

- SUBJECT:** Continuing DIR; transferring some purchasing functions to comptroller
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Cook, Frullo, Gallego, Geren, Harless, Hilderbran, Huberty, Solomons, Turner
- 0 nays
- 4 absent — Menendez, Craddick, Oliveira, Smithee
- WITNESSES:** For — Andy Wilson, Public Citizen, Inc.
- Against — None
- On — (*Registered, but did not testify:* Ron Pigott, Comptroller of Public Accounts; Karen Robinson, Texas Department of Information Resources; Katharine Teleki, Sunset Advisory Commission)
- BACKGROUND:** The Department of Information Resources (DIR), established by the Legislature in 1989, provides a broad range of information technology and telecommunications products and services to state agencies and eligible voluntary customers, including local governments and universities. DIR's role has evolved from establishing strategic direction to procuring and administering information technology and telecommunications contracts on behalf of the state. DIR's key activities include:
- procuring and managing statewide cooperative contracts for technology commodities, which includes commercial software, hardware, and technology services, other than telecommunications services (DIR negotiates and administers about 850 cooperative contracts through which all state agencies must purchase their technology commodities);
  - providing telecommunications services, including the Texas Agency Network (TEX-AN) and Capitol Complex Telephone System;
  - managing consolidated data center services, under its authority for statewide technology centers (DIR manages the delivery of consolidated data center services to 27 state agencies and one

university through a seven-year, estimated \$863 million contract with IBM);

- managing Texas.gov, the official website of Texas (More than 100 state agency, local government, and university participants offer nearly 1,000 online services through the website, such as driver license renewals, utility bill payments, vehicle registration, and property and sales tax payments);
- providing guidance on and oversight of state information security; and
- providing statewide IT strategic planning, reporting, and standards setting.

DIR's board has seven members appointed by the governor (one employed by an institution of higher education) and three ex officio nonvoting members. The three ex officio members rotate between two groups. Members of the first group serve two-year terms, and after two years the second group serves its two-year terms. The first group is the insurance commissioner, the health and human services executive commissioner, and the executive director of the Texas Department of Transportation. The second group is the education commissioner, the executive director of the Texas Department of Criminal Justice, and the executive director of Texas Parks and Wildlife Department.

DIR had about 235 authorized staff in fiscal 2009. The Legislature appropriated \$209 million to DIR in fiscal 2009, mostly derived from fees collected through its cost-recovery programs, including data center services, TEX-AN, Capitol Complex Telephone System, and statewide cooperative contracts. Appropriations riders allowing unexpended balance carry forward and the keeping of all program revenues resulted in an additional \$76 million in fiscal 2009, for a total of \$285 million.

DIR last underwent Sunset review in 1997 and was continued by the 75th Legislature. DIR will be abolished on September 1, 2011, unless continued by the Legislature.

**DIGEST:**

CSHB 2499 would continue DIR until September 1, 2017. The bill would transfer the technology commodities purchasing program to the comptroller. It would require new DIR board appointments and would revise its mission and oversight role. The bill also would require contracting changes, such as requiring management plans for each major outsourced contract, requiring a contract management guide, and adding

conflict of interest provisions. CSHB 2499 would require consistent methods for determining administrative fees, the appropriate use of outside staff and consultants, and the costs and progress of an information resources technology consolidation initiative. The bill would require more customer involvement and more resources and responsibilities for the internal auditor.

The bill also would add the standard Sunset provision to encourage the use of negotiated rulemaking and alternative dispute resolution.

**Transfers to comptroller.** CSHB 2499 would transfer all powers and duties in law for the statewide purchase of information technology commodities from DIR to the comptroller. DIR would be required to work with and at the direction of the comptroller to facilitate the transfer. All appropriated funds for the program would transfer to the comptroller. Employees of the program, including administrative support, would transfer from DIR to the comptroller, except that a management employee would need to apply for the position with the comptroller to hold it for more than an interim period.

The bill would establish that rules, forms, policies, procedures, and decisions of DIR had full force of law until superseded by an act of the comptroller. All related personal property, such as records, would transfer, as would all contracts, memoranda of understanding, and leases. Court cases and contract negotiation would be transferred, and the comptroller would assume the position of DIR in those proceedings.

