

## **BILL ANALYSIS**

Senate Research Center

H.B. 2472  
By: Cook (Birdwell)  
Government Organization  
4/19/2013  
Engrossed

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

This bill contains the results of the Sunset Advisory Commission's review of two separate but related agencies: the Department of Information Resources (DIR) and the Texas Procurement and Support Services Division (TPASS) of the comptroller of public accounts of the State of Texas (comptroller). DIR provides information technology and telecommunications products and services to state agencies, primarily by establishing and managing statewide contracts for commodity items such as computer hardware and major programs such as data center consolidation. The comptroller's office performs a similar statewide procurement function, but for non-information technology commodities and services such as office supplies and food for the prison system.

DIR underwent Sunset review in 2010, but the resulting bill was vetoed by the governor. The agency was instead continued for two years and will be abolished on September 1, 2013, unless continued by the legislature. The comptroller's program is not subject to abolishment, but without legislative action, these functions will transfer to the Texas Facilities Commission on September 1, 2013.

The Sunset Advisory Commission determined the state has a continuing need for the procurement, support, and information technology functions performed by DIR and TPASS and that no major organizational change is needed at this time. However, the Sunset Advisory Commission recommends increased coordination and improved data collection between the two agencies' procurement programs, as well as a broader Sunset evaluation of the state's overall approach to procurement and contracting in eight years. Finally, the Sunset Advisory Commission concluded that DIR has made progress to address concerns arising from the 2010 Sunset review, but statutory changes are still needed to ensure lasting change.

H.B. 2472 amends current law relating to the continuation and functions of the Department of Information Resources and certain procurement functions of the comptroller of public accounts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the governing board of the Department of Information Resources in SECTION 13 (Sections 2054.521, 2054.552, and 2054.554, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2054.005(a), Government Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), the Department of Information Resources (DIR) is abolished and this chapter expires September 1, 2021, rather than expires September 1, 2013.

SECTION 2. Amends Section 2054.021(g), Government Code, to require that the training program provide information to the person regarding certain requirements, roles, rules, and laws pertaining to DIR, including information regarding this chapter and the governing board of DIR (board) to which the person is appointed to serve, rather than the enabling legislation that created DIR and its policymaking body to which the person is appointed to serve, and information regarding contract management training.

SECTION 3. Amends Section 2054.022(c), Government Code, to delete existing text providing that an employee of DIR, other than the executive director of DIR (executive director), is prohibited from participating in DIR's bidding process, including the proposal development related to a contract and the negotiation of a contract, if the employee receives more than five percent of the employee's income from any likely bidder on the contract, or the employee's spouse is employed by any likely bidder on the contract.

SECTION 4. Amends Subchapter B, Chapter 2054, Government Code, by adding Section 2054.0331, as follows:

Sec. 2054.0331. CUSTOMER ADVISORY COMMITTEE. (a) Requires the board to appoint a customer advisory committee under Section 2054.033 (Advisory Committees).

(b) Provides that the advisory committee is composed of representatives of customers who receive services from each of DIR's key programs, including state agencies with fewer than 100 employees, and the public.

(c) Requires the board, in making appointments to the advisory committee, to the extent practicable, ensure that the committee is composed of a cross-section of DIR's customers, including institutions of higher education, and the public.

(d) Requires the advisory committee to report to and advise the board on the status of DIR's delivery of critical statewide services.

SECTION 5. Amends Subchapter B, Chapter 2054, Government Code, by adding Sections 2054.0345 and 2054.0346, as follows:

Sec. 2054.0345. DETERMINATION OF ADMINISTRATIVE FEES. (a) Requires DIR to adopt a process to determine the amount of the administrative fee DIR charges to administer any of its programs, including fees charged for programs under Sections 2054.380 (Fees) and 2170.057 (Payment for Services).

(b) Requires that the process require that the amount of a fee directly relate to the amount necessary for DIR to recover the cost of its operations, as determined by DIR's annual budget process.

(c) Requires DIR to develop clear procedures directing staff for each DIR program and DIR's financial staff to work together to determine the amount of administrative fees. Requires that the procedures require review and approval of all administrative fees by the board, the executive director, and DIR's chief financial officer.

Sec. 2054.0346. REPORTING OF ADMINISTRATIVE FEES. (a) Requires DIR to report to the Legislative Budget Board (LBB) all administrative fees that DIR sets under Section 2054.0345 each fiscal year. Requires that the report include the underlying analysis and methodology used to determine the fee amounts and the cost allocation charged to customers.

