract
8-35 under review, and is not otherwise associated with the contract. In
8-36 conducting the review, the engineer shall focus primarily on the
8-37 proposed improvements from an engineering perspective, the
8-38 methodology and calculations related to cost savings, increases in
8-39 revenue, and, if applicable, efficiency or accuracy of metering
8-40 equipment. An engineer who reviews a contract shall maintain the
8-41 confidentiality of any proprietary information the engineer
8-42 acquires while reviewing the contract. A contract is not required
8-43 to be reviewed or approved by the State Energy Conservation Office.
8-44 Sections 1001.053 and 1001.407, Occupations Code, apply to work
8-45 performed under the contract.

8-46 SECTION 22. The following sections of the Government Code
8-47 are repealed:

- 8-48 (1) Section 2155.086;
- 8-49 (2) Section 2155.087;
- 8-50 (3) Section 2155.138;
- 8-51 (4) Section 2155.141; and
- 8-52 (5) Section 2156.002.

8-53 SECTION 23. This Act takes effect immediately if it
8-54 receives a vote of two-thirds of all the members elected to each
8-55 house, as provided by Section 39, Article III, Texas Constitution.
8-56 If this Act does not receive the vote necessary for immediate
8-57 effect, this Act takes effect September 1, 2011.

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