LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 26, 2011

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

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

IN RE: **SB68** by Zaffirini (Relating to contracting issues of state agencies, including ethics issues related to state contracting.), **As Introduced**

There would be an indeterminate cost to the state from the provisions of the bill.

The bill would reform state contracting and procurement practices, including: contract reporting and public notification; review and analysis of contracting and outsourcing opportunities; determination and approval of outsourcing of significant governmental operations; contract manager training, certification, and advancement; use of performance measures, monitoring, reporting, and review of contracts; contractor disclosure requirements; required contract terms and provisions; the responsibilities and composition of the State Contract Advisory Team; and state-level oversight of agency contracting operations.

The bill would implement recommendations from the report, "Reduce Risks Associated with State Contract Management," in the Legislative Budget Board's Government Effectiveness and Efficiency Report submitted to the Eightieth Texas Legislature, 2007. The bill would create a State Office of Contract Management, within the office of the Comptroller of Public Accounts (CPA), tasked with reviewing, approving, and assisting state agency actions related to high risk contracts. High-risk contracts would be defined as those at or exceeding $10 million in total costs, or containing other high-risk factors as determined by the office.

The creation of a State Office of Contract Management (office) to oversee the development, execution, and monitoring of high-risk state contracts would require nine additional full-time equivalent employees. The cost for the office would be $1.2 million in General Revenue Funds for the 2012-13 biennium. The bill would provide the office some flexibility in defining high-risk contracts and provide the CPA the ability to waive certain agencies and operations from the requirements of the chapter; therefore, not all $10 million contracts would require the activities prescribed by the bill. This factor was considered when calculating the workload assumptions upon which this fiscal impact is based. Depending on the number of contracts ultimately identified as high-risk, future staffing levels may need to be adjusted.

The bill's provisions related to the responsibilities of the Contract Advisory Review Team both reduce and add to the group's workload. This analysis assumes that current resources tasked with responsibility for the functions removed from statute would be re-assigned to those functions added to statute at no additional cost to the state.

This estimate assumes that development of the performance review database required by the bill would result in General Revenue Fund costs of $725,000 at the Comptroller's Office in fiscal year 2012.

The bill would prescribe several new reporting requirements for general contracting operations and analysis and review requirements for agencies contemplating the outsourcing of certain functions and services. This processes would include the required use of an optimized model and a full and fair cost comparison analysis for any outsourcing project of at least $10 million or that would result in the loss of at least 100 state employee positions. The bill would also require the State Council on Competitive

Government to review, at cost to the contracting agency, the outsourcing of any functions which are inherently governmental in nature. Agencies report a need for additional internal staff and resources associated with the implementation of such requirements; although, the total statewide cost cannot be determined due to a number of unknown variables, including the total number of projects to be undertaken during the next biennium and the necessary development and review time per project. The Office of the Attorney General (OAG) reports that analysis of certain solicitations required to be reviewed by the Council on Competitive Government would result in additional costs to the agency of $100,000 during the 2012-13 biennium. The OAG additionally reports that required development of optimized models and conducting full and fair cost comparison analyses would require two additional full-time employees at a biennial cost to General Revenue.

The bill's provisions related to creation of a contract manager career ladder would also result in an indeterminate cost to the state. The exact cost cannot be determined due to the undefined nature of the program. The Health and Human Services Commission reports that HHSC and the Department of Family and Protective Services could experience increased All Funds costs of $502,621 for the 2012-13 biennium from bill provisions to establish a career ladder for contract managers, based on salary adjustments of up to 4 percent.

Current statute requires state agency contract managers to complete state developed and approved training programs; therefore, no significant additional costs are assumed related to the bill's requirements for contract manager training. Likewise, statutory training requirements exist for agency executive directors and governing boards; therefore, the specific training requirements imposed by the bill are not assumed to create significant additional costs to the state.

The Department of Information Resources reports that the bill's provisions could create delays in the contracting process, result in additional costs for vendors, and limit the competitiveness of state cooperative contracts. The Texas Department of Insurance (TDI) reports that the bill's provisions would result in a 2012-13 biennial costs of $433,667 in General Revenue from the Insurance Maintenance Tax. The insurance maintenance tax is self-leveling; therefore, this analysis assumes that the costs to implement this bill within TDI would come from either fund balances or a resetting of the tax.

This analysis assumes that the remaining contracting requirements and procedural changes envisioned by this bill could be met with existing state resources. The following agencies report that implementation of the bill would have either no fiscal impact or no significant fiscal impact to their operations: the Texas Department of Transportation, the Texas Department of Criminal Justice, the Texas Commission on Environmental Quality, the Department of Agriculture, the Texas Lottery Commission, and the Texas Facilities Commission.

Certain provisions of this bill would apply only to a contract which a state agency solicits on or after the effective date of the bill. The bill would take effect November 1, 2011.

Local Government Impact

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

Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 313 Department of Information Resources, 362 Texas Lottery Commission, 405 Department of Public Safety, 454 Department of Insurance, 529 Health and Human Services Commission, 551 Department of Agriculture, 582 Commission on Environmental Quality, 601 Department of Transportation, 696 Department of Criminal Justice

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