

SUBJECT: Purchasing and other practices of public higher education institutions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 9 ayes — Rangel, F. Brown, Farabee, Goolsby, J. Jones, Morrison, E. Reyna, Uher, West

0 nays

WITNESSES: For — None

Against — None

On — Dan Burck, University of Texas System; *Registered but did not testify*: Joe Behrens, University of Texas Southwestern Medical Center at Dallas; James P. Dorn, University of Texas M.D. Anderson Cancer Center; Charles Franklin, Floyd Self, Eric Stoutner, and Jeff Treichel, University of Texas at Austin; Art Martinez, Brett L. Morris, and Joe Stafford, University of Texas System; Dan Williams

BACKGROUND: Education Code, sec. 51.9335 allows medical and dental units of public institutions of higher education to acquire goods and services by the method that provides the best value. These “best-value” methods may include competitive bidding, competitive sealed proposals, catalogue purchases, a group purchasing program, or an open-market contract.

Government Code, chapters 2155-2158 govern these and other purchasing practices of state agencies, and chapter 2170 governs procurement of telecommunications services. Government Code, chapters 661 and 662 govern policies for sick leave, vacations, and holidays for state employees. Chapter 497 governs the sale of prison-made articles or products to governmental agencies.

DIGEST: **Purchasing practices.** CSHB 1545 would amend the Education Code to authorize all public institutions of higher education other than the University of Texas Medical Branch at Galveston or public junior colleges to use the “best-value” purchasing practices now authorized for medical and dental

units. An institution could acquire goods or services as provided under the Government Code but would not have to do so.

CSHB 1545 would allow the state auditor to audit purchases of goods or services by an institution of higher education or by a component that purchases goods and services. It would exempt higher education institutions from the procedural requirements of the Government Code relating to purchases of prison-made articles or products.

CSHB 1545 would delete provisions in the Government Code that allow a designated purchasing officer for a higher education institution to sign the written justification for a purchase and that allow higher education institutions to use their own bidders list but that encourage them to use the master bidders list when possible. The bill also would repeal sections of the code that address the delegation of authority to institutions to buy goods and services for research projects through group purchasing programs and competitive sealed proposals.

Leave policy. CSHB 1545 would amend the Education Code by adding leave provisions for certain employees of the university system. The system's governing board could adopt a comprehensive leave policy for employees working in a hospital or clinic of a medical or dental unit. Chapters 661 and 662 of the Government Code would not apply to employees covered by such a comprehensive leave policy, but the policy would have to address the same subject matter and the intended effect of the policy on the rights, duties, and responsibilities of employees and employers.

This policy could combine vacation, sick leave, and holiday leave into a system that would not distinguish or separate the types of leave to be awarded and could award leave in an amount determined by the governing board to be appropriate and cost-effective. The policy would have to provide for payment for accrued leave to the estates or heirs of deceased employees, to employees separating from the system, and to contributing members of state retirement systems who retire. It also would have to provide for awards of accrued leave to employees separating from the system who are to be employed by other public higher education institutions, and it could include other matters deemed relevant and appropriate by the

board. This policy would have to be adopted by the governing board in an open meeting.

Before implementing such a policy, the governing board would have to enter into a memorandum of understanding with the Teacher Retirement System of Texas, the state auditor, the Employees Retirement System of Texas, and the Higher Education Coordinating Board concerning awards of accrued leave for the purposes of retirement and other issues related to implementing the policy. The governing board could adopt a similar leave policy for other employees of the institution on or after September 15, 2005.

Merit raises. CSHB 1545 would authorize higher education institutions to grant merit salary increases, including one-time merit payments, to certain employees. An institution would have to adopt criteria for granting merit increases, but could pay the increases from any funds. To be eligible for a merit increase, an employee would have to have been employed by the institution at least six months before the effective date, and at least six months would have to have elapsed since the employee's last merit raise.

Other employment practices. The bill would allow a full-time employee of a higher education institution with appointments to more than one position at the same institution to receive pay for working more than 40 hours in a week if the institution determined that pay instead of compensatory time was in the institution's best interests.

CSHB 1545 also would allow a higher education institution to hire a person who had retired under Government Code, Title 8, if the governing board of the institution found that the employment would be in the institution's best interests and if the person had been retired for at least one calendar year before the effective date of the employment. The governing board could pay such a person an amount the board considered appropriate, and this person could participate in the appropriate retirement system under Title 8. This provision would prevail over other laws governing the hiring of retired employees to the extent of any conflict.

If a state law required a higher education institution to notify its officers or employees in writing about requirements, rights, duties, or responsibilities, the institution could provide the required notification through the use of

electronic media. The institution could adopt rules and guidelines to ensure that such notification would be effective and that it would be provided to officers and employees who lacked access to electronic media.

CSHB 1545 would amend the Government Code to specify that state employees who had accrued six months of continuous state employment and who resigned, was dismissed, or otherwise separated from employment by a higher education institution would be entitled to be paid for the accrued balance of their vacation time as of the date of the separation.

