LEGISLATIVE FISCAL OFFICE
Fiscal Note

Fiscal Note On: **HB 774** HLS 20RS 1281
Bill Text Version: **ORIGINAL**
Opp. Chamb. Action:
Proposed Amd.:
Sub. Bill For.:

Date: May 2, 2020 6:58 AM
Author: DESHOTEL
Dept./Agy.: Statewide
Subject: Provides with respect to post-emergency procurement
Analyst: Alan M. Boxberger

PROCUREMENT OR INCREASE GF EX See Note

Provides with respect to post-emergency procurement

Present law establishes requirements and regulations for state contracting and procurements. Proposed law provides that, due to the exigent circumstances surrounding the COVID-19 virus pandemic, in the eight-month period immediately following recision of the governor's proclamation suspending the Louisiana Procurement Code during the pandemic, any new procurement entered into in that time period shall be contracted with a Louisiana vendor to the extent possible. Proposed law provides an exception when the quantity or quality of goods or services needed is unavailable from a Louisiana vendor and exempts contracts financed in whole or in part from contributions or loans from the U.S. government.

EXPENDITURES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	$0	$0	$0	$0	$0	**$0**
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total						

REVENUES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	$0	$0	$0	$0	$0	**$0**
Agy. Self-Gen.	$0	$0	$0	$0	$0	**$0**
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**

EXPENDITURE EXPLANATION

Proposed law will likely increase aggregate expenditures for state governmental entities by a significant amount (reported in this fiscal note as SGF for simplicity but likely impacting all means of finance). Proposed law provides that any new procurement entered into during the eight-month time period immediately following the recision of the governor's proclamation suspending the Louisiana Procurement Code due to the COVID-19 virus pandemic shall be contracted with a Louisiana vendor to the extent possible. Proposed law offers exclusions for cases in which the Chief Procurement Officer (CPO) certifies that a Louisiana vendor is unable to provide the goods or services needed in sufficient quantity or quality, or for any contract financed in whole or in part with federal funds.

The Office of State Procurement (OSP) reports two primary fiscal impacts arising from proposed law. First, proposed law is explicitly intended to reduce competition between Louisiana and non-Louisiana vendors. OSP anticipates a likely cost increase, both due to fewer bidders and due to the awareness of decreased competition among participating bidders. OSP provides the following estimate for illustrative purposes:

The state's annual expenditures by statewide purchasing contracts are approximately $500 million. To derive the amount of potentially impacted contracts, OSP divides this amount by 48 months (the average purchasing contract duration) then multiplies the result by 8 to determine the potential purchasing exposure over 8 months. $500 M / 48 months = $10.4 M monthly. $10.4 M x 8 months = $83.3 M. OSP reports that if the reduction of competition results in a 2% average cost increase, the approximate fiscal impact to the state would be $1.67 M annually as many of these procurements would persist over the 48 month average contract period (reflected as a SGF increase for simplicity in this fiscal note, but potentially impacting all means of finance other than federal). *NOTE: The total expenditure impact could be significantly greater if the average cost increase exceeds 2%. The expenditure impact could be less if the assumption regarding average expenditures were realized to be inflated, or if the volume of statewide purchasing contracts entered into should diminish for any reason during the recovery period.*

EXPENDITURE EXPLANATION CONTINUED ON PAGE TWO

REVENUE EXPLANATION

There is no anticipated direct material effect on governmental revenues as a result of this measure.

Senate	Dual Referral Rules	House
[x]	13.5.1 >= $100,000 Annual Fiscal Cost {S & H}	[x] 6.8(F)(1) >= $100,000 SGF Fiscal Cost {H & S}
[ ]	13.5.2 >= $500,000 Annual Tax or Fee Change {S & H}	[ ] 6.8(G) >= $500,000 Tax or Fee Increase or a Net Fee Decrease {S}

Evan Brasseaux

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Staff Director

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CONTINUED EXPLANATION from page one:

EXPENDITURE EXPLANATION CONTINUED FROM PAGE ONE

Second, OSP reports that it will realize a significant workload increase associated with protests, appeals and potential litigation arising from the vendor preference established in proposed law. OSP estimates that the additional workload would result in an increased workload as follows: 10% for the OSP Director, 20% of one OSP Assistant Director, 5% of a second OSP Assistant Director, 20% of two Office of General Counsel (OGC) attorneys, 5% of an OGC attorney on appeals, and 5% of the Executive Counsel's workload on appeal. OSP reports this workload increase would be the equivalent of 0.85 T.O. for eight months. At an assumed average compensation of $50/hour, OSP projects the expenditure impact at $58,933 prorated for the eight-month period. To the extent this additional workload could not be adequately absorbed, additional budgetary or personnel resources may be required. OSP's expenditures are paid from approximately 50% SGR and 50% IAT. For user agencies, these IAT expenses would be attributed to the appropriate means of finance.

OSP reports three complications in attempting to effectuate proposed law as drafted. First, the requirement that the CPO certify in good faith that a good or service cannot be obtained from a Louisiana vendor is impractical, as the CPO does not have real-time access to the entire universe of vendors and their corresponding capacity and inventory to provide goods and services.

Second, it is logistically cumbersome for many agencies to distinguish funds by funds source – to screen out federal funds – in the legacy Louisiana Performance Accountability System (LaPAS) with any certainty. The largest state agencies have high levels of federal match tied to many expenditures, and many other agencies have interconnected Interagency Transfer relationships with others that mix federal funding sources into transfers. OSP anticipates that the Division of Administration and other agencies will likely experience increased protests, appeals and litigation arising from the requirements that purchases be made from Louisiana-based vendors "to the extent possible."

Finally, the state regularly enters into contracts and procurements that span beyond the eight-month recovery period. For example, an agency entering into a five-year office supply contract during the eight-month period would be required to enter into such an agreement with local companies regardless of those companies' ability to provide comparable service (online ordering, statewide coverage, next day shipping, time-bound price locks, etc.) and may impact value-added differentiation. To the extent an extended contract was entered into, crossing multiple fiscal years, the potential cost increase would exceed the eight-month window prescribed by proposed law. *NOTE: Presumably, the CPO could override such a procurement scenario as not meeting the same quality requirement, but such a decision could again lead to protests and appeals by impacted vendors.*

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[x]	13.5.1 >= $100,000 Annual Fiscal Cost {S & H}	[x] 6.8(F)(1) >= $100,000 SGF Fiscal Cost {H & S}
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