

SUMMARY ANALYSIS OF AMENDED BILL

Author: Eng/Lieu Analyst: Deborah Barrett Bill Number: AB 756
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: June 29, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Prepare Annual Report Available On Internet Website Of Personal Services & Consulting Services Contracts

- 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 June 1, 2009.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 1, 2009, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would require state agencies to provide a link to a state-run Internet Web site that contains a listing of the personal services and consulting services contracts entered into by the agency, as specified.

SUMMARY OF AMENDMENTS

The June 29, 2009, amendments would do the following:

- Replace an annual requirement to provide a report of specified contracts with a requirement to provide a link to a centrally located and accessible state-run Internet Web site,
- Expand the required information about the contracts to be included on the list,
- Remove the categories of information the contracts are sorted into and replace it with categories established pursuant to the United Nations Standard Procurement and Services Code® (UNSPSC®),
- Provide additional definitions for terms used, and
- Require information to be made available in an electronic format for government transparency.

Board Position:	Asst. Legislative Director	Date
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<input checked="" type="checkbox"/> PENDING	Patrice Gau-Johnson	07/15/09

The June 29, 2009, amendments did not resolve the "Implementation Considerations" or include the "Suggested Amendments" that would provide an appropriation for department costs that were identified in the department's analysis of the bill as amended June 1, 2009, and are repeated below for convenience. Additionally, the June 29, 2009, amendments raise new implementation and technical considerations that are discussed below. The "This Bill", "Implementation Considerations", "Technical Considerations", and "Fiscal Impact" discussions are revised. The remainder of the department's analysis of the bill as amended June 1, 2009, still applies.

Summary of Suggested Amendments

Amendment 1 is provided to suggest appropriation language to fund the department's costs to implement the provisions of this bill.

POSITION

Pending.

THIS BILL

This bill would require each state agency to provide a link to a centrally located and accessible state-run Internet Web site that includes a listing of the personal services and consulting services contracts entered into by the agency during the fiscal year. The bill would require that the listing be in searchable form on the state Internet Web site, be organized to ensure transparency, and include the following information:

- The name and identification number of each contractor, including whether the contractor is a for profit, nonprofit, small business, micro-business, disabled veteran or nonprofit veteran's service agency;
- The statutory basis for the authorization of each contract;
- The duration of each contract;
- The number of amendments to each contract and the number of renewals of each contract, where applicable;
- Reason why low bid was not accepted;
- Reason for noncompetitive bidding;
- The total amount of the contract price over the duration of the contract, including all known amendments to the contract, the total amount paid by the state agency during the most recently completed fiscal year, and the number, cost, bill rate, and staffing levels that would be associated with each type of contract, employee retained during the most recently completed fiscal year. For time and material contracts, staffing levels would be required to be described or accounted for in personnel years or full-time equivalent terms. For deliverables based contracts, average staffing levels and bill rates would be required to be available and reportable 90 days after the completion of the contract or after one year, whichever occurs first.

The bill would require costs and relevant staffing information to be organized and reported using both broad and detailed contract categories that are based on the UNSPSC.

The bill would further require the contractor to electronically provide specific staffing and cost information at the end of each fiscal year for each contract operative in that fiscal year. If a contractor fails to provide the information required, any payments due to the contractor on ongoing contracts would cease and the contractor would be ineligible for any additional personal services contracts with the state until that contractor has complied with the requirements of the bill.

The information regarding the personal services and contract services entered into by a state agency would be required to be made available to the public in an electronic format that is searchable and easy to use to promote and support government transparency.

The bill would provide definitions for terms used, such as “consulting services contracts”, “time and material contracts”, “deliverables”, and “personal services contract”.

The bill would specify that state agencies that are not required to report to the State Contract and Procurement Registration System (SCPRS) are exempt from the requirements of the bill unless required by provisions of the Public Records Act.

IMPLEMENTATION CONSIDERATIONS

The bill does not specify which state agency is responsible for the creation and maintenance of the Web site required under the provisions of the bill. The bill also does not specify how the agency information is to get to the Web site, when the information is required to be provided, and how often it should be updated—all issues that can affect the department’s costs to administer the provisions of this bill. It is recommended that the bill be amended to provide specific direction so there is no confusion as to the requirements of the bill.

Because state agencies are currently required to report contracts and purchases and Department of General Services (DGS) posts contracts of \$5,000 or more on the SCPRS, the requirement to also place information derived from those personal services or consulting services contracts could be duplicative. The author may want to consider using the actual contracts on the DGS Web site as a resource for the public, which could accomplish the same level of transparency without unnecessarily duplicating information already available.

The bill would require the name and identification number of a contractor to be included in the report that is made public. Because the identification number is often a social security number for individuals holding personal services or consulting services contract, Franchise Tax Board (FTB) would redact that information from the report to prevent disclosure of confidential tax data and to guard against potential identity theft.

This bill would require an agency to withhold payments on a contract when a contractor does not provide information required under this bill's provisions. It is unclear if the author intends these provisions to apply to all new contracts entered into after the effective date of the bill, or expects all existing contracts to be amended to include the requirements of the bill. It is recommended that express operative date language be added to the bill to ensure its provisions are implemented as the author intended.

TECHNICAL CONSIDERATIONS

On page 3, line 4 and line 6, "In" should read "For".

FISCAL IMPACT

The bill would require an effort to collect and assemble the required information from various sources throughout the department. The department estimates this effort would cost approximately \$68,000 in one-time costs with absorbable ongoing annual costs. Appropriation language to fund the department costs is included in this analysis.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 756
As Amended June 1, 2009

AMENDMENT 1

On page 4, after line 12, insert:

The sum of sixty eight thousand dollars (\$68,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget Chapter XX, Statutes of XXXX.