CSHB 1545 would modify language in the Government Code concerning payroll deductions of parking fees and permits that an employee of a higher education institution may authorize. The change would specify that a payroll reduction could reflect payment for a transportation pass or other qualified transportation benefit as well as for parking fees and permits. An employee also could authorize a payroll deduction for a club membership, recreational sports membership, or similar activity or program. Such payroll deductions or reductions would have to be voluntary, and the institution would have to determine which fees or charges their employees could pay in this manner. If authorized by federal law, such a salary deduction or reduction could be made on a pretax basis.

Financial management. CSHB 1545 would amend the Education Code by deleting provisions that require the governing board of a public higher education institution to secure the attorney general's opinion on the title of real property to be conveyed before accepting gifts, grants, and donations of such property in aid of a medical school.

The bill would amend the Government Code to provide that no interest could accrue or be paid from the institutional funds of a public higher education institution if the total amount of interest that otherwise would have accrued would be equal to or less than \$5. This change would apply only to interest on a payment by an institution that became overdue on or after the bill's effective date.

Reporting. CSHB 1545 would amend the Government Code to remove duplicative reporting requirements by higher education institutions relating to construction, maintenance, and leased space. If information to be obtained

from a higher education institution for inclusion in such a report also would be included in another report by the institution to another state agency, the institution could enter into a memorandum of understanding with the General Services Commission and the agency receiving the other report to enable the institution to provide the required information in the most cost-effective manner. CSHB 1545 would not limit the authority of the state auditor to request and receive information directly from the institution.

Strategic planning. CSHB 1545 would exempt university systems and higher education institutions from the requirement to prepare a strategic plan for operations under Government Code, ch. 2056.

Other financial matters. CSHB 1545 would amend the Education Code to allow higher education institutions that accept payment of tuition and fees or other charges by credit card to charge the card user a fee for processing the payment. Such a fee could not exceed the amount charged to the institution by the issuer of the credit card in connection with the payment. Before accepting payment by credit card, an institution would have to notify students of any such fees.

The bill also would repeal Education Code, sec. 54.010, which authorizes the governing board of an institution of higher education to prorate student fees and reduce tuition in certain cases.

CSHB 1545 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS
SAY:

CSHB 1545 would increase efficiency and decrease administrative costs involved in the operation, regulation, and administration of public institutions of higher education and would enable these institutions to focus more of their resources on education rather than on business practices. It would implement part of the recommendations of the comptroller's e-Texas report.

Purchasing practices. The bill would streamline reporting and reduce duplicative requirements now in place. Also, it would allow higher education institutions to follow the "best-value" practices already used by medical and dental units in purchasing goods and services. This would result in a

significant decrease in labor and other costs involved in practices such as competitive bidding. It also would allow these institutions to gain significant discounts in purchasing certain items, such as computer software and hardware, through purchasing consortia that would enable the institutions to take advantage of economies of scale.

The track record of medical and dental units that have used best-value purchasing methods demonstrates that the changes proposed in CSHB 1545 would benefit higher education institutions, their students, and the state. These units have saved about \$18 million per year through best-value purchasing, having bought goods and services more inexpensively with less staff and less paperwork. The increased efficiencies resulting from CSHB 1545 would allow these institutions to focus more of their resources on academics.

Employment practices. CSHB 1545 would bring human resources practices at higher education institutions into line with those in the private sector, allowing them to remain competitive in recruiting and retaining qualified workers. It would allow merit increases for employees, “overtime” pay for employees who work more than 40 hours per week, notification of employees of certain matters via e-mail, quicker payment of accrued leave for employees leaving employment, and payroll deductions or reductions for certain services received from the institution. Also, CSHB 1545 would remove unnecessary barriers in current law that make it more difficult to rehire retired employees.

Some changes proposed by CSHB 1545 would produce significant benefits for hospitals or clinics of medical and dental units of a university system. These changes would increase the flexibility of these units in scheduling health-care staff by authorizing the accumulation of sick, holiday, and vacation leave into a “paid leave” system. The institutions could use this flexibility to help overcome the current shortages in critical health-related fields such as nursing. The medical and dental units would be an effective “test market” for implementation of this program, which, if successful, could be applied to all higher education institutions.

Fees for credit-card payment. CSHB 1545 would give higher education institutions the same authority that other state agencies and the private sector

have regarding recovery of the costs of accepting payments by credit cards. Students increasingly register for courses on-line and pay their tuition with credit cards. For example, about half of all students in the UT System register over the Internet and pay with credit cards, creating a significant cost to the system.

CSHB 1545 would allow students to pay by credit card but would require them to pay fees to cover additional charges now incurred by the institution. The institution would have to inform students explicitly about such fees. This change merely would allow the institutions to recoup charges they now pay "out of pocket" and would provide no excess revenue to these institutions. It would not discourage credit card use, since many students still would be willing to pay the fee for the convenience of paying by credit card. The fee amount would be quite low relative to the overall cost of tuition and fees.