(b) Requires DIR to post on DIR's Internet website information about each administrative fee DIR charges, including a description of how the fee is determined. Requires DIR to update this information when a contract amendment or other action results in a major change to the costs incurred or the price paid by DIR or a customer of DIR.

SECTION 6. Amends Subchapter B, Chapter 2054, Government Code, by adding Section 2054.037, as follows:

Sec. 2054.037. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the board to develop and implement a policy to encourage

the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of DIR rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under DIR's jurisdiction.

(b) Requires DIR's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires DIR to coordinate the implementation of the policy adopted under Subsection (a); provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures.

SECTION 7. Amends Subchapter B, Chapter 2054, Government Code, by adding Sections 2054.038, 2054.039, and 2054.040, as follows:

Sec. 2054.038. INTERNAL AUDITOR; POWERS AND DUTIES. (a) Requires the board to appoint an internal auditor who reports directly to the board and serves at the will of the board and provide staff and other resources to the internal auditor as appropriate.

(b) Requires the internal auditor to prepare an annual audit plan using risk assessment techniques to rank high-risk functions in DIR. Requires the internal auditor to submit the annual audit plan to the board for consideration and approval. Authorizes the board to change the plan as necessary or advisable.

(c) Authorizes the internal auditor to bring before the board an issue outside of the annual audit plan that requires the immediate attention of the board.

(d) Prohibits the internal auditor from being assigned to any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of DIR's operations. Authorizes the internal auditor to provide guidance or other advice before an operational or management decision is made but is prohibited from making the decision, approving the decision, or otherwise violating this subsection.

(e) Requires DIR to give the internal auditor unrestricted access to the activities and records of DIR unless restricted by other law.

Sec. 2054.039. OPEN MEETINGS EXCEPTION FOR INTERNAL AUDITOR. Provides that a meeting between the board and DIR's internal auditor to discuss issues related to fraud, waste, or abuse is not required to be an open meeting under Chapter 551 (Open Meetings).

Sec. 2054.040. AUDIT SUBCOMMITTEE. (a) Requires the board to maintain an audit subcommittee of the board. Requires the subcommittee to oversee DIR's internal auditor and any other audit issues that DIR considers appropriate.

(b) Requires the subcommittee to evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

SECTION 8. Amends Subchapter B, Chapter 2054, Government Code, by adding Section 2054.041, as follows:

Sec. 2054.041. ADDITIONAL BOARD OVERSIGHT. (a) Requires the board to adopt a policy describing the board's role in setting a strategic direction for DIR. Requires that

the policy address the board's role in developing new initiatives for and service offerings by DIR, including requiring the board to evaluate and approve new initiatives for, or categories of, services offered by DIR under DIR's various programs.

(b) Requires the board to regularly evaluate the extent to which DIR fulfills DIR's information resources technology mission by providing cost-effective services and meeting customer needs.

(c) Requires the board to regularly evaluate DIR operations, including an evaluation of analytical data and information regarding trends in DIR revenue and expenses, as well as performance information.

SECTION 9. Amends Subchapter C, Chapter 2054, Government Code, by adding Section 2054.061, as follows:

Sec. 2054.061. **USE OF CONSULTANTS AND OUTSIDE STAFF.** (a) Requires DIR to develop clear criteria for the appropriate use of consultants and outside staff by DIR to temporarily augment DIR's existing staff.

(b) Requires DIR to annually analyze DIR's staffing needs, the need for and cost-effectiveness of contracting for consultants and outside staff, whether DIR could use DIR staff to accomplish tasks proposed for the consultants and outside staff, and whether and what type of training or additional resources are necessary for DIR to use DIR's own staff to accomplish tasks proposed for the consultants or outside staff.

(c) Requires DIR, in conjunction with the budget process, to provide the analysis to the board for approval. Prohibits DIR from hiring or training any consultants or outside staff unless it has been approved during this budget process.

SECTION 10. Amends Subchapter C, Chapter 2054, Government Code, by adding Sections 2054.062 and 2054.065, as follows:

Sec. 2054.062. **INFORMATION RESOURCES TECHNOLOGIES CONSOLIDATION.** (a) Requires DIR to develop a consistent and clear method of measuring the costs and progress of an information resources technology consolidation initiative, including a consolidation under Subchapter L (Statewide Technology Centers).

(b) Requires DIR to work with any entity involved in an information resources technology consolidation to develop an agreed on methodology for collecting and validating data to determine a baseline assessment of costs. Requires DIR to use the data both in DIR's initial cost projections and in any later cost comparison. Requires DIR to coordinate with the internal auditor for guidance, subject to Section 2054.038(d), on developing a methodology that provides an objective assessment of costs and project status.