The bill would make conforming changes to law to establish that the comptroller would perform all future responsibilities under this program, including:

- negotiating with vendors for a favorable price and making good faith efforts to provide contracting opportunities for historically underutilized businesses and persons with disabilities;
- providing training in contract negotiation to state agency personnel for the purchase of information resource technologies;
- managing and using planned procurement schedules for commodity items;
- coordinating technology training;
- procuring power management software for state agencies; and
- establishing rules for the development of multiple award contract schedules.

DIR would maintain its authority to purchase for telecommunications services, including TEX-AN and the Capitol Complex Telephone System.

CSHB 2499 would require the comptroller to develop clear procedures for calculating the fee for purchasing technology commodity items. The comptroller would have to post fee information to its website and report any administrative fee to the Legislative Budget Board for each fiscal year, including the underlying analysis and methodology used to determine the fee.

CSHB 2499 would require that two funds be established by the comptroller in the treasury that already are established by appropriations rider: the statewide technology account, which is a revolving fund account for the administration by DIR of statewide technology centers, and the clearing fund account, which is a revolving fund account for the administration by the comptroller of the technology commodity purchasing program.

**New board appointments.** CSHB 2499 would require the governor to appoint seven new board members with staggered six-year terms for DIR by September 1, 2011. The terms of the current board members would expire September 1, 2011. The bill would require that each member have expertise in at least one of the following areas: business or financial management; information technology; telecommunications; or any other area necessary for policymaking and oversight of DIR.

The bill would create three rotating groups of nonvoting ex officio members, instead of the two in current law. The first group would be the insurance commissioner, the Health and Human Services executive commissioner, and the executive director of a small state agency. The second group would be the executive directors of the Texas Department of Transportation and a small state agency and the commissioner of education. The third group would be the executive directors of a small state agency, of the Texas Department of Criminal Justice, and of the Parks and Wildlife Department. Only one group would serve at a time. The governor would appoint the small state agency representatives for each group. A small state agency would be defined as an agency with fewer than 100 employees.

**Board oversight and mission.** CSHB 2499 would require the board to adopt a policy describing its role in setting strategic direction for DIR. The policy would need to address the board's role in developing new initiatives. The board would be required to regularly evaluate whether DIR with fulfilling its technology mission by providing cost-effective services and meeting customer needs. The board would also be required to evaluate department operations, including performance information and analytical data on trends in DIR revenue and expenses.

CSHB 2499 would require DIR to advise and provide technical assistance at the request of a state agency to determine the agency's information resources technology needs and to solve the agency's information resources technology problems.

**Major outsourced contracts.** The bill would require DIR to get board approval before entering into a major outsourced contract (if solicitation of bids was published on or after September 1, 2011) or before amending any major outsourced contract, if the amendment had statewide impact. The board would establish subcommittees to monitor the major outsourced contracts.

The bill would require DIR to develop management plans for administering, monitoring, and overseeing each major outsourced contract. The executive director would be required to approve each management plan, which would be required to have details about implementing the contract program, monitoring contractor performance, identifying and mitigating risks, communicating with customers, and as appropriate, transitioning from one major outsourced contract to another. DIR would be required to revise each management plan as necessary and upon renewal, amendment, or resolicitation of a major outsourced contract. Formal procedures to ensure customer involvement would be required, including in the initial analysis, solicitation development, contract award, and implementation stages.

CSHB 2499 would require the board to define by rule what constitutes a major outsourced contract, which would not include contracts with state entities or political subdivisions of the state. The definition of major outsourced contract would have to include outsourced contracts for statewide technology centers, for Texas.gov projects, telecommunications projects, such as TEX-AN and the Capitol Complex Telephone System, and for contracts that exceed a monetary threshold as set by the board.

**Contract management guide.** The bill would require the development of a contract management guide. The board could adopt rules to develop or update the contract management guide. The contract management guide would provide an overall, consistent approach for procurement and management of all DIR contracts, including major outsourced contracts. The guide would be required to provide information on DIR's general approach to business case analysis, procurement planning, contract solicitation, contract execution, contract monitoring (with guidance from the internal auditor), program changes affecting customers, and ethics and conflict policies. The guide also would be required to establish clear lines of accountability and decision-making authority for staff, executive management, customers, and the board. The guide would establish DIR's process for evaluating and managing risk during contract procurement, implementation, and management. The guide also would include expectations and standards for obtaining and using customer input during all contract management phases.

