

## **BILL ANALYSIS**

Senate Research Center

S.B. 1604  
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Higher Education  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 82nd Legislature passed S.B. 5, which streamlined the administration of institutions of higher education. S.B. 1604 addresses a variety of asset management and acquisition issues, some of which are the direct result of S.B. 5, and some of which are not directly related to S.B. 5, but have the same theme of cleaning up administration and management issues and providing cost-effective flexibility in regard to asset management.

S.B. 1604 provides that a University of Texas M.D. Anderson Cancer Center (M.D. Anderson) contract for acquiring goods or services automatically includes any provision required by law, without regard to whether the provision appears on the face of the contract or whether the contract has a provision to the contrary. S.B. 5 included this provision for most institutions of higher education, but inadvertently excluded M.D. Anderson, which is governed by a separate statute unique to that institution.

The bill addresses an issue resulting from legislation that passed in 2011 permitting a co-owner of residential property to place a mechanics' lien or deed of trust on the property without the consent of other co-owners. Institutions of higher education are occasionally co-owners of residential property, most often received through a decedent's will. The other co-owner's unrestricted right to place the property under a lien or deed of trust puts the institution's interests at risk. It is unlikely that the law was intended to capture interests held by an institution of higher education or the state, which rarely has interests in residential property.

The bill also allows, rather than requires, the chancellor of The University of Texas System to be a member of the governing board of the University of Texas Investment Management Company (UTIMCO). This will give the board the flexibility to name the chancellor as a member of UTIMCO, but also to name another qualified individual. Since UTIMCO reports to and serves the UT System, the chancellor will retain a significant oversight responsibility even if not holding a designated position on the board. This will give the board the flexibility, for example, to name another individual with substantial investment expertise.

Lastly, S.B. 1604 repeals an obsolete provision of law relating to the lease of hospital property by The University of Texas Medical Branch at Galveston (UTMB-Galveston). A 1957 statute now codified as Section 74.002, Education Code, governed a specific transaction for the lease of Jennie Sealy Hospital by UTMB-Galveston. The hospital governed by the statute is being demolished and a series of land swaps and leases in the reconstruction of UTMB-Galveston have made the purpose of the original statute obsolete.

As proposed, S.B. 1604 amends current law relating to asset management and acquisition by institutions of higher education.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 73.115, Education Code, by adding Subsection (g), to provide that, in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to whether the provision appears on the face of the contract or whether the contract includes any provision to the contrary.

SECTION 2. Amends Chapter 64, Property Code, as added by Chapter 918, Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 64.0011, as follows:

Sec. 64.0011. APPLICATION TO INSTITUTION OF HIGHER EDUCATION.  
Provides that this chapter does not apply to residential property for which an institution of higher education is a co-owner.

SECTION 3. Amends Section 66.08(d), Education Code, to require the board of directors (board) of the corporation to have nine members, including seven, rather than six, members appointed by the board, of whom three are required to be members of the board; three are required to have a substantial background and expertise in investments; and one is required to be a qualified individual as determined by the board, which is authorized to include the chancellor of the University of Texas System and two members appointed by the board of regents of the Texas A&M University System, at least one of whom is required to have a substantial background and expertise in investments.

SECTION 4. Repealer: Section 74.002 (Jennie Sealy Hospital; R. Waverly Smith Pavilion), Education Code.

SECTION 5. Effective date: upon passage or September 1, 2013.