



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government*--HB 181 increases government by creating a new responsibility for Department of State. Additional staff and funding will be required to create and manage a website and its associated database, neither of which exist.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current situation

State agencies and local governmental entities maintain their own files of contracts for goods and services, and records of expenditures made in accordance with those contracts. No central file or database of all contracts exists.

While an electronic record of some contracts may exist, there is no requirement to maintain a database of such records at the state, agency, or local governmental entity level. Neither is there a requirement to create electronic copies of contracts. In addition, some agency contracts incorporate the procurement document and contractor proposals by reference. These contract documents exist separately, but are integral parts of the contract. At the local level, governmental entities are not required to provide the state copies of contracts, or records of expenditures pursuant to those contracts.

There is no current requirement to hold or store all contracts in a central location within a state agency or local governmental entity. Financial databases are likewise not required to be integrated with contractual databases.

##### Proposed Change

HB 181 specifies that the Department of State create and manage a new, free, searchable website. The website is to contain a listing, by calendar year quarter, of individual expenditures made by a governmental entity to a person or entity providing goods or services under a contract with an obligation totaling \$5000 or more.

HB 181 specifies the website must list six items of information. Some or all may need to be manually compiled from each contract. The six data elements are:

- The name of the governmental entity making the expenditure.
- The name of the person or entity receiving the expenditure.
- The date of the expenditure.
- The amount of the expenditure.
- The purpose of the expenditure.
- The name of each party to the contