

Fiscal Estimate - 2009 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 09-3274/3	Introduction Number SB-447
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Description
 State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties

Fiscal Effect

State:

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

Local:

<input type="checkbox"/> No Local Government Costs		5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input checked="" type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS s. 20.505 (1) (kf)	

Agency/Prepared By DOA/ Martha Kerner (608) 266-1359	Authorized Signature Martha Kerner (608) 266-1359	Date 2/6/2010
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Fiscal Estimate Narratives

DOA 2/6/2010

LRB Number	09-3274/3	Introduction Number	SB-447	Estimate Type	Original
Description State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties					

Assumptions Used in Arriving at Fiscal Estimate

SB-447 makes changes to state statutes in regard to state contractual services and contracting. The Department of Administration's (DOA) fiscal estimate addresses only state contractual services and contracting entered into under Chapter 16.

The bill establishes many new requirements but does not authorize the additional FTE positions necessary to perform all the new requirements. While the ramifications of SB-447 are statewide, the costs in this fiscal estimate pertain to DOA only.

Sections 1 and 2 of relate to biennial budget reporting. Section 1 requires state agencies to include information on contractors and contracting in their agency biennial budget requests on September 15th of each even numbered year. This information includes: the total number of contracted positions, the appropriations the services are being paid from, and the base level funding being used and requested for contracted services. Section 2 requires the State Budget Office (SBO) to compile this information into the Governor's budget request the following calendar year. Not all state agencies currently collect this data and there is currently no central repository for it. State agencies will incur increased costs associated with developing a system to compile and report the new data requirements. The actual cost and additional FTE to comply with this provision will vary among agencies.

Sections 3 and 4 modify s. 16.705 so that at least two of three conditions relating to expertise and efficiency must be met in order to contract for services. There is no fiscal effect based on modifying this requirement. In addition, Section 4 specifies that contracts may not be automatically renewed. While it is unknown what or how business or service delivery areas may be affected, this provision could create service interruptions and result in adverse fiscal impacts. The State Bureau of Procurement (SBOP) has a formal contract analysis/renewal process, therefore, this change will have no fiscal impact on contracts managed by the SBOP. However, other agencies do utilize automatic renewals. Those agencies will experience an indeterminable additional workload associated with establishing a formal contract review/renewal process.

Section 5 outlines in statute specific items that should be compared in a cost benefit analysis (CBA). These items are already included in the SBOP's instructions, forms and calculations, so there is no fiscal effect.

SB-447 contains a new requirement for DOA to certify the accuracy of all CBA's and "continued appropriateness" (CA's) for contracts prepared by other agencies. Legally, the act of certifying is an attestation of the truth of a statement, document or event, usually in writing (by signing an appropriate statement to that effect). Therefore, in order for DOA to certify as to the truth and accuracy of CBA's and CA's, DOA staff will need to conduct (informal) fact-finding with agency personnel, SBO staff and Office of State Employment Relations (OSER) staff to ascertain and understand how the agency's figures were derived and whether they actually reflect the cost of contracting versus utilizing state staff. This will include verifying the type and level of the comparable state positions, ensuring that the correct overhead costs are included, that the number of hours and staff are reasonable for the project needing to be done, and that other costs are factored in.

Based on FY09 data, there were a total of 752 CBA's and CA's completed statewide under Chapter 16 purchasing authority. To meet the certification requirement, it is assumed that DOA staff will need to spend a minimum of 8 hours on each review for a total of 6016 hours. Using 1685 hours as the number of actual working hours (i.e., less time for sick leave, vacation, holidays, training, etc.), DOA will require 3.50 FTE to absorb this workload. The cost of these positions is itemized below:

Procurement Specialist - Obj (3.5 staff @ \$ 29.18 p/hr @ 2080 hrs) = \$212,400
Fringe Benefits @ 39.88% = \$84,700
Supplies & Services @ \$11,300 per FTE = \$39,500

Total = \$336,600

Section 10 codifies in statute appeal periods that currently are addressed in Wisconsin Administrative Code Chapter Adm. 10.15. The bill language also lengthens the appeal periods and modifies the definition of the aggrieved from "any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation..." to "any person submitting a bid or proposal, or any representative of an interested collective bargaining unit under subch. V of ch. 111, that is aggrieved by a solicitation for bids or by a letter of intent to contract."

