

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Eng & Lieu Analyst: Deborah Barrett Bill Number: AB 756

See Legislative  
Related Bills: History Telephone: 845-4301 Amended Date: March 31, 2009

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

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

## SUMMARY

This bill would require state agencies to post an annual report on its Web site relating to personal services and consulting services contracts entered into by the agency.

## SUMMARY OF AMENDMENTS

The March 31, 2009, amendments added the Legislature as a direct recipient of the report required under this bill's provisions. This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to bring transparency to the contracting processes that involve personal service or consulting service contracts in lieu of using state employees.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and would be operative on or after that date.

## POSITION

Pending.

## ANALYSIS

### STATE LAW

Each state agency is responsible for its own services acquisitions program.

This responsibility includes ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that safeguards the state's interests, and obtaining required approvals. State agencies use contracts, purchase orders, interagency agreements, and memorandums of understanding to effectuate services acquisition programs in place.

Board Position:

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Department Director

Date

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Personal service contracting is permitted under state law to achieve cost savings under specified conditions.<sup>1</sup> Those conditions include among other things, the following:

- The actual overall cost savings can be demonstrated by the agency;
- The contractor pays a competitive wage and does not cause the displacement of state employees;
- The contract supports the states affirmative action goals;
- The contract is for a new state function, and the Legislature has specifically mandated or authorized the performance of the work by independent contractors;
- The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system; and
- The amount of savings justifies the duration and size of the contract.

#### THIS BILL

This bill would require each state agency to prepare an annual report listing the personal services and consulting services contracts entered into during the fiscal year. The bill would require the state agency to make the report available on its Web site, be organized to ensure transparency, and include, but not be limited to, the following information:

- The name and identification number of each contractor;
- 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;
- 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 associated with each type of contract employee retained during the most recently completed fiscal year. Staffing levels shall also be described or accounted for in personnel years or full-time equivalent terms.

The bill would require costs and relevant staffing information to be organized and reported using specified contract categories. 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, that failure would be deemed to be a material breach of contract and payment for any ongoing contract would be halted until the requested information is provided. Any contractor that fails to provide the information would be ineligible for any future personal services or consulting services contracts.

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<sup>1</sup> Government Code section 19130

The bill would require each agency to provide electronically a written copy of the annual report to the Department of Finance and the Legislature.

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

## **PROGRAM BACKGROUND**

The State Contract and Procurement Registration System (SCPRS) is a centralized database of information on state contracts and purchases over \$5,000 established in 2003. This database is available on the California Department of General Services (DGS) Web site. Each state agency is required to report its contracts to DGS. The public can download information on the procurement expenditures of each state department and agency.

## **IMPLEMENTATION CONSIDERATIONS**

Because state agencies are already required to report contracts and purchases over \$5,000 to DGS for posting in the SCPRS, the requirement to place information derived from those personal services or consulting services contracts on agency Web sites could be duplicative. The author may want to consider using the actual contracts on the DGS Website as a resource for taxpayers, which could accomplish the same level of transparency to the public without unnecessarily duplicating information or maintenance on all state agency Web sites.

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, FTB would redact that information from the report to prevent disclosure of confidential tax data and to guard against potential identity theft.

This bill requires a contractor to provide certain information or be considered in breach of contract. 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. Clarification would assist the department in implementing the bill.

Staff resources would be required to collect the required information and develop the report for purposes of making it available on the Web site. The impact is discussed in the Fiscal Impact section below.

## **LEGISLATIVE HISTORY**

AB 400 (De Leon, 2009) would require state agencies to provide annually a detailed breakdown of specified fund expenditures on their Web site. This bill was referred to the Assembly Appropriations Committee on March 31, 2009.

AB 1194 (Strickland, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Web site to be available by July 2010 and be updated monthly. This bill was introduced on February 27, 2009, and has not yet been referred to a committee.

SB 502 (Walters, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Web site to be available January 1, 2010, and be updated annually. This bill was introduced on February 26, 2009, and has not yet been referred to a committee.

SB 719 (Huff, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Website to be available January 1, 2010, and be updated annually. This bill was introduced on February 26, 2009, and has not yet been referred to a committee.

### **FISCAL IMPACT**

The department would be required to gather and post the required information at the existing Web site, which would require an effort to collect and assemble the required information from various sources throughout the department. A fiscal estimate will be developed as the bill moves through the legislative process

### **ECONOMIC IMPACT**

The provisions of this bill would not impact state income tax revenue.

### **LEGISLATIVE STAFF CONTACT**

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