

BILL ANALYSIS

C.S.H.B. 20
By: Capriglione
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, the number and variety of the current reporting requirements relating to state contracting are difficult for state agencies to follow and negatively impact the quality of reported data. C.S.H.B. 20 seeks to fill the gaps in the contract oversight system, ensure that best practices are used, and more effectively mitigate contracting risk by consolidating and revising requirements relating to the review, oversight, and reporting of certain state agency contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 20 amends the Government Code to authorize the Legislative Budget Board (LBB) to review the contracts of executive branch and judicial branch state agencies, including public university systems and public institutions of higher education, to determine compliance with the contract management guide developed by the Department of Information Resources under the Information Resources Management Act, the procurement policy manuals of the comptroller of public accounts, and each applicable state contracting law, rule, policy, and procedure. The bill establishes that the authority to so review applies regardless of the source of funds or method of financing for the contract. The bill exempts from contract oversight by the LBB a contract of an institution of higher education that is paid for solely with institutional funds or hospital and clinic fees and requires the LBB to review the contract management handbook developed by an institution of higher education when determining the institution's compliance with contracting rules and procedures. The bill authorizes LBB staff to request, and expressly entitles such staff to obtain, any document related to a contract so reviewed or related to a purchase under the contract. The bill requires each applicable state agency to cooperate with the LBB in conducting the contract review and in resolving any issue resulting from the contract review.

C.S.H.B. 20 requires the director of the LBB on determination that a contract of such a state agency violates the contract management guide, the comptroller's procurement policy manuals, or a state contracting law, rule, policy, or procedure to provide notice of the violation to the agency and requires a state agency to provide a written response to the notice of the violation not later than the 10th business day after the agency receives the notice. The bill authorizes the director of the LBB on determination by the LBB that the response does not adequately address or resolve the violation to provide to the LBB and the state agency, comptroller, and governor

written notice of the violation. The bill sets out the required contents of that latter violation notice, including recommended actions to be taken to address the violation, and requires a state agency that receives such a notice to develop a written corrective action plan consistent with LBB recommendations and to provide the plan to the LBB not later than the 30th calendar day after the date the agency receives the notice. The bill authorizes the LBB to monitor a state agency's implementation of the corrective action plan.

C.S.H.B. 20 authorizes the LBB to assess an enforcement mechanism against such a state agency determined to be in violation, authorizes the LBB to establish a schedule of enforcement mechanisms, which may include certain specified actions that may be assessed against an agency for such a violation, and requires any assessed enforcement mechanism to be in accordance with that schedule. The bill authorizes the director of the LBB to recommend to the LBB an enforcement mechanism to be assessed against such a state agency for a contract violation, authorizes the LBB to increase the severity of an enforcement mechanism assessed against an agency for repeated contract violations, and authorizes the LBB to dismiss an enforcement mechanism assessed against a state agency by the LBB for a contract violation on successful implementation of a corrective action plan by the agency.

C.S.H.B. 20 revises the applicability of statutory provisions governing the LBB online contracts database so that such provisions apply only to the following contracts: a major consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college, and a contract that has a value that exceeds or is reasonably expected to exceed \$50,000, other than a contract of an institution of higher education that is paid for solely with institutional funds or hospital and clinic fees or is for sponsored research. The bill defines "contract" for purposes of the contracts database as a contract, grant, or agreement for the purchase or sale of goods or services that is entered into or paid for, wholly or partly, by an executive branch or judicial branch state agency, including a public university system and a public institution of higher education, or an amendment, modification, renewal, or extension of the contract, grant, or agreement. The bill provides that the term includes a revenue generating contract, an interagency or interlocal grant or agreement, a purchase order, or other written expression of terms of agreement. The bill replaces the requirement that such an agency provide the LBB copies of certain documents relating to the contract with a requirement that the agency provide the LBB written notice of the contract, which must include those documents. The bill imposes a deadline on the required provision of notice of not later than the 30th calendar day after the date a contract is awarded, amended, modified, renewed, or extended.

