

## **BILL ANALYSIS**

Senate Research Center

S.B. 255  
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Business & Commerce  
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Enrolled

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

Current law requires the Department of Information Resources (DIR), in cooperation with the Texas comptroller of public accounts and other appropriate state agencies, to develop a training program for state agency personnel who contract for the purchase of information resources technologies, but it does not require agency personnel to complete the training. S.B. 255 would remedy this by requiring the training for most such agency personnel.

The bill also would address certain subject-specific deficiencies in existing training programs. For example, under current law, the training program for contract managers and the abbreviated training program offered to agency governing boards is not required to include information regarding how to maintain contract documentation, create a risk evaluation and mitigation strategy, create a plan for potential problems with a contract, develop an accurate and comprehensive statement of work, or complete the contract and evaluate performance. To remedy this omission, S.B. 255 would expressly require those topics' inclusion in the training.

To better assess the cost and value of training, the bill would require any state agency that spends more than \$5,000 in a fiscal year on training or education for any administrator or employee to submit a report to the Legislative Budget Board including a list of employees participating in training, the amount spent on each employee, and the certification each earned.

Finally, S.B. 255 would reorganize state agency contracting law. The current law governing training for state agency contracting personnel is scattered across a number of different statutes. A general "State Employees Training Act" appears in the Government Code, but other agency- and subject matter-specific training provisions appear elsewhere. In the interests of greater uniformity of standards across state agencies and of better statutory organization, S.B. 255 would consolidate the various, scattered provisions relating to training (in information resources, purchasing, and contract management, respectively) from their current places in code to the State Employee Training Act, and would re-designate them as sections under that Act. (Original Author's / Sponsor's Statement of Intent)

S.B. 255 amends current law relating to contracts with and training for governmental entities and vendors, including purchasing and contract management training and authorizes fees.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Building and Procurement Commission is transferred to the Texas comptroller of public accounts (comptroller) and modified in SECTION 3 (Section 656.051, Government Code) of this bill.

Rulemaking authority is expressly granted to the comptroller in SECTION 3 (Section 656.051, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 656.047, Government Code, by adding Subsection (c), as follows:

- (c) Requires a state agency that spends more than \$5,000 in a state fiscal year for a training or education program for any individual administrator or employee to submit to

the Legislative Budget Board (LBB), not later than August 31 of that year, a report including a list of the administrators and employees participating in a training or education program, the amount spent on each administrator or employee, and the certification earned by each administrator or employee through the training or education program.

SECTION 2. Amends Subchapter C, Chapter 656, Government Code, by adding Sections 656.054 and 656.055, as follows:

Sec. 656.054. PURCHASING AND CONTRACT MANAGEMENT TRAINING BY COMPTROLLER. (a) Requires the Texas comptroller of public accounts (comptroller) to develop training programs provided by the comptroller to meet the needs of state agencies.

(b) Requires a state agency annually to estimate the number of employees requiring purchasing or contract management training and report the anticipated training needs of the agency to the comptroller as prescribed by the comptroller.

(c) Requires the comptroller on an annual basis to assess the number of employees requiring purchasing or contract management training and to maintain a regular schedule of classes to accommodate that number.

(d) Authorizes the comptroller to use staff or contract with private or public entities, including state agencies, to conduct the training.

(e) Authorizes the comptroller to assess a fee for a training program, including continuing education and certification, in an amount sufficient to recover the costs incurred by the comptroller to provide the training program.

Sec. 656.055. PURCHASING AND CONTRACT MANAGEMENT TRAINING BY AGENCY. (a) Authorizes a state agency, in consultation with the comptroller, to develop agency-specific purchasing and contract management training programs to be administered by the agency to the agency's employees instead of or as a supplement to training programs developed by the comptroller under this subchapter.

(b) Provides that an employee who participates in an agency-specific training program under this section remains subject to any other applicable certification requirements established for training programs under this subchapter, including written or oral examinations administered by the comptroller.

SECTION 3. Transfers Sections 2054.057, 2155.078, 2262.053, and 2262.0535, Government Code, to Subchapter C, Chapter 656, Government Code, and redesignates those sections as Sections 656.050, 656.051, 656.052, and 656.053, Government Code, respectively, and amends them, as follows:

Sec. 656.050. New heading: TRAINING IN CONTRACT NEGOTIATION FOR PURCHASES OF INFORMATION RESOURCES TECHNOLOGIES. (a) Defines "department" and "information resources technologies."

(a-1) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Requires state agency personnel directly involved in contract negotiations for the purchase of information resources technologies to complete the training developed by the Texas Department of Information Resources (DIR).

(c) Includes information on how to use contracts entered into by DIR under Section 2157.068 (Purchase of Information Technology Commodity Items) among the list of subjects DIR is required to include in the training. Makes nonsubstantive changes.

(d) Makes no changes to this subsection.

Sec. 656.051. TRAINING AND CERTIFICATION OF STATE AGENCY PURCHASING PERSONNEL AND VENDORS. (a) Changes references from the Texas Building and Procurement Commission (commission) to the comptroller. Requires the comptroller to establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. Authorizes the comptroller to establish and offer appropriate training to vendors on a cost recovery basis. Authorizes the comptroller to adopt rules to administer this section, rather than authorizes the commission to adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section.

(b) Redesignates existing Subsection (a-1) as Subsection (b). Makes no further changes to this subsection.

