

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 9, 2009

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB953 by Shapleigh (Relating to contracting issues of state agencies.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB953, As Introduced: a negative impact of (\$33,653,698) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$16,993,432)
2011	(\$16,660,266)
2012	(\$16,295,364)
2013	(\$16,291,124)
2014	(\$16,202,013)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>State Highway Fund</i> 6	Probable (Cost) from <i>Federal Funds</i> 555	Probable (Cost) from <i>Appropriated Receipts</i> 666
2010	(\$16,993,432)	(\$848,867)	(\$5,586,039)	(\$1,268,689)
2011	(\$16,660,266)	(\$855,311)	(\$5,059,547)	(\$1,268,689)
2012	(\$16,295,364)	(\$946,788)	(\$5,043,798)	(\$1,268,689)
2013	(\$16,291,124)	(\$1,067,678)	(\$5,040,538)	(\$1,268,689)
2014	(\$16,202,013)	(\$1,150,495)	(\$4,972,011)	(\$1,268,689)

Fiscal Year	Probable (Cost) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042	Probable Revenue Gain from <i>Insurance Maint Tax</i> <i>Fees</i> 8042	Change in Number of State Employees from FY 2009
2010	(\$267,690)	\$267,690	102.0
2011	(\$249,083)	\$249,083	105.0
2012	(\$249,083)	\$249,083	105.0
2013	(\$249,083)	\$249,083	105.0
2014	(\$249,083)	\$249,083	105.0

Fiscal Analysis

This bill would amend various chapters of the Government Code to address and modify contracting practices at state agencies including contract provisions, contract maintenance, contract management,

agency oversight of contracting procedures, and the training and certification of certain persons. The bill would create requirements for establishing contract management functions within certain agencies, establish certain responsibilities for contract management staff, and increase training requirements for agency personnel, executives, and board and council members. The bill requires each agency to establish an Office of Contract Management and specifies associated duties. The bill also prescribes additional oversight and advisory functions for the State Contract Advisory Team. The following summarizes sections of the bill with identified fiscal impact.

Section 12 of the bill would require state agencies to maintain all agency contracts in a central location. This section requires the Comptroller of Public Accounts (Comptroller) to aggregate contractor performance reviews, received from state agencies, in a centralized database. The Comptroller would be required to establish, by rule, a monetary value triggering annual evaluation of a contract; all state agency contracts meeting or exceeding this value would require review by an independent evaluator annually to determine contractor performance. All state agency employees with significant contract management responsibilities would be required to obtain appropriate training and certification from the Comptroller. Any proposed contract, or amendment, that results in outsourcing valued at \$10 million or more, would require an analysis by the State Council on Competitive Government (CCG), completed under contract between the agency and the CCG, to determine whether the outsourced services are inherently governmental in nature. The analysis would also determine the most efficient form for the provision of the services under consideration.

Section 16 of the bill would require the establishment of an office of contract management within each agency that enacts a “high-risk” contract. “High-risk” contracts are defined as: (1) having a value of at least \$10 million or (2) containing other factors identified by the agency as “high-risk.” Among other responsibilities, each office of contract management would review and approve actions related to identified contracts, provide recommendations and assistance to other agency personnel, and coordinate with existing contract oversight entities. Any recommendations for the cancellation of a solicitation or an existing contract would be made after review and comment by the Legislative Budget Board and the Office of the Governor. This section would also require an audit of all “high-risk” contracts by the State Auditor’s Office.

Some sections of the bill would take effect beginning November 1, 2009, while other requirements would be delayed until September 1, 2011.

Methodology

The primary fiscal impact associated with this bill results from the implementation of new statutory requirements found in Section 16 resulting in a substantial increase in the workload of state agency staff necessitating the addition of resources above current levels. Of 22 responding agencies, ten agencies calculated a significant fiscal impact resulting from the additional full-time equivalent employees necessary to implement individual offices of contract management within each agency, including the related training and technology needs of both new and existing employees. These costs also include the development of new databases required by the bill. The bill’s requirements to establish an office of contract management within each agency would result in the addition of 105 full time equivalent positions at an estimated cost of \$22.9 million in General Revenue funds during the 2010-11 biennium.

Twelve agencies responded that the changes required by the bill would result in no significant fiscal impact because: (1) their current contracting operations are large enough, or complex enough, to meet the majority of the new requirements, or (2) the low dollar amount of contracts within their agency subject to the bill’s requirements does not necessitate significant additional resources.

The changes made to Section 2262.305, Government Code, would prescribe additional duties and responsibilities to the State Auditor’s Office (SAO), by requiring the audit of state agency contracts valued at \$10 million or more or otherwise determined to be of “high-risk” to the state. The SAO estimates that the addition of 37 full-time equivalent positions, at an average salary of \$74,838, completing 60,000 hours of work is necessary to meet the requirements of this bill. Including benefits, related professional services, travel, and other operating expenses, the total cost of this requirement is estimated at \$5.4 million in General Revenue Funds per year during the 2010-11 beinnium. In

accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be proposed in the SAO's annual audit plan for Legislative Audit Committee approval.

The fiscal impact of changes to Section 2262.062, Government Code, requiring yearly independent evaluation of contracts above a monetary threshold set by the Comptroller of Public Accounts, cannot be estimated because the monetary threshold defining the requirement is unknown. However, state agencies could expect to expend up to 10 percent of the value of any reviewed contract to complete such an evaluation. For state agency contracts valued at \$10 million or more in 2008, such a cost would total approximately \$52 million per year. This cost is not shown in the tables above and is shown for illustrative purposes only.

The requirements made by the bill in Section 2262.304, Government Code, would require review and comment by the Legislative Budget Board and the Office of the Governor for any "high-risk" contracts or solicitations considered for cancellation. It is assumed that such review would be required only on a limited basis and only after significant review and consideration by the contracting agency. Therefore, such activities could be handled through existing resources without additional cost to the state.

It is also possible that the creation of a state career ladder for contract managers would result in a cost to the state resulting from increased salaries for current employees that would be placed on the new track. The fiscal impact cannot be estimated due to the unknown nature of the potential career ladder structure and the number of employees that would be affected.

Additionally, state agencies reported that the language in Section 1 of the bill stating that an agency "may not accept a bid or award a contract that includes proposed financial participation by a person who participated to any extent in preparing specifications or request for proposals on which the bid or contract is based" would necessarily eliminate several procurement processes currently available to them, such as the Request for Information (RFI) process. The language could provide a disincentive to vendors to participate in project development processes for highly technical or complex issues for which the state generally depends on the assistance of industry to create an efficient and cost effective solution. It is assumed this result would negatively impact the efficiency, total cost, and success of many state contracting projects, but a direct fiscal impact cannot be estimated.

Technology

The bill would require estimated expenditures for technology of \$961,916 in All Funds during the 2010-11 biennium. This amount is included in the tables above. Ongoing technology expenses related to the bill average \$26,000 per year beginning in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 307 Secretary of State, 308 State Auditor's Office, 313 Department of Information Resources, 362 Texas Lottery Commission, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 454 Department of Insurance, 455 Railroad Commission, 473 Public Utility Commission of Texas, 477 Commission on State Emergency Communications, 529 Health and Human Services Commission, 537 State Health Services, Department of, 551 Department of Agriculture, 582 Commission on Environmental Quality, 601 Department of Transportation, 694 Youth Commission, 696 Department of Criminal Justice, 701 Central Education Agency, 802 Parks and Wildlife Department

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