C.S.H.B. 20 exempts from the requirement to provide copies of the documents in relation to the written notice an enrollment contract described by specified provisions of the Texas Administrative Code as those provisions existed on September 1, 2015, or a contract of the Texas Department of Transportation that relates to highway construction or engineering or is subject to Transportation Code provisions relating to certain contract claims. The bill authorizes a state agency to redact from the written notice information excepted from disclosure under state public information law, including information that may be used to perpetrate fraud on the agency, and requires an institution of higher education to report to the LBB a contract paid with appropriated funds for a purchase of a major information system in an amount that exceeds \$1 million; a construction project in an amount, including an amount included in any amendment, modification, renewal, or extension of the contract, that exceeds \$50,000; and professional services, other than a physician or optometric services, in an amount, including an amount included in any amendment, modification, renewal, or extension of the contract, that exceeds \$50,000.

C.S.H.B. 20 repeals provisions relating to written notice that certain state agencies are required to provide to the LBB for certain contracts involving major information systems or the amount of which exceeds \$14,000.

C.S.H.B. 20 replaces the requirement that each executive branch and judicial branch state agency, including public university systems and public institutions of higher education and excepting a public junior college, post certain information on its website relating to entering into and competitive bidding for certain contracts for the purchase of goods or services from a private vendor with a requirement that each such agency post on its website home page a link to the LBB contracts database. The bill removes the dollar value limitation on the contracts such an agency may post on its website for contracts valued at less than \$15,000 and the exemption for memoranda of understanding, interagency contracts, interlocal agreements, and contracts for which there is not a cost from statutory provisions relating to the posting requirement and to enhanced contract and performance monitoring. The bill requires an institution of higher education, for each contract in an amount of \$15,000 or more for the purchase of goods or services from a private vendor that is paid for solely with certain institutional funds or hospital and clinic fees, to post on the institution's website the contract, including a contract that does not require competitive bidding before selection of the contractor, until the contract expires or is completed; for a contract that does not require competitive bidding, the statutory or other authority that allows the contract to be entered into without compliance with competitive bidding procedures; and the request for proposals related to a competitively bid contract until the contract is completed.

C.S.H.B. 20 requires the Contract Advisory Team created under statutory provisions governing statewide contract management to provide to the LBB a copy of each recommendation made on a reviewed solicitation document or contract document for a contract of certain executive branch state agencies that has a value of at least \$10 million not later than the 10th calendar day after the date the team makes the recommendation and a copy of any written explanation submitted by such an agency regarding why the recommendation is not applicable to the contract under review not later than the 10th calendar day after the date the team receives the explanation.

C.S.H.B. 20 repeals the following provisions of the Government Code:

- Section 322.020(f)
- Section 2054.008
- Section 2166.2551
- Section 2254.006
- Section 2254.0301

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 20 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. The heading to Section 322.020, Government Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 322.020, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1)	SECTION 2. Section 322.020, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (b-

to read as follows:

(a) In this section[, "~~major contract~~" means]:

(1) "Contract" means a contract, grant, or agreement for the purchase or sale of goods or services that is entered into or paid for, wholly or partly, by a state agency or an amendment, modification, renewal, or extension of the contract, grant, or agreement. The term includes a revenue generating contract, an interagency or interlocal grant or agreement, a purchase order, or other written expression of terms of agreement. [a contract for which notice is required under one of the following sections:

~~[(A) Section 2054.008;~~

~~[(B) Section 2166.2551;~~

~~[(C) Section 2254.006; or~~

~~[(D) Section 2254.0301; or]~~

(2) "State agency" has the meaning assigned by Section 2054.003 [a contract, including an amendment, modification, renewal, or extension:

~~[(A) for which notice is not required under a section listed in Subdivision (1);~~

~~[(B) that is not a purchase order, an interagency contract, or a contract paid only with funds not appropriated by the General Appropriations Act; and~~

