

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Liu Analyst: Kristina E. North Bill Number: AB 1829

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: August 9, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agency Contracts/Prohibits Expending State Funds For Employee Training & Service Contracts With Contractors Or Subcontractors Outside The U.S./Waiver of Requirements

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended July 20, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED JULY 20, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would prohibit state and local governments from contracting for services unless the contractor first certifies that the work will be performed in the United States.

SUMMARY OF AMENDMENTS

The August 9, 2004, amendments would exclude certain contracts from the requirements of this bill. Specifically, if refusing to award the contract on the basis of the certification requirement would violate the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement that California has adopted, this bill would not apply.

The remainder of the department's analysis of the bill as amended July 20, 2004, still applies. For convenience, the implementation consideration and legal impact from the previous analysis are included below.

POSITION

No position.

IMPLEMENTATION CONSIDERATION

Assuming this bill is effective and operative January 1, 2005, the language is silent on whether this bill is intended to apply to contracts awarded before that date. Absent clarifying language, the department would assume existing contracts are valid and would not be set aside. If, however, the bill is to be applicable to all existing state contracts, several significant legal concerns could arise.

Board Position:

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Legislative Director

Date

Brian Putler

8/18/04

LEGAL IMPACT

Article I, section 10, of the U.S. Constitution provides that "No state shall pass any . . . law impairing the obligation of contracts[".]” Since this bill could be interpreted to apply to contracts entered into prior to the operative date of the bill, it could implicate this federal constitutional prohibition.

LEGISLATIVE STAFF CONTACT

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