

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 4, 2017

TO: Honorable John Zerwas, Chair, House Committee on Appropriations

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB18 by Capriglione (Relating to contract procurement, management, auditing, oversight, and evaluation of state agencies.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB18, As Introduced: a negative impact of (\$5,161,547) through the biennium ending August 31, 2019. Provisions in the bill relating to contract oversight, including in the medical transportation program, could result in a positive fiscal impact, depending on action by affected agencies.

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
2018	(\$2,456,638)
2019	(\$2,704,909)
2020	(\$1,453,282)
2021	(\$2,705,782)
2022	(\$1,453,282)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Federal Funds</i> 555	Change in Number of State Employees from FY 2017
2018	(\$2,456,638)	(\$70,077)	1.0
2019	(\$2,704,909)	(\$1,319,344)	1.0
2020	(\$1,453,282)	(\$65,971)	1.0
2021	(\$2,705,782)	(\$1,318,471)	1.0
2022	(\$1,453,282)	(\$65,971)	1.0

Fiscal Analysis

The bill would amend the Government Code to specify documentation that should be included in

existing records retention requirements for contracts and contract solicitation documents.

The bill would require an attorney representing the agency to assist in the drafting of agency contracts, and that contracts include a specific list of provisions.

The bill would prohibit a state agency from issuing payment to a vendor without documentation that clearly demonstrates the agency's obligation to make a payment.

The bill would require the Comptroller of Public Accounts (CPA) to consult with vendors and other interested parties, in addition to state agencies, in developing rules, guides, and manuals, relating to state contracting standards and oversight.

The bill would require the CPA to consult with additional state agencies that award major contracts when developing and updating the Contract Management Guide for use by state agencies. The bill would specify provisions to be contained in the Contract Management Guide relating to improved procurement practices, and procurement metrics used by state agencies.

The bill would require each contract that has a value of at least \$1 million to have a contract manager assigned to manage the oversight of the contract.

The bill would prohibit invoices from being paid that do not directly correlate to a corresponding contract, that all payments obtain the approval and signature of two state employees, and would authorize the state to revoke a payment that was made without the two required signatures at any time.

The bill would require the Health and Human Services Commission (HHSC) and each health and human services agency to perform financial audits once every two years by an independent auditor. The cost of the audit is to be covered by current appropriations.

The bill would require, rather than authorize, the CPA to bar a vendor from participating in state contracts if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.

The bill would require each contract change of \$1 million or more be reported by a state agency and posted on its website.

The bill would require public approval by the CPA for a state agency to consider factors other than price when establishing best value standards for contracts with a value that exceed \$100,000.

The bill would amend Government Code, Chapter 531 to require the HHSC Inspector General to appoint a Contract Internal Affairs Specialist to monitor commission contracts. The Contract Internal Affairs Specialist would be authorized to work with other state oversight entities, and would be required to post a quarterly report on HHSC's website.

The bill would prohibit retaliation against a public employee who in good faith reports contracting violations, and would grant 30 percent of savings to a state employee or member of the public who makes such reports.

The bill would limit state agency payments or reimbursements on procurements to one per month.

The bill would require that vendors return overpayments made by the state within 90 days or be subject to a penalty of three times the amount of the overage.

The bill would require HHSC, as part of quality review of the Medicaid medical transportation program, to hire a single independent survey vendor directly contracted with HHSC to determine customer satisfaction and rates of unmet transportation need among Medicaid members. Surveys are currently conducted by multiple transportation brokers who subcontract for survey administration.

The bill would amend the Texas Government Code to require HHSC to use the most cost-effective model of delivering medical transportation services to Medicaid members. Under current statute, HHSC must use a broker model. HHSC would be required to determine which model is potentially the most cost-effective based on price and the quality of services. Additionally, HHSC would only be allowed to award contracts to third party vendors for the administration of the program if it was able to receive qualified bids from vendors at or below a cost threshold established based on the historical cost-effectiveness of fee-for-service.

The bill would require state agencies to evaluate the feasibility of an in-house solutions prior to soliciting bids for service contracts valued between \$1 million and \$5 million.

The bill would amend Government Code, Chapter 322 to require the Legislative Budget Board, (LBB) to annually report how much of each agency's budget is spent in contracts for a fiscal year.

The bill would amend Government Code, Chapter 2262 to create the Contract Outside Tactical Team within the CPA's office. This team would assist state agencies in improving Information Technology (IT) contract management practices for contracts valued at \$100 million or more. State agencies would be required to comply with a recommendation made by the Contract Outside Tactical Team, or submit a written explanation regarding why the recommendation is not applicable to the contract under review.

The bill would take effect on September 1, 2017.

Methodology

The CPA estimates that the bill would require outside resources to revise the contract management guide, resulting in a one-time General Revenue cost of \$1.0 million in fiscal year 2018.

HHSC indicated that the financial audit requirements of the bill would result in a 2018-19 All Funds cost of \$2.5 million for an outside vendor to conduct the audits. These audits would be conducted every two years, and are estimated to begin in fiscal year 2019. This estimate assumes this cost would be split 50/50 between General Revenue and Federal Funds.

The bill would require the HHSC Office of the Inspector General to appoint a Contract Internal Affairs Specialist, for which the agency estimated a 2018-19 All Funds salary and benefit cost of approximately \$200,000 for one full-time equivalent position. This estimate assumes this cost would be split 50/50 between General Revenue and Federal Funds.

It is assumed that the cost for HHSC to hire a single independent vendor for surveys relating to medical transportation would not be significant and could be absorbed by reducing capitation rates to brokers associated with the discontinuation of the multiple surveys currently conducted by brokers and/or eliminating these costs in an alternative model.

The bill would amend statute to require HHSC to use the most cost-effective model of delivering transportation services to Medicaid members. It is assumed that establishing flexibility to use the

most cost-effective model of delivering services based on the results of an evaluation using historical data would result in a positive fiscal impact, but because it is unknown to what extent program structure, costs, and rates would change, and in which region of the state, the amount is unknown. Current contracts are set to expire at the end of fiscal year 2018. Any cost avoidance that would result from more cost effective program delivery would start in fiscal year 2019.

The bill would require the CPA to establish the Contract Outside Tactical Team consisting of outside legal counsel and professional consulting services to review IT contracts valued over \$100 million. Based on data from the LBB Contracts Database, no more than 10 such contracts have been awarded in any fiscal year. The CPA estimates that reviewing each solicitation and contract will require on average 210 hours to review, at a rate of \$400/hour (Contracts Attorney) and \$250/hour (Contracts Consultant). Based on these assumptions, this analysis assumes this provision would result in an estimated General Revenue cost of \$1.4 million per fiscal year.

State agencies and institutions of higher education other than the CPA and HHSC estimated costs associated with hiring FTEs to implement the records retention, contract drafting, contract approval, and payment processing requirements of the bill. This estimate assumes that the costs associated with the bill's contracting requirements could be absorbed within existing resources for these agencies.

Technology

No significant technology impact is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 326 Texas Emergency Services Retirement System, 405 Department of Public Safety, 455 Railroad Commission, 529 Health and Human Services Commission, 582 Commission on Environmental Quality, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 302 Office of the Attorney General, 477 Commission on State Emergency Communications

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