



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	S. 0530	Introduced on February 19, 2019
Author:	Leatherman	
Subject:	Procurement Code	
Requestor:	Senate Finance	
RFA Analyst(s):	Gallagher and Gardner	
Impact Date:	March 18, 2019 Updated for Additional Agency Response	

Fiscal Impact Summary

This bill will have no expenditure impact on the State Fiscal Accountability Authority's (SFAA) General Fund, Other Funds, or Federal Funds. The bill will simplify and increase efficiency in purchasing procedures for procurements \$100,000 or less. However, this will not result in staffing changes or quantifiable expenditure savings. SFAA further indicates that any additional administrative duties resulting from this bill will be managed within existing appropriations.

The bill has no impact on the Judicial Department's General Fund, Other Funds, or Federal Funds, as the department expects to manage any additional costs associated with an increase in circuit court caseloads using existing General Fund resources.

This bill has an undetermined local expenditure impact and an undetermined revenue impact from a new \$250 fee as there is no data to estimate the effect of the new offenses and statutes outlined in this legislation. However, any impact will likely be negligible.

This fiscal impact has been updated, following responses from the Judicial Department and SFAA.

Explanation of Fiscal Impact

Updated for Additional Agency Response on March 18, 2019
Introduced on February 19, 2019

State Expenditure

This bill amends several statutes to reflect the restructuring provisions of Act 121 of 2014. This bill requires SFAA to maintain and post publicly a running list of all exemption actions taken by the board regarding the purchasing procedures required in this bill. The bill provides that any new SFAA-granted exemption sunsets after five years, unless SFAA renews the exemption, or promulgates it as a regulation.

This bill increases the threshold for direct procurements, allows the Director of Procurement Services to authorize an increase in an agency's base procurement, and deletes Section 11-35-1520(8), which eliminates discussion with bidders for the purpose of clarifying bid requirements. This bill increases the threshold for no competition purchases and service contract limits for small architect-engineer (AE), construction management, and land surveying services. For small purchases less than \$25,000 and less than \$100,000 of off-the-shelf products and construction, respectively, this bill requires three written quotes that must be documented with the purchase requisition. Alternatively, if adequate public notice is provided in the South Carolina Business

Tribunal, agencies do not need to include these written quotes in the purchase requisition at the aforementioned threshold limits.

This bill authorizes SFAA staff to conduct competitive negotiations with multiple offerors before evaluation and ranking. SFAA is tasked with issuing interim regulations to govern these negotiations. This bill exempts small purchases of commercially available products from regulations concerning unauthorized aliens and public employment, contracts for legal or consultant services, and certain requirements regarding contracting with discriminatory businesses. It also exempts these purchases from the Iran Divestment Act, the Drug-Free Workplace Act, and any other provision of law identified by regulation of the board.

This bill replaces indefinite delivery contracts with task order contracts for AE and land-surveying services. The bill allows the state to require construction performance and payment in bonds in phases where appropriate. This bill expands on criteria behind supplier suspension and disbarment and tasks the chief procurement officers (CPOs) with maintaining and updating a public list of debarred and suspended persons.

This bill establishes that appeals from the Procurement Review Panel go directly to the Court of Appeals. Furthermore, members or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel are forbidden from communicating in connection with any issue of fact. An individual who violates these provisions is guilty of a misdemeanor offense punishable by a fine of not more than \$250 or imprisonment for not more than six months upon conviction. This bill allows a CPO or the Procurement Review Panel to file a certified copy of an un-appealed final ruling with a clerk of the circuit court, or a court of competent jurisdiction. The certified ruling has the same effect as a judgment of the court.

This bill allows for cooperative purchasing with other states. This bill requires that any procurement by a governmental body from any other public procurement unit be reported to the Division of Procurement Services quarterly and tasks the Division of Procurement Services with reporting to the board annually on such procurements. This bill eliminates the annual audit of the department's internal procurement operation by the Materials Management Office.

State Fiscal Accountability Authority (SFAA). This bill repeals several regulations regarding purchasing procedures for procurements of \$100,000 or less, allows SFAA staff to conduct competitive negotiations with multiple offerors before evaluation and ranking, and requires SFAA to post publicly a running list of all exemption actions taken by the board regarding the purchasing procedures required in this bill. SFAA indicates this bill will have no impact on its General Fund, Other Funds, or Federal Funds, as they can manage any additional administrative duties resulting from this bill within existing appropriations. By repealing several regulations regarding purchasing procedures for procurements of \$100,000 or less, SFAA anticipates that state agency staff will experience a reduction in time and effort they exert when making small purchases. However, SFAA does not anticipate this will result in a reduction in staffing or quantifiable expenditure savings.