(c) Redesignates existing Subsection (b) as Subsection (c). Requires all state agency purchasing personnel, including agencies exempted from the purchasing authority of the comptroller, and notwithstanding Subsection (i), rather than Subsection (n), to receive the training and continuing education to the extent required by the comptroller, rather than by rule of the commission. Prohibits a state agency employee who is required to receive the training from participating in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the comptroller. Deletes existing text requiring that the training and continuing education include ethics training and authorizing training to count toward the continuing education requirements. Deletes existing Subsection (c) requiring the commission to set and collect a fee from state agencies employing purchasing personnel and requiring the commission to set the fee for a certain amount. Makes conforming changes.

(d) Makes a conforming change. Deletes existing text requiring the commission to collect certain fees under this subsection.

(e) Redesignates existing Subsection (g) as Subsection (e). Requires that the training provided by the comptroller, rather than the basic training level, include instruction in certain methods and practices relating to purchasing and negotiation. Deletes existing Subsection (e) relating to the commission providing training and continuing education using its own personnel or through contracts with private entities. Makes conforming changes.

(f) Redesignates existing Subsection (j) as Subsection (f) and makes a conforming change. Deletes existing Subsections (f), (h), and (i) requiring three levels of training under this section and setting forth their contents.

(g) Redesignates existing Subsection (k) as Subsection (g). Requires the comptroller to adopt rules to monitor compliance with this subsection. Makes conforming and nonsubstantive changes.

(h) Requires the comptroller to certify a state agency employee as a state agency purchaser when the employee has completed the training required by this section or as prescribed by rule and passed a written examination.

(i) Redesignates existing Subsection (n) as Subsection (i). Makes no further changes to this subsection. Deletes existing Subsections (l) (relating to the inclusion of completion of training, passage of a written exam, and a minimum number of years of purchasing experience to the commission's prerequisites for receiving a level-two purchaser certification) and (m) (relating to the requirement

that the commission's prerequisites for level-three purchaser certification include certain requirements).

Sec. 656.052. New heading: TRAINING AND CERTIFICATION FOR CONTRACT MANAGERS. (a) Defines "contract management guide" and "contract manager."

(a-1) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Requires that the training program for contract managers include certain information, including how to maintain required documentation for contracting decisions, changes to a contract, and problems with a contract; create a risk evaluation and mitigation strategy; create a plan for potential problems with the contract; develop an accurate and comprehensive statement of work; and complete the contract and evaluate performance under the contract.

(c) through (f) Makes no changes to these subsections.

(g) Requires the comptroller to adapt the training required under this section and administer an abbreviated training program meeting the relevant requirements under this section for state agency employees, other than contract managers, with contract management duties.

(h) Provides that this section does not apply to an institution of higher education as defined by Section 61.003 (Definitions), Education Code, or a contract manager whose contract management duties relate primarily to contracts described by Section 2262.002(b) (relating to the exemption of certain contracts of the Texas Department of Transportation from this chapter (Statewide Contract Management)).

Sec. 656.053. TRAINING FOR GOVERNING BODIES. (a) Defines "state agency."

(a-1) Creates this subsection from existing text. Requires the comptroller to adapt the program developed under Section 656.052, rather than Section 2262.053, to provide an abbreviated training program for members of the governing bodies of state agencies.

(b) and (c) Makes no changes to these subsections.

(d) Provides that this section does not apply to the Texas Transportation Commission.

SECTION 4. Amends Section 2056.002(b), Government Code, as follows:

(b) Requires the LBB and the Office of the Governor (governor's office), rather than the Governor's Office of Budget, Policy, and Planning, to determine the elements required to be included in each agency's strategic plan. Requires that a plan, unless modified by LBB or the governor's office, rather than the Governor's Office of Budget, Policy, and Planning, include certain items. Makes a conforming change.

SECTION 5. Amends Sections 2252.908(c) and (e), Government Code, as follows:

(c) Provides that, notwithstanding Subsection (b) (relating to the application of this section (Disclosure of Interested Parties) only to certain contracts of a governmental entity or state agency), this section does not apply to:

(1) makes no changes to this subdivision;

(2) and (3) makes nonsubstantive changes to these subdivisions;

(4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;

(5) a contract with an electric utility, as that term is defined by Section 31.002 (Definitions), Utilities Code; or

(6) a contract with a gas utility, as that term is defined by Section 121.001 (Definition of Gas Utility), Utilities Code.

(e) Requires that the disclosure of interested parties be submitted on a form prescribed by the Texas Ethics Commission that includes:

(1) makes no changes to this subdivision; and

(2) a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is substantially in a certain form, rather than the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury. Sets forth the contents of the form.

SECTION 6. Amends Section 2262.101(a), Government Code, to provide that the Contract Advisory Team is to provide recommendations to the comptroller regarding the training under Section 656.052, rather than Section 2262.053, among certain duties.

SECTION 7. Amends Section 2267.003, Government Code, as follows:

Sec. 2267.003. APPLICABILITY. Provides that this Chapter (Public and Private Facilities and Infrastructure) does apply to a transportation authority operating, rather than created, under certain chapters of the Transportation Code, other than a metropolitan rapid transit authority operating under Chapter 451 (Metropolitan Rapid Transit Authorities), Transportation Code, in which the principal municipality has a population of 1.9 million or more.

SECTION 8. (a) Requires the comptroller, not later than February 1, 2018, to adopt rules to implement Section 656.051, Government Code, as transferred, redesignated, and amended by this Act.

(b) Makes application of Section 656.051, Government Code, as transferred, redesignated, and amended by this Act, prospective to March 1, 2018.

SECTION 9. Provides that Section 2252.908, Government Code, as amended by this Act, applies only to a contract entered into or amended on or after January 1, 2018.

SECTION 10. Effective date: September 1, 2017.