According to the SBOP, the change in definition of who can bring an appeal is likely to increase the number of protests/appeals filed and will increase workload. On average, the response to a protest/appeal requires involvement from SBOP management, division management and department legal counsel. The development of a response to a protest or appeal takes on average 10 to 15 days. To avoid extended delayed responses to the protest or appeals, the SBOP will require an additional 2.0 FTE as itemized below:

Procurement Specialist - Senior (1.0 staff @ \$ 29.18 p/hr @ 2080 hours) = \$60,700
Fringe Benefits @ 39.88% = \$24,200
Supplies & Services @ \$11,300 per FTE = \$11,300

Total = \$96,200

Purchasing Associate (1.0 staff @ \$ 17.65 p/hr @ 2080 hours) = \$36,700
Fringe Benefits @ 39.88% = \$14,600
Supplies & Services @ \$11,300 per FTE = \$11,300

Total = \$62,600

In addition, this provision will delay the ability of the SBOP and agencies to enter into contracts by two business days. Current state terms and conditions require vendors submitting a bid or RFP to hold pricing for 90 days to allow for state agencies to complete the award and contracting process. Contracts delayed beyond the 90 day window due to increased protest/appeal time periods could result in increased costs to the State.

Section 11 directs DOA's Division of Legal Services to promulgate rules regarding the recovery of agency expenses for contractual services and to develop standard performance measures and benchmark indicators with which to rate and evaluate contractors. The Division can absorb this workload. However, meaningful performance measures and benchmark indicators for the evaluation of contractors are very programmatically dependent. This provision will require the Division to determine those specific programmatic needs in each agency that procures services pursuant to Chapter 16. The Division anticipates having to devote 2.0 FTE attorney positions to this effort, which would divert those positions from other work.

In addition, Section 11 directs that no payment can be made on contracts over \$25,000 that exceed the original bid by more than 10% unless the DOA Secretary approves the payment. Additionally, the DOA Secretary must provide, in writing, to the Joint Committee on Finance the rationale for the approval. DOA currently does not have the ability to collect and monitor this information statewide. In order for DOA to monitor agency contractor payments, the State will need to utilize some type of data collection system.

State agencies currently use multiple procurement and payables systems. DOA utilizes the Purchase Plus system for purchasing and payment approval. In order to implement the provisions of Section 11, it is anticipated that DOA would modify the Purchase Plus system to flag payments that exceed the purchase order or original bid amount by more than 10%. DOA's Division of Enterprise Technology (DET) estimates that approximately 250 programmer hours would be needed at an estimated hourly rate of \$78.00 per hour.

Purchase Plus modifications (250 hours @ \$78/hr) = \$19,500

Thirty-eight agencies utilize WiSMART, the State's accounting system, for procurement and payables. Currently, WiSMART cannot flag payments that exceed the purchase order or original bid amount, since it is an accounting system that is not designed to integrate purchasing information such as an original bid. According to DET, it is likely not possible that WiSMART could be modified to integrate the necessary data to comply with the provisions of the bill, as the system is nearly 20 years old.

In addition, five state agencies use four other systems for procurement and payables (DOT Tips purchasing system, DWD Rapids system, DHS & DOC FMS financial system, SFS for UW System campuses). The extent to which these other systems would require modification is unknown by DOA.

Earlier cost estimates to implement an enterprise system which includes all the necessary components to monitor the information required under SB-447 were approximately \$15.6 million.