(c) Requires DIR, using the methodology agreed on under Subsection (b), to evaluate actual costs and cost savings related to the consolidation. Requires DIR to also evaluate the progress of DIR's information resources consolidation projects compared to the initially projected timelines for implementation. Requires that the evaluation results break out the information on both statewide and individual entity levels.

(d) Requires DIR to annually report the evaluation results to the board, LBB, and customers involved in the consolidation.

(e) Requires DIR to post on DIR's Internet website the report required by this section.

Sec. 2054.065. REVIEW OF CERTAIN CONTRACT SOLICITATIONS. (a) Defines "major contract" and "team" in this section.

(b) Requires DIR, for any solicitation of a major contract DIR is required to submit for review by the Contract Advisory Team (team) established under Subchapter C (Contract Advisory Team), Chapter 2262 (Statewide Contract Management), to implement any recommendations made by the team regarding the solicitation, or provide a written explanation of why the team's recommendations cannot be implemented.

SECTION 11. Amends Sections 2054.260(a) and (b), Government Code, as follows:

(a) Requires DIR, not later than November 15, rather than not later than September 1, of each even-numbered year, to report on the status, progress, benefits, and efficiency gains of the project.

(b) Requires DIR, not later than November 15, rather than not later than September 1, of each even-numbered year, to report on financial matters, including project costs and revenues, and on any significant issues regarding contract performance on the project.

SECTION 12. Amends Subchapter L, Chapter 2054, Government Code, by adding Section 2054.392, as follows:

Sec. 2054.392. STATEWIDE TECHNOLOGY ACCOUNT. Requires the comptroller to establish in the state treasury the statewide technology account. Provides that the account is a revolving fund account for the administration of this subchapter. Provides that the account is the depository for all money received from entities served under this subchapter. Authorizes money in the account to be used only for the operation and management of a statewide technology center or for any other purpose specified by the legislature.

SECTION 13. Amends Chapter 2054, Government Code, by adding Subchapters O and P, as follows:

#### SUBCHAPTER O. MAJOR OUTSOURCED CONTRACTS

Sec. 2054.521. MAJOR OUTSOURCED CONTRACT DEFINED; RULE. Requires the board by rule to define what constitutes a major outsourced contract with regard to contracts DIR executes with entities other than this state or a political subdivision of this state. Requires that the definition include as a major outsourced contract:

- (1) outsourced contracts entered into under Subchapter I (State Electronic Internet Portal Project) and Subchapter L of this chapter or Chapter 2170 (Telecommunications Services); and
- (2) contracts that exceed a monetary threshold, other than those described by Subdivision (1).

Sec. 2054.522. BOARD APPROVAL AND OVERSIGHT OF MAJOR OUTSOURCED CONTRACTS. (a) Requires DIR to receive approval from the board before entering into a major outsourced contract or amending any major outsourced contract, if the amendment has significant statewide impact.

(b) Requires the board to establish one or more subcommittees to monitor DIR's major outsourced contracts.

Sec. 2054.523. MANAGEMENT PLANS FOR MAJOR OUTSOURCED CONTRACTS. (a) Requires DIR to specify procedures for administering, monitoring, and overseeing each major outsourced contract by creating a management plan for each

contract. Requires DIR, in each management plan, to specify DIR's approach to managing and mitigating the risks inherent in each contract.

(b) Requires DIR staff who perform contract administration and program duties to jointly develop the management plans with input from executive management and the board. Requires that each management plan be approved by the executive director.

(c) Requires that each management plan establish clear lines of accountability and coordination of contract activities. Requires that the plan provide details about implementing the program that is the subject of the contract as well as procedures for monitoring contractor performance, identifying and mitigating risks related to the contract, and involving and communicating with customers who will be served by any programs implemented through the contract. Requires that the plan, as appropriate, define an approach for transitioning from one major outsourced contract to another major outsourced contract.

(d) Requires DIR to revise each management plan as necessary to keep current during the contracting process and when DIR renews, amends, or resolicits a major outsourced contract to ensure the plan remains updated and incorporates any changes resulting from a new contract.

Sec. 2054.524. CUSTOMER INVOLVEMENT IN MAJOR OUTSOURCED CONTRACTS. Requires DIR to establish formal procedures to ensure customer involvement in decision making regarding each of DIR's major outsourced contracts, including initial analysis, solicitation development, and contract award and implementation, that affect those customers.

#### SUBCHAPTER P. ADDITIONAL PROVISIONS ON CONTRACTING

Sec. 2054.551. DEFINITION. Defines "contract management guide" in this subchapter.