~~[(C) with a value that exceeds \$50,000].~~

(b) This section applies only to:

(1) a major consulting services contract, as defined by Section 2254.021; and

(2) a contract, including any amendment, modification, renewal, or extension of the contract, that has a value that exceeds or is reasonably expected to exceed \$50,000, other than:

(A) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015; or

(B) a contract of the Texas Department of Transportation that:

(i) relates to highway construction or engineering; or

(ii) is subject to Section 201.112,

1), (b-2), (b-3), and (b-4) to read as follows:

(a) In this section[, "~~major contract~~" means]:

(1) "Contract" means a contract, grant, or agreement for the purchase or sale of goods or services that is entered into or paid for, wholly or partly, by a state agency or an amendment, modification, renewal, or extension of the contract, grant, or agreement. The term includes a revenue generating contract, an interagency or interlocal grant or agreement, a purchase order, or other written expression of terms of agreement. [a contract for which notice is required under one of the following sections:

~~[(A) Section 2054.008;~~

~~[(B) Section 2166.2551;~~

~~[(C) Section 2254.006; or~~

~~[(D) Section 2254.0301; or]~~

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "State agency" has the meaning assigned by Section 2054.003 [a contract, including an amendment, modification, renewal, or extension:

~~[(A) for which notice is not required under a section listed in Subdivision (1);~~

~~[(B) that is not a purchase order, an interagency contract, or a contract paid only with funds not appropriated by the General Appropriations Act; and~~

~~[(C) with a value that exceeds \$50,000].~~

(b) This section applies only to:

(1) a major consulting services contract, as defined by Section 2254.021; and

(2) a contract, including any amendment, modification, renewal, or extension of the contract, that has a value that exceeds or is reasonably expected to exceed \$50,000, other than a contract of an institution of higher education that:

(A) is paid for solely with institutional funds or hospital and clinic fees, as described by Section 51.009, Education Code; or

(B) is for sponsored research.

(See Sec. 322.020(b-2) below.)

Transportation Code.

(b-1) Not later than the 30th calendar day after the date a contract is awarded, amended, modified, renewed, or extended, a [Each] state agency shall provide written notice of the contract to the Legislative Budget Board. The written notice must include copies of the following documents:
(1) each [major] contract entered into by the agency, including each amendment, modification, renewal, or extension of the contract; and
(2) each request for proposal, invitation to bid, or comparable solicitation related to the [major] contract.

(See Sec. 322.020(b)(2)(A)-(B) above.)

No equivalent provision.

No equivalent provision.

(b-1) Not later than the 30th calendar day after the date a contract is awarded, amended, modified, renewed, or extended, a [Each] state agency shall provide written notice of the contract to the Legislative Budget Board. The written notice must include copies of the following documents:
(1) each [major] contract entered into by the agency, including each amendment, modification, renewal, or extension of the contract; and
(2) each request for proposal, invitation to bid, or comparable solicitation related to the [major] contract.

(b-2) The requirement to provide copies of documents under Subsection (b-1) does not apply to:
(1) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015; or
(2) a contract of the Texas Department of Transportation that:
(A) relates to highway construction or engineering; or
(B) is subject to Section 201.112, Transportation Code.

(b-3) A state agency may redact from the written notice provided under Subsection (b-1) information excepted from disclosure under Chapter 552, including information that may be used to perpetrate fraud on the agency, such as:
(1) certain commercial or financial information;
(2) credit card, debit card, charge card, and access device numbers; and
(3) government information related to security or infrastructure issues for computers.

(b-4) An institution of higher education shall report to the board a contract paid with appropriated funds for:
(1) a purchase of a major information system, as defined by Section 2054.0965, in an amount that exceeds \$1 million;
(2) a construction project in an amount, including an amount included in any amendment, modification, renewal, or extension of the contract, that exceeds \$50,000; and

(c) The Legislative Budget Board shall post on the Internet a copy of:

(1) each [major] contract, including each amendment, modification, renewal, or extension of the contract [of a state agency]; and

(2) each request for proposal, invitation to bid, or comparable solicitation related to the [major] contract.