**Contracting provisions/conflict of interest.** The bill would require:

- the board to receive contract management training;
- DIR to develop a contract management training policy;
- the board to establish approval requirements by rule for all contracts in addition to those rules for major outsourced contracts; and
- the board to adopt conflict of interest policies for contracting.

The bill would prohibit DIR employees from having any interest in or connection with a contract or bid for department purchases or from accepting or receiving anything of value from potential contractors. The bill would subject a violating employee to dismissal. These contracting conflict of interest rules would apply only to a contract for which the solicitation of bids was published on or after September 1, 2011. The revolving door conflict of interest policies that apply to regulatory agencies would apply to DIR.

**Administrative fees.** The bill would require DIR to adopt a process for determining administrative fees for all of its programs, including for operating the consolidated telecommunications system and the statewide technology center. The fee amount would have to relate directly to the amount necessary for cost recovery as determined by DIR's annual budget process. DIR staff would be required to work together, under clearly developed procedures, to determine the amount of administrative fees. The

administrative fees would need to be approved by the board, the executive director, and DIR's chief financial officer.

Once the fees were set, DIR would be required to report the fees to the Legislative Budget Board with information on how the fees were set and the cost allocation charged to the customer. DIR also would be required to post administrative fee information on its website, including information on how any fee was determined. Major changes would require updates to the website.

**Appropriate use of consultants.** CSHB 2499 would require that DIR develop clear criteria for the appropriate use of consultants and outside staff on a temporary basis. Every year DIR would be required to analyze its staffing needs, the cost-effectiveness of using consultants, whether DIR staff could be used, and what training or resources would be necessary to use DIR's own staff for tasks proposed for consultants or outside staff.

**Information resources technologies consolidation.** CSHB 2499 would require DIR to develop a clear method for measuring the costs and progress of an information resources technology consolidation initiative. DIR would have to develop a methodology for collecting and validating cost data with any consolidating agencies and with the internal auditor. DIR would be required to evaluate actual costs and cost savings and the actual time taken compared to projected timelines for any technology consolidation project. The evaluation results would need to be broken into statewide and individual state agency categories and given every year to the board, the Legislative Budget Board, and the agencies involved in the consolidation, and they would have to be posted to the DIR website.

**Customer advisory committee.** The board would be required to appoint an advisory committee of customers from each of DIR's key programs. The committee would advise the board on the status of DIR's delivery of critical services. The advisory committee would need to include at least one member representing an agency with fewer than 100 employees and one member appointed by the Information Technology Council for Higher Education.

**Internal auditor and audit subcommittee.** CSHB 2499 would require the board to appoint an internal auditor who reported directly to the board and served at the will of the board. An audit subcommittee would have to be maintained to oversee the internal auditor and evaluate whether the

internal auditor had sufficient resources. The board would have to provide staff and other resources to the internal auditor as appropriate.

The bill would require the internal auditor to prepare an annual audit plan for board approval using risk assessment techniques. The internal auditor could bring an issue to the board outside the annual plan if the issue required immediate attention. The board could change the annual plan as necessary. Meetings between the board and internal auditor to discuss fraud, waste, or abuse would not be required to be open meetings under the Open Meetings Act.

The internal auditor would have unrestricted access to the activities and records of DIR unless restricted by other law. The internal auditor would not be allowed to have any operational or management responsibilities that impaired independent examination. The internal auditor could provide guidance on management decisions, but could not make or approve management decisions.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

**Transfer to comptroller/comptroller provisions.** CSHB 2499 would transfer technology commodities purchasing from DIR to the Comptroller's Office, which would save state agencies money and allow DIR to refocus on its mission of being the technology expert for the state. DIR spends its energy on this purchasing program because it generates significant income, but it needs to focus on its IT responsibilities, including TEX-AN, the Capitol Complex Telephone System, consolidated data center services, and Texas.gov. If this purchasing function were not transferred, agencies should be given the right to opt out of purchasing through DIR because of overall dissatisfaction with the system. The fact that most state agencies must purchase technology commodities through DIR is not fair to the agencies.