If the DOA is charged with approving all payments that exceed 10% of the original bid amount in all state agencies, additional staff will be necessary. In FY09, DOA issued 148 purchase orders over \$25,000. DOA's contractual services report shows that DOA spent approximately 5% of the total dollars in FY09 for contractual services under Chapter 16. While there is no direct correlation between the number of purchase orders issued and the amount of procurement spend, assuming DOA also issued 5% of the total purchase orders for services over \$25,000, the total number of purchase orders statewide would be 2,960. Assuming it will take approximately 7 hours to review payments against each purchase order or original bid in other state agencies (2960 - 148 = 2812), the Department estimates it would need an additional 12.0 FTE.

Financial Specialist 2 (12.0 staff @ \$19.09 p/hr @ 2080 hours) = \$476,500

Fringe Benefits @ 39.88% = \$190,000

Supplies & Services @ \$11,300 per FTE = \$135,600

Total = \$802,100

This provision may impact state agencies' ability, under s. 16.528, the State's prompt payment law, to make payment on a properly submitted invoice within thirty days. Potential delays in the approval process resulting from this provision may delay prompt vendor payments and may result in agencies making additional interest payments to those vendors.

Sections 12 through 14 state that unsatisfactory agency evaluations of contractors would need to be done based on the new benchmarks and performance standards developed by DOA's Division of Legal Services and that contracts could not be renewed until evaluations were completed. The SBOP would assist the Division in developing standards and benchmarks for vendor performance. However, the SBOP would have to maintain a disqualified vendor list and develop a process to monitor agency vendor spend to ensure that agencies do not contract with vendors on this list. An additional 0.5 FTE will be required to monitor state agency compliance with this new provision.

Procurement Specialist - Obj. (0.5 staff @ \$29.18 p/hr x 2080 hours) = \$30,300

Fringe Benefits @ 39.88% = \$12,100

Supplies & Services @ \$11,300 per FTE = \$11,300

Total = \$53,700

Section 16 states that unless an exemption is sought and granted by the Joint Committee on Finance through the passive review process, state agencies would be unable to hire contractors in fiscal years when state employees are required to serve unpaid leaves of absence or in any fiscal year when an agency in the executive branch is prohibited from hiring employees to fill vacant positions. Exemptions are listed for the use of federal stimulus funds and if a CBA shows it is more efficient to use a contractor. While it is unknown what or how business or service delivery areas may be affected, this provision could result in service interruptions and result in adverse fiscal impacts.

Section 17 states that the contracting agency shall electronically send notifications to bidders. As this is current practice, there is no fiscal impact.

Sections 18 through 20 relate to forfeitures and fines that could be imposed by the State in cases where false claims are made under contracts. The breadth of the language on this topic, as well as debaring companies from working on state contracts, has the potential to be very costly. The impact of these provisions will be on the Department of Justice and agency legal staff.

Section 25 relates to forfeitures and fines that could be imposed by local units of government in cases where false claims are made under contracts. While the bill language may augment current contract language and give municipalities greater authority to recoup damages and forfeitures when contract terms have been violated, it is not possible to identify the number or amount of forfeitures that may be collected under this section.

Long-Range Fiscal Implications

Unknown.

Fiscal Estimate Worksheet - 2009 Session

Detailed Estimate of Annual Fiscal Effect

Original
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 Corrected
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LRB Number 09-3274/3		Introduction Number SB-447	
Description State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): \$15,619,500 for IT system costs.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes	\$1,142,200		\$
(FTE Position Changes)	(18.0 FTE)		
State Operations - Other Costs	209,000		
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category	\$1,351,200		\$
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS (General)	1,351,200		
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
	Increased Rev		Decreased Rev
GPR Taxes	\$		\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues	\$		\$
NET ANNUALIZED FISCAL IMPACT			
	State		Local
NET CHANGE IN COSTS	\$1,351,200		\$
NET CHANGE IN REVENUE	\$		\$
Agency/Prepared By Authorized Signature Date			
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