SECTION 3. Chapter 322, Government Code, is amended by adding Sections 322.021, 322.0211, and 322.0212 to read as follows:

Sec. 322.021. STATE AGENCY CONTRACT OVERSIGHT. (a) In this section:

(1) "Board" means the Legislative Budget Board.

(2) "State agency" has the meaning assigned by Section 2054.003.

(b) The board may review state agency contracts to determine compliance with the contract management guide developed under Section 2054.554, the comptroller's procurement policy manuals, and each applicable state contracting law, rule, policy, and procedure. The authority to review a state agency contract under this subsection applies regardless of the source of funds or method of financing for the contract and includes a contract funded only with nonappropriated funds.

No equivalent provision.

(3) professional services, other than a physician or optometric services, in an amount, including an amount included in any amendment, modification, renewal, or extension of the contract, that exceeds \$50,000.

(c) The Legislative Budget Board shall post on the Internet a copy of:

(1) each [major] contract, including each amendment, modification, renewal, or extension of the contract [of a state agency]; and

(2) each request for proposal, invitation to bid, or comparable solicitation related to the [major] contract.

SECTION 3. Chapter 322, Government Code, is amended by adding Sections 322.021, 322.0211, and 322.0212 to read as follows:

Sec. 322.021. STATE AGENCY CONTRACT OVERSIGHT. (a) In this section:

(1) "Board" means the Legislative Budget Board.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "State agency" has the meaning assigned by Section 2054.003.

(b) Subject to Subsection (c), the board may review state agency contracts to determine compliance with the contract management guide developed under Section 2054.554, the comptroller's procurement policy manuals, and each applicable state contracting law, rule, policy, and procedure. The authority to review a state agency contract under this subsection applies regardless of the source of funds or method of financing for the contract.

(c) This section does not apply to a contract of an institution of higher education that is paid for solely with institutional funds or hospital and clinic fees, as described by Section 51.009, Education Code. The board shall review the contract management handbook developed by an institution of higher education as required by Section 51.9337(b)(3), Education Code, when determining the institution's compliance with contracting rules and procedures.

(c) Board staff may request, and are entitled to obtain, any document related to a contract reviewed under this section or to a purchase under the contract.

(d) Each state agency shall cooperate with the board in conducting a contract review under this section and in resolving any issue resulting from the contract review.

Sec. 322.0211. NOTICE OF VIOLATION OF STATE CONTRACTING LAW; CORRECTIVE ACTION PLAN. (a) If the Legislative Budget Board determines under Section 322.021 that a state agency contract violates the contract management guide, the comptroller's procurement policy manuals, or a state contracting law, rule, policy, or procedure,

the board's director may provide to the board and the state agency, comptroller, and governor written notice of the violation. A notice provided under this section must:

- (1) detail the specific provision violated by the contract;
- (2) recommend actions to be taken to address the violation and any identified risks related to the contract;
- (3) list potential remedies for the violation; and
- (4) state any enforcement mechanism that may be assessed under Section 322.0212 for the violation.

(b) A state agency that receives notice of a violation under Subsection (a) shall develop a written corrective action plan consistent with the board's recommendations and provide the plan to the board not later than the 30th calendar day after the date the agency receives the notice.

(c) The board may monitor a state agency's implementation of the corrective action plan.

(d) Board staff may request, and are entitled to obtain, any document related to a contract reviewed under this section or to a purchase under the contract.

(e) Each state agency shall cooperate with the board in conducting a contract review under this section and in resolving any issue resulting from the contract review.