The comptroller already manages the state's other cooperative purchasing program, so the transfer in this bill would be a good fit. Savings would result because the comptroller's purchasing program negotiates the price for cooperative contracts for the expected volume, whereas DIR negotiates prices based on one item and the state agencies continue negotiations for the volume they need. Many state agencies do not have procurement negotiations expertise, so the comptroller's purchasing program would allow them to get the best deal.

The comptroller has the expertise to handle technology commodity purchasing. The items purchased are commodities, not new complicated technologies. A personal computer has become standard and should be purchased in volume to get the best price. Moreover, the comptroller's purchasing program has significant procurement expertise as a result of the transfer of procurement specialists to the comptroller in 2007 from the former Texas Building and Procurement Commission. CSHB 2499 would transfer an estimated 32 employees from DIR who perform technology commodity procurement now, so the comptroller would have more technology expertise at that point as well. Even with the volume price negotiation, the comptroller's program maintains an excellent choice of products from multiple vendors. For example, a personal computer could be purchased through the Comptroller's Office from a choice of six vendors with the best prices, rather than through DIR from a choice of 40 vendors whose prices still would need to be negotiated by each agency.

The comptroller has good participation from historically underutilized businesses (HUBs) in its current purchasing program. The comptroller uses more HUBs than DIR even though the dollar amount the comptroller spends with them is less. For example, the comptroller used 976 HUBs to DIR's 260 HUBs from fiscal 2008 to fiscal 2010. The comptroller spreads its HUB dollars across a broad range of HUBs, whereas DIR spends its HUB dollars on only a handful of HUB vendors. DIR's top three HUB vendors received \$234,015,370 in one year. Recently, the comptroller leveraged the state's money on two contracts for office supplies that include many HUBs. For internal purchasing, the comptroller also uses more HUBs than DIR (about 29 percent for the comptroller and about 19 percent for DIR). The comptroller has been the HUB certifier for the state since 2007, and since that time HUB certifications have gone from about 11,000 to about 14,000.

Even though it is already established by appropriations rider, requiring by statute that the comptroller establish the statewide technology account and the clearing fund account in the treasury would ensure that funds in an account were used only for that program's purposes.

**New board appointments.** New members for DIR's governing board with information technology expertise would be able to provide better oversight for staff and more accountability to customer agencies for solving technology problems and pursuing new technology initiatives. New

board members would help bring DIR's focus back from purchasing programs to serving state agencies' technology needs.

**Board mission and oversight.** Requiring the board to develop a policy for setting strategic direction would ensure that DIR had a consistent focus on providing technical assistance, customer service, and policy development and guidance to state agencies.

**Information resources technologies consolidation.** Requiring methods for measuring costs and progress in a consolidation would help the agency monitor the performance of contractors at every stage and would provide guidance for how best to correct course if necessary. DIR has had difficulty effectively tracking and reporting the costs and progress of the ongoing data center services consolidation project contracted to IBM.

**Major outsourced contracts.** The bill would require DIR's board to vote on major outsourced contracts, which would be critical for accountability. After problems came up regarding the \$863 million IBM contract for data services consolidation, it came to light that the board did not vote on the contract. Appropriate oversight by the board on large contracts would ensure that all the factors were evaluated for a contract that provided critical IT services.

The bill also would require contract management plans for each major outsourced contract, including those for Texas.gov, TEX-AN, and data center services, to make sure DIR administered and monitored the contracts consistently, with appropriate approval and oversight by the board and executive staff, and with appropriate plans for mitigating risks and transitioning the contract to another vendor if necessary. Formal procedures for customer involvement would provide for feedback to DIR on contractor performance at every stage of the contract to ensure that the customers' technology needs were being met.

**Contract management guide.** The contract management guide would fulfill the need for an overall, consistent approach to contracting.

**Appropriate use of consultants.** Requiring DIR to develop criteria for the appropriate use of consultants would help it shift from its history of relying on outside help automatically. In fiscal 2009, DIR spent 43 percent of its budget on outside staff and consultants.

**Administrative fees.** DIR's broad authority to collect fees has resulted in growing fund balances that totaled \$29 million in fiscal 2009. Requiring DIR to adopt fees that directly related to the amount necessary for cost recovery would result in a more accurate budget and more cost-effective services to its customers.