Accountability. CSHB 1545 would increase the efficiency and autonomy of these institutions while preserving a solid accountability system through the use of both the state auditor's office and the institutions' internal audits. Higher education institutions would continue to provide full disclosure and access to data requested by the state auditor.

Fiscal implications. CSHB 1545 would not authorize any efficiency measures that would result in a substantial fiscal implication to the state. Certain measures in the bill as filed that would have caused a significant fiscal impact have been removed. The bill would not authorize institutions of higher education to set their own tuition rates because that would decrease legislative control over tuition. Such control is essential to hold down tuition and fee increases and to ensure the affordability and accessibility of higher education to all students.

OPPONENTS
SAY:

Accountability. CSHB 1545 would give higher education institutions more autonomy, particularly with regard to purchasing practices, but would not provide sufficient accountability measures to monitor their behavior. This could result in cases of fraud and abuse and a decrease in quality control at these institutions. The state auditor would receive no additional funds to perform audits in connection with this bill.

Furthermore, the state auditor would not have ready access to all procurement data from these institutions and could not monitor their purchasing practices effectively. The auditor would have ready access only to data for transactions that go through the state treasury, which would amount to no more than half of these transactions. The auditor then would have to request specific additional data from the institutions. CSHB 1545 should include a provision for on-line access to such data directly from institutions for all procurement transactions, thus allowing the state auditor's office to maximize its role in the accountability process.

Fees for credit-card payment. CSHB 1545 would allow higher education institutions to benefit from the efficiencies involved in credit-card use by students but would allow the institutions to pass along any costs involved to the students. The benefits to an institution would outweigh by far the user fee charged by the issuer of a credit card in connection with the payment. Typically, on-line registration and payment by credit card involve lower labor costs. By allowing institutions to pass along the user-fee charge, CSHB 1545 would result in a net benefit to the institutions at the expense of students. Also, the bill would discourage students from using credit cards in connection with registration. This would be inconsistent with the trend of a larger role for on-line and Internet transactions.

OTHER
OPPONENTS
SAY:

CSHB 1545 would not go far enough in increasing efficiency at public institutions of higher education. The bill would implement only part of the recommendations of the comptroller's e-Texas report. Specifically, CSHB 1545 should allow these institutions to set their own tuition rates.

Such authority would enable the institutions to be more competitive with private institutions in the state and with out-of-state colleges and universities. Also, it would give these institutions more flexibility in creating an incentive structure for students to take higher course loads by, for example, providing flat-rate tuition. The state still would control tuition-setting through the level of state tax support provided to these institutions. Market forces also would keep tuition at reasonable and affordable levels. Finally, this would bring Texas into line with the majority of other states. A recent study of 40 states found that the legislature sets tuition in only three states: Florida, Texas, and Washington.

CSHB 1545 also should reinstate the provisions in the bill as filed that would have authorized the governing board of an institution to retain control of tuition and fees collected at the institution. The bill also should reinstate the provisions that would have provided an exception to the requirement that governing boards deposit tuition, laboratory, and special course fees with the state treasury. These changes would allow the institutions to spend these funds more easily on construction projects. Currently, if this revenue goes into general revenue, the institution may not be able to be spend it on construction because of fund consolidation requirements.

NOTES:

The committee substitute modified the original bill by authorizing the state auditor to audit purchases of goods or services by a component of a higher education institution. In addition, CSHB 1545 specifically would exclude the UT Medical Branch at Galveston and public junior colleges from the bill's purchasing provisions.

The committee substitute also added the provision that an institution could employ a state retiree if the person had been retired for at least one year. The substitute would remove the prohibition against such a person's receiving retirement benefits if employed on a greater than a half-time basis. Also, CSHB 1545 modified the original to allow the state auditor's office to ask for and receive construction and maintenance information directly from a higher education institution.

CSHB 1545 also modified the bill as filed by prohibiting an institution from charging excessive fees in connection with credit-card payments and by requiring the institution to notify students of fees being charged. The substitute also removed provisions authorizing an institution's governing board to exempt full-time employees of the institution from payment of all or part of tuition and fees.

The substitute removed provisions relating to the refund of tuition and fees on a pro-rata basis for courses a student drops. It also removed provisions that would have authorized the governing board of an institution to retain control of tuition and laboratory and special course fees collected at the institution, as well as provisions exempting a governing board from the requirement to deposit such tuition or fees in the state treasury.

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Finally, CSHB 1545 removed provisions in the original bill that would have increased the maximum general property deposit to \$50 for each student. It also modified the original bill to provide that the governing board of a university system could adopt a comprehensive leave policy only for employees in a hospital or clinic of a medical or dental unit of the system but that the board could adopt a leave policy for other employees on or after September 1, 2005.

The companion bill, SB 1465 by Bivins, is scheduled for a public hearing in the Senate Education Committee today.