Sec. 322.0211. NOTICE OF VIOLATION OF STATE CONTRACTING LAW; CORRECTIVE ACTION PLAN. (a) If the Legislative Budget Board determines under Section 322.021 that a state agency contract violates the contract management guide, the comptroller's procurement policy manuals, or a state contracting law, rule, policy, or procedure, the board's director shall provide notice of the violation to the agency.

(b) A state agency shall provide a written response to the notice provided under Subsection (a) not later than the 10th business day after the date the agency receives the notice.

(c) If the board determines that the response provided by a state agency under Subsection (b) does not adequately address or resolve the violation determined under Subsection (a), the board's director may provide to the board and the state agency, comptroller, and governor written notice of the violation. A violation notice provided under this subsection must:

- (1) detail the specific provision violated by the contract;
- (2) recommend actions to be taken to address the violation and any identified risks related to the contract;
- (3) list potential remedies for the violation; and
- (4) state any enforcement mechanism that may be assessed under Section 322.0212 for the violation.

(d) A state agency that receives notice of a violation under Subsection (c) shall develop a written corrective action plan consistent with the board's recommendations and provide the plan to the board not later than the 30th calendar day after the date the agency receives the notice.

(e) The board may monitor a state agency's implementation of the corrective action plan.

Sec. 322.0212. ENFORCEMENT.

SECTION 4. Section 2054.0965, Government Code, is amended.

SECTION 5. Section 2261.253, Government Code, is amended to read as follows:

Sec. 2261.253. REQUIRED POSTING OF [CERTAIN CONTRACTS; ENHANCED] CONTRACT INFORMATION AND PERFORMANCE MONITORING. (a) Each [For each contract for the purchase of goods or services from a private vendor, each] state agency shall post on its Internet website's home page a link to the Legislative Budget Board's contracts database established under Section 322.020. [website: (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed; (2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and (3) the request for proposals related to a competitively bid contract included under Subdivision (1) until the contract expires or is completed.]

Sec. 322.0212. Substantially the same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Section 2261.253, Government Code, is amended to read as follows:

Sec. 2261.253. REQUIRED POSTING OF [CERTAIN CONTRACTS; ENHANCED] CONTRACT INFORMATION AND PERFORMANCE MONITORING. (a) Each [For each contract for the purchase of goods or services from a private vendor, each] state agency shall post on its Internet website's home page a link to the Legislative Budget Board's contracts database established under Section 322.020. [website: (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed; (2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and (3) the request for proposals related to a competitively bid contract included under Subdivision (1) until the contract expires or is completed.]

(b) For each contract in an amount of \$15,000 or more for the purchase of goods or services from a private vendor that is paid for solely with institutional funds or hospital and clinic fees, as described by Section 51.009, Education Code, an institution of higher education, as defined by Section 61.003, Education Code, shall post on the institution's Internet website:

(1) the contract, including a contract that does not require competitive bidding before selection of the contractor, until the contract expires or is completed;

(2) for a contract that does not require competitive bidding, the statutory or other authority that allows the contract to be entered into without compliance with competitive bidding procedures; and

(3) the request for proposals related to a competitively bid contract posted under Subdivision (1), until the contract is

(b) ~~[A state agency monthly may post contracts described by Subsection (a) that are valued at less than \$15,000.~~

~~[(c)] Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.~~

~~[(d) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.]~~

SECTION 6. Section 2262.101, Government Code, is amended.

SECTION 7. The following sections of the Government Code are repealed:

- (1) Section 322.020(f);
- (2) Section 2054.008;
- (3) Section 2166.2551;
- (4) Section 2254.006; and
- (5) Section 2254.0301.

SECTION 8. The changes in law made by this Act apply to a contract entered into or amended, modified, renewed, or extended on or after the effective date of this Act. A contract entered into or amended, modified, renewed, or extended before the effective date of this Act is governed by the law in effect on the date the contract was entered into or amended, modified, renewed, or extended, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2017.

completed ~~[A state agency monthly may post contracts described by Subsection (a) that are valued at less than \$15,000].~~

(c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

~~[(d) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.]~~

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.