The Judicial Department. This bill provides persons affiliated with the public procurement process with immunity from civil and criminal liability for providing certain information. It also

grants certain individuals reporting anti-competitive practices or participating in investigations or judicial proceedings arising from such reports with civil and criminal immunity from liability. The new offenses and causes of actions provided for in the bill create rebuttable presumptions and may increase litigation brought in circuit courts. There is no data to estimate the number of additional hearings or trials that may be heard, however. The department expects to manage additional costs associated with an increase in circuit court caseloads using existing General Fund resources.

The expenditure impact has been updated, following responses from the Judicial Department and SFAA.

State Revenue

N/A

Local Expenditure

This bill adds two new statutes to the procurement code, one of which allows the final order of either the chief procurement officer or the Procurement Review Board to be filed, recorded, enforced, and satisfied either in circuit court or, upon request, a “a court of competent jurisdiction.” Technically, such an order could be filed in magistrates court if the amount of the judgment is \$7,500 or less; however, since magistrate court judgments are valid for only three years (versus ten years for circuit court judgments), this option is unlikely. The filing of these orders could increase caseloads in Master-in-Equity courts, which is where supplemental proceedings to enforce judgments are usually heard. It is not possible to estimate the actual caseload impact for the Master-in-Equity courts, but any increase in expenses for the courts would be borne by the counties. The bill also creates a new misdemeanor offense for certain exparte communications. These cases would be heard in magistrate or municipal courts. As there is no data to estimate the potential increase in caseloads for these courts, the expenditure impact cannot be determined.

The expenditure impact has been updated, following responses from the Judicial Department.

Local Revenue

This bill stipulates that members of the Procurement Review Panel or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel are forbidden from communicating in connection with any issue of fact. An individual who violates these provisions is guilty of a misdemeanor offense punishable by a fine of not more than \$250 or imprisonment for not more than six months upon conviction. There is no data to estimate the number of additional hearings or trials that may be heard, however. As there is no data available to estimate the potential increase in revenue resulting from this fine, the revenue impact cannot be determined. However, any impact will likely be negligible.

The revenue impact of this bill has been updated, following a response from the Judicial Department.

Introduced on February 19, 2019

State Expenditure

This bill amends several statutes to reflect the restructuring provisions of Act 121 of 2014. This bill requires SFAA to maintain and post publicly a running list of all exemption actions taken by

the board regarding the purchasing procedures required in this bill. The bill provides that any new SFAA-granted exemption sunsets after five years, unless SFAA renews the exemption, or promulgates it as a regulation.

This bill increases the threshold for direct procurements, allows the Director of Procurement Services to authorize an increase in an agency's base procurement, and deletes Section 11-35-1520(8), which eliminates discussion with bidders for the purpose of clarifying bid requirements. This bill increases the threshold for no competition purchases and service contract limits for small architect-engineer (AE), construction management, and land surveying services. For small purchases less than \$25,000 and less than \$100,000 of off-the-shelf products and construction, respectively, this bill requires three written quotes that must be documented with the purchase requisition. Alternatively, if adequate public notice is provided in the South Carolina Business Tribunal, agencies do not need to include these written quotes in the purchase requisition at the aforementioned threshold limits.

This bill authorizes SFAA staff to conduct competitive negotiations with multiple offerors before evaluation and ranking. SFAA is tasked with issuing interim regulations to govern these negotiations. This bill exempts small purchases of commercially available products from regulations concerning unauthorized aliens and public employment, contracts for legal or consultant services, and certain requirements regarding contracting with discriminatory businesses. It also exempts these purchases from the Iran Divestment Act, the Drug-Free Workplace Act, and any other provision of law identified by regulation of the board.

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This bill establishes that appeals from the Procurement Review Panel go directly to the Court of Appeals. Furthermore, members or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel are forbidden from communicating in connection with any issue of fact. An individual who violates these provisions is guilty of a misdemeanor offense punishable by a fine of not more than \$250 or imprisonment for not more than six months upon conviction. This bill allows a CPO or the Procurement Review Panel to file a certified copy of an un-appealed final ruling with a clerk of the circuit court, or a court of competent jurisdiction. The certified ruling has the same effect as a judgment of the court.

This bill allows for cooperative purchasing with other states. This bill requires that any procurement by a governmental body from any other public procurement unit be reported to the Division of Procurement Services quarterly and tasks the Division of Procurement Services with reporting to the board annually on such procurements. This bill eliminates the annual audit of the department's internal procurement operation by the Materials Management Office. The bill tasks the Department of Administration with several, enumerated duties regarding assessing and evaluating state needs associated with information technology.

The expenditure impact of this statement is pending, contingent upon a response from SFAA, the Department of Administration, and the Judicial Department.

State Revenue

This bill stipulates that members of the Procurement Review Panel or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel are forbidden from communicating in connection with any issue of fact. An individual who violates these provisions is guilty of a misdemeanor offense punishable by a fine of not more than \$250 or imprisonment for not more than six months upon conviction.

The revenue impact of this bill is pending, contingent upon additional responses and information.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director