

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: August 17, 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 29, 2009.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ 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 August 17, 2009, amendments would do the following:

- Require all new contracts entered into by a state agency to be posted within 15 days of signature by all parties and updated as specified.
- Expand the information to be posted to include the license, registration, or certification number of each contractor.
- Make certain provisions of the bill specifically operative January 1, 2011.
- Specify the contract listings to be organized by either using the maximum level of specificity available through the United Nations Standard Products and Services Code or by using specified broad category names.

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- Remove the exclusion of public works contracts from the bill's provisions.
- Require contractors to report specified information within 90 days of the completion of a contract or after one year for each contract operative within the fiscal year.
- Remove consequences to contractors for failure to provide the required information.
- Clarify that the provisions do not affect the public disclosure requirements of the California Public Records Act.

The August 17, 2009, amendments did not resolve all the "Implementation Considerations" and "Technical Considerations" that were identified in the department's analysis of the bill as amended June 29, 2009. Also, the August 17, 2009, amendments did not include the "Suggested Amendments" that would provide an appropriation for department costs. The unresolved "Implementation Considerations", "Technical Considerations", and "Suggested Amendments" discussions are repeated below for convenience. The "Effective/Operative Date", "This Bill", and "Fiscal Impact" discussions are revised. The remainder of the department's analysis of the bill as amended June 29, 2009, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and as specified in the bill, the requirement related to reporting staffing levels and details of contracts is operative on January 1, 2011.

POSITION

Pending.

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.

ANALYSIS

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 without charge to the public and be organized to ensure transparency. The bill requires that all new contracts be initially posted within 15 working days of being signed by all parties and be updated as necessary to include any information required that is not available at the time of posting. The list must include the following information:

- The name and license, registration, certification, or 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; and
- The total amount of the contract allocation 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. This requirement is specifically operative January 1, 2011.

The bill would require costs and relevant staffing information to be organized and reported using either the maximum level of specificity available through the United Nations Standard Products and Services Code (UNSPSC) or using broad categories as follows:

- Architectural, engineering, and environmental services and consulting services.
- Information technology personal services and consulting services.
- Other personal services and consulting services.
- Information technology goods contracts.
- Non-information technology goods contracts.
- Public Works Contracts.

The bill would further require the contractor to electronically provide specific staffing and cost information 90 days after the completion of the contract or after one year for each contract operative in that fiscal year.

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. The bill would further clarify that it does not in any manner affect the public disclosure requirements of the California 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 and ability 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 would redact that information from the report to prevent disclosure of confidential tax data and to guard against potential identity theft.

TECHNICAL CONSIDERATIONS

On page 3, lines 7 and 9, "In" should be stricken and "For" inserted.

FISCAL IMPACT

Staff estimates a cost of approximately \$68,000 to collect and assemble the required information from various sources throughout the department. Due to the current fiscal environment and the need for increased resources necessary to implement other pending bills, implementation of this bill is contingent on funding. Accordingly, suggested language is provided in Amendment 1 to fund the department's implementation costs for this bill. If this bill is enacted without appropriation language, the department will pursue a budget augmentation ("legislative budget change proposal") through the normal budgetary processes, which would delay implementation of the bill's provisions to July 1, 2010. If approval of a legislative budget change proposal is denied, the department may be unable to implement the provisions of this bill.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 756
As Amended August 17, 2009

AMENDMENT 1

On page 4, after line 35, insert:

SEC. 2 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.