

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 11, 2015

TO: Honorable Gary Elkins, Chair, House Committee on Government Transparency & Operation

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB543 by Zaffirini (Relating to oversight of and requirements applicable to state contracts and other state financial and accounting issues; authorizing fees.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB543, Committee Report 2nd House, Substituted: a negative impact of (\$2,644,021) through the biennium ending August 31, 2017.

In addition to cost shown above, there would be an indeterminate fiscal impact for activities related to the State Office of Risk Management. Depending on rules adopted by the Office, the cost may be significant. There would also be an indeterminate revenue impact to the state.

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
2016	(\$1,346,616)
2017	(\$1,297,405)
2018	(\$1,462,607)
2019	(\$1,627,809)
2020	(\$1,793,011)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2015
2016	(\$1,346,616)	11.0
2017	(\$1,297,405)	14.0
2018	(\$1,462,607)	16.0
2019	(\$1,627,809)	18.0
2020	(\$1,793,011)	20.0

Fiscal Analysis

The bill would amend the Government Code to require agencies to adopt certain procurement related procedures and policies relating to the solicitation, negotiation, approval, management, oversight, and closeout of contracts. The bill would also require each state agency to maintain a comprehensive list that identifies all contracts made with the agency and essential information pertaining to those contracts. Agencies with certain procurement volumes would be required to create a contract administration team to verify contract performance and to maintain agency expertise on contract management and oversight.

The bill would amend the Government Code to allow agencies to use appropriated funds to contract for auditing services in certain circumstances. The bill would also require agencies to periodically audit contracts and contract processes and controls.

The bill would require agencies to make efforts to competitively re-bid contracts at least every four years.

The bill would also require the Comptroller of Public Accounts (CPA) to publish an annual report on the number and dollar value of sole source and emergency purchases made in the previous calendar year.

The bill would repeal and amend portions of the Government Code to replace the interagency Contract Advisory Team with a contract management team at the Legislative Budget Board (LBB) to review high risk contracts and solicitations. The team would review contracts with a value of at least \$10 million as well as contracts below this threshold that meet certain high risk factors. State agencies would be required to provide written notice to the team at least 30 days before publication of the solicitation documents for high risk contracts. The team would review information and documentation to make recommendations to ensure that potential risks related to high-risk contracts have been identified and communicated to the affected agency. If unresolved, the risks would be reported to the Legislative Budget Board, the Governor, and the Comptroller.

The bill would also limit state agency use of multiple award contracts. State agencies would be required to obtain at least three bids from vendors on a multiple award schedule when making purchases in excess of \$50,000. Additionally, the Department of Information Resources (DIR) would be required to approve and sign certain statements of work for purchases from the multiple award schedule at DIR.

The bill would expand the core functions of the State Office of Risk Management (SORM) to include the management of a vendor compliance verification program. The compliance verifications would include reviews of compliance with a variety of policies and contract elements. SORM would be required to develop rules for implementation of an internet-based software system that has the capability to exchange information and facilitate payments. The Office would have the authority to contract with a third party vendor to provide compliance verification. The bill also requires the Office to provide a report every two years to the Legislature with findings and recommendations regarding compliance.

The bill would create a new fee to be paid by a vendor that enters a contract with the state. The bill would require that the fee be set at an amount sufficient to recover SORM's costs for the compliance verification program. The fee could not exceed the lesser of \$1,000 or one per cent of the contract amount. The bill would also amend the Government Code to require that state

agencies include in each of their contracts a provision allowing for the collection and payment of this fee.

The bill would amend the Government Code to require the comptroller to use the uniform statewide accounting project to notify the comptroller when contracts exceed certain thresholds.

Methodology

Based on the number of new contracts currently reported to the LBB that are in excess of \$10 million, it is estimated that the contract management team created by the bill would review approximately 60 new contracts each year for contracts with a value over \$10 million. It is also estimated that the team would review an additional 175 high risk contracts below this monetary threshold. The volume of contract reviews would be dependent on the criteria developed by the team, and therefore, could be greater or less than this estimate.

After initial review of contracts by the team, it is assumed that a certain number of contracts would be subject to ongoing review past the initial solicitation process. The total number of contracts subject to ongoing monitoring after initial review would increase each year as the team completes reviews of contracts and continues to monitor existing contracts through their completion. As a result, it is estimated that the number of FTEs at the LBB would increase from 11 in fiscal year 2016 to 20 in fiscal year 2020. Some of the work load associated with reviewing contracts could be absorbed by existing staff; new FTEs would include a team manager and a mix of contract specialists, attorneys, and staff with IT expertise. Additionally, the LBB would incur one time expenses in the first year for start-up costs associated with the function.

DIR estimates there would be a cost associated with implementing various provisions of the bill including the provision reviewing statements of work for information technology commodity purchases over \$50,000. It is anticipated that these cost could be absorbed within existing resources.

The scope of the contract verification program at SORM, which would represent a new core function for the agency, will depend on rules adopted by SORM. As such, the costs for these activities cannot be determined at this time; however, the costs to SORM are likely to be significant. A fee to support the program would be collected from certain vendors with at least one contract with any state agency. The number of vendors that meet the criteria for paying the vendor fee is unknown at this time. Therefore, according to CPA, the revenue cannot be determined at this time. If the fee revenue is not sufficient to fund activities at SORM, the agency would require additional appropriations. The entities responsible for collecting this revenue would also be determined in rule by SORM. The potential costs to agencies for complying with the rules adopted by SORM cannot be determined at this time.

CPA estimates that the capability to identify contracts meeting certain criteria could be developed in the uniform statewide account project within existing agency resources. It is assumed for the purposes of this fiscal estimate that CPA would develop this system based on either automated reporting or manual agency self-identification and reporting, or some combination thereof.

It is assumed that the remaining provisions of the bill could be implemented by agencies and institutions of higher education within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 308 State Auditor's Office, 323 Teacher Retirement System, 327 Employees Retirement System, 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources, 479 State Office of Risk Management, 529 Health and Human Services Commission, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 733 Texas Tech University, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

LBB Staff: UP, FR, JI, KMc, SD, LCO, TBo, LBe, MW