**Internal auditor and audit subcommittee.** Bolstering the role of the internal auditor would mitigate risks associated with high-dollar outside contracts. Despite the risks, the resources that DIR has dedicated to its internal audit function have been insufficient, and serious problems have gone undetected, such as lax billing procedures. DIR had only one auditor overseeing \$1.5 billion of risk and had reduced its internal auditing expenditures by 55 percent between 2006 and 2009. The new board-approved annual audit plan, an audit subcommittee, and sufficient resources would protect the integrity of DIR's important programs.

**Contracting provisions/conflict of interest.** Prohibiting employees from accepting gifts from potential contractors strengthens the integrity of the outside contracts that state agencies rely on for critical technology services. The Comptroller's Office, with similar risks, already has stricter conflict of interest policies in place.

**Customer advisory committee.** A customer advisory committee comprised of key program customers would keep DIR's focus on making sure its customers' technology needs were being met. The bill would require that a small agency representative be appointed because small agencies often need the most help and have not been given the attention they deserve.

OPPONENTS  
SAY:

**Transfers to comptroller.** The transfer of technology commodities purchasing from DIR to the Comptroller's Office would prevent state agencies from choosing the products that work for them and would hurt historically underutilized businesses (HUBs) and small businesses that provide technology commodities to the state.

The comptroller's purchasing methods might give the best price for a category of product, but because only a few vendors are on the list, an agency might not be able to buy the product it needs. By using the best price for one item negotiation approach, DIR is able to secure many different vendors with many different product category choices for the purchasing cooperative. A state agency benefits because it can choose the

vendor that will give the best price for the volume of the specific product that best fits the agency's needs. Technology items are not widgets, and agencies are purchasing technology items that must work with technology items they already have. DIR also has the technology expertise to determine what variety of products need to be on the cooperative list, because they are responsible for evaluating technology needs and trends across all agencies. Because of the choice available and the ability to negotiate directly with the vendor, local governments and school districts voluntarily purchase their technology commodities through the DIR program. School districts and local governments might not be as well served if the program were transferred.

DIR's current purchasing program has higher by dollar HUB participation than the comptroller's purchasing program and should be considered for continuation. For fiscal 2008 through fiscal 2010, DIR spent \$453,359,714 and the comptroller spent \$149,538,346 with HUBs. One reason for the difference might be that small businesses and HUBs are squeezed out on upfront volume negotiations, even when the HUB could have offered the volume needed by the agency at a good price. These issues should be studied in the interim before the Legislature makes a decision. Sunset staff did not formally compare the agencies' procurement methods because the issue came up after the staff report was written.

**New board appointments.** The new board appointments might not be necessary because the current board members meet the new qualifications in the bill regarding expertise.

OTHER  
OPPONENTS  
SAY:

CSHB 2499 would not push DIR far enough in the direction of using information technology to make sure all state agency websites provided public information in a standard format and were easy to use and accessible. DIR should be required to evaluate all state agency websites for opportunities to create more transparency, such as by creating a web portal format that all agencies could use to handle Public Information Act requests.

Transparency standards also should be adopted that would require all agencies to post agency information, such as staff directories, statutes and regulations, agency reports, and budget information, in a standard format. State agency websites should be evaluated to make sure they are compliant with the Americans with Disabilities Act to ensure that all Texans can access their public information. DIR also should be required to lead a

working group for its state agency customers on how the public information law applies in the context of social media and other new technology.

NOTES:

The committee substitute revised the bill caption to reference the transfer of the technology commodities purchasing program from DIR to the Comptroller's Office and added and modified instructional language on the transfer. The substitute would require DIR to work in cooperation with and at the direction of the comptroller to facilitate the transfer. The substitute specified that technology commodity purchasing employees at DIR, including administrative support, would transfer to the Comptroller's Office, although management employees would be required to apply for the position with the comptroller after the transfer.

The substitute also would require at least one member of the customer advisory committee to be appointed by the Information Technology Council for Higher Education.

The companion bill, SB 664 by Nichols, was considered in a public hearing by the Senate Government Organization Committee on April 11 and left pending.