Sec. 2054.552. CONFLICT OF INTEREST IN CONTRACTING. (a) Prohibits a DIR employee from:

(1) having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by DIR; or

(2) in any manner, including by rebate or gift, directly or indirectly accepting or receiving from a person to whom a contract is authorized to be awarded anything of value or a promise, obligation, or contract for future reward or compensation.

(b) Provides that a DIR employee who violates Subsection (a)(2) is subject to dismissal.

(c) Requires the board to adopt rules to implement this section.

(d) Requires DIR to train staff in the requirements of this section and Section 572.054 and incorporate the requirements into the contract management guide and DIR's internal policies, including employee manuals.

Sec. 2054.553. CONTRACT MANAGEMENT TRAINING POLICY. (a) Requires DIR to develop a policy for training DIR staff in contract management.

(b) Requires that the policy establish contract management training requirements for all staff involved in contract management, including contract managers, program staff, and executive management.

(c) Requires that the policy specify DIR's overall approach to procuring and managing contracts, as well as contract-specific procedures developed in the contract management guide and under Subchapter O.

Sec. 2054.554. CONTRACT MANAGEMENT GUIDE; RULES. (a) Requires DIR to develop and periodically update a contract management guide to provide an overall, consistent approach on procurement and management of major outsourced contracts under Subchapter O and other contracts. Requires DIR, in updating the guide, to make changes based on contract experiences and account for changing conditions to guide the updates.

(b) Requires DIR to coordinate with DIR's internal auditor, subject to Section 2054.038(d), as needed for assistance and guidance in developing procedures in the contract management guide for monitoring contracts and individual contractors.

(c) Authorizes the board to adopt rules necessary to develop or update the contract management guide.

(d) Requires that the contract management guide provide information regarding DIR's general approach to business case analysis, procurement planning, contract solicitation, contract execution, and contract monitoring and oversight; ethics standards and policies, including those required by Section 2054.552; and approach to changing a program's internal structure or model for delivering services to customers.

(e) Requires that the contract management guide establish clear lines of accountability, staff roles and responsibilities, and decision-making authority for program staff, contract management staff, executive management, customers, and the board; include the procedures established under Section 2054.524 regarding customer involvement; and establish DIR's process for evaluating and managing risk during each stage of contract procurement, implementation, and management.

(f) Requires that the contract management guide describe the expectations and standards for obtaining and using customer input during all contract management phases.

SECTION 14. Amends Section 2151.0041(a), Government Code, as follows:

(a) Provides that the comptroller's authority to perform any act under this title that relates to state purchasing is subject to Chapter 325 (Texas Sunset Act), rather than providing that the transfer of powers and duties to the comptroller under Section 2151.004(d) (relating to transferring all powers and duties of the Texas Building and Procurement Commission to the comptroller, except for certain subsections) and under H.B. 3560, Acts of the 80th Legislature, Regular Session, 2007, is subject to Chapter 325 (Texas Sunset Act). Provides that that authority, notwithstanding any other law, expires September 1, 2021, unless continued in existence as provided by Chapter 325.

SECTION 15. Amends Chapter 2151, Government Code, by adding Section 2151.0042, as follows:

Sec. 2151.0042. SUNSET EVALUATION. (a) Requires the Texas Sunset Advisory Commission (Sunset) to evaluate the state's overall procurement system, including the provisions of this subtitle and Chapter 2054 (Information Resources). Authorizes the evaluation to include any provision in state law that relates to procurement and contracting for goods and services. Requires Sunset to present not later than January 1, 2021, a report to the legislature on its evaluation and recommendations in relation to the report's findings.

(b) Authorizes Sunset, in conducting the evaluation required under Subsection (a), to request the assistance of LBB, the state auditor, and each standing committee of the senate and house of representatives having primary jurisdiction over matters relating to state procurement.

SECTION 16. Amends Subchapter A, Chapter 2155, Government Code, by adding Section 2155.007, as follows:

Sec. 2155.007. PROCUREMENT COORDINATION COMMITTEE. (a) Defines "department" in this section.

(b) Requires DIR and the comptroller to establish a committee composed of essential personnel of DIR and the comptroller to:

(1) identify areas of overlap in the procurement functions of DIR and the comptroller and methods to avoid duplication of services; mutually beneficial contracting and procurement methodologies, data collection and management techniques, and customer relations management; opportunities for collaboration on procurement functions that would benefit the state or other customers; and opportunities for consolidation of administrative or other functions to improve customer service and reduce operating costs; and

(2) develop a standardized method for DIR and the comptroller to collect and analyze spending data relating to procurement contracts; and benchmark and quantitatively measure cost savings and increased administrative efficiency resulting from collaboration and cooperative purchasing; and strategies that encourage coordination between DIR and the comptroller relating to procurement functions.

(c) Authorizes the committee to appoint advisory members as appropriate to assist the committee.

(c-1) Requires the committee to report to Sunset the committee's findings under Subsection (b). Requires the committee to file a first report on September 1, 2015, that covers the two-year period preceding that date. Requires the committee to file a second report on September 1, 2017, that covers the two-year period preceding that date.

(c-2) Requires DIR and the comptroller to publish the reports required under Subsection (c-1) on DIR's and the comptroller's Internet website.

(c-3) Requires DIR and the comptroller, in addition to the reports required under Subsection (c-1), to include the analysis prescribed by Subsection (b) in a report filed under Section 325.007 (Agency Report to Commission). Requires the comptroller, for purposes of this subsection, to file a report as required by Section 325.007, but only to the extent required by Section 2151.0041(a).

(c-4) Provides that this subsection and Subsections (c-1), (c-2), and (c-3) expire October 1, 2019.

SECTION 17. Amends Section 2157.068(b), Government Code, as follows:

(b) Requires DIR, when negotiating with a vendor, to use information related to the state's historical spending levels on particular commodity items to secure the best value for the state. Requires DIR, to the greatest extent practicable, to negotiate a specific price for commonly purchased commodity items. Requires DIR, if DIR selects a vendor based on the vendor's offer of a percentage discount from the list price of commodity items, to document in writing how that arrangement obtains the best value for the state.

SECTION 18. Amends Subchapter B, Chapter 2157, Government Code, by adding Section 2157.069, as follows:

Sec. 2157.069. CLEARING FUND ACCOUNT. Requires the comptroller to establish in the state treasury the clearing fund account. Provides that the account is a revolving fund account for the administration of Section 2157.068 (Purchase of Information Technology Commodity Items). Provides that the account is the depository for all money received from entities served under that section. Authorizes money in the account to be used only to administer that section or for any other purpose specified by the legislature.

SECTION 19. Amends Section 2161.121(d), Government Code, to require the comptroller to send to the presiding officer of each house of the legislature on May 15 of each year, a report on the previous six-month period, and on November 15 of each year, a report on the preceding fiscal year, rather than requiring the comptroller to send on April 15 of each year a report on the previous six-month period to the joint committee charged with monitoring the implementation of the historically underutilized business goals.

SECTION 20. Amends Section 2161.126, Government Code, to require the comptroller, before October 15 of each year, rather than September 1 of each year, to report to the governor, the lieutenant governor, and the speaker of the house of representatives on the education and training efforts that the comptroller has made toward historically underutilized businesses.

SECTION 21. Amends Chapter 122, Human Resources Code, by adding Section 122.0012, as follows:

Sec. 122.0012. SUNSET PROVISION. Provides that the comptroller's authority to perform any act under this chapter that relates to state purchasing is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that the authority, notwithstanding any other law, expires September 1, 2021, unless continued in existence as provided by Chapter 325, Government Code.

SECTION 22. Repealer: Section 497.030 (Comptroller Reports), Government Code.

Repealer: Section 2054.005(b) (relating to providing that Sunset's review of DIR in preparation for the work of the 83rd Legislature, Regular Session, is not limited to the appropriateness of recommendations made by Sunset to the 82rd Legislature), Government Code.

Repealer: Sections 2151.0041(b) (relating to requiring Sunset to evaluate the transfer of powers and duties to the comptroller and providing that the comptroller is required to perform certain duties), Government Code.

Repealer: Section 2151.0041(c) (relating to transferring certain powers, duties, rules, and other information and obligations of the comptroller to the Texas Facilities Commission), Government Code.

Repealer: Section 2161.121(e) (relating to requiring the comptroller to send on October 15 of each year a report on the preceding fiscal year to the presiding officer of each house of the legislature and the joint committee), Government Code.

SECTION 23. Makes application of Sections 2054.260 and 2161.121, Government Code, as amended by this Act, prospective to September 1, 2013.

SECTION 24. Requires DIR and the comptroller to enter into a memorandum of understanding to facilitate the implementation of Section 2155.007, Government Code, as added by this Act, not later than March 1, 2014.

SECTION 25. Makes application of Sections 2054.522 and 2054.552, Government Code, as added by this Act, and Section 2157.068(b), Government Code, as amended by this Act, prospective to September 1, 2013.

SECTION 26. Effective date: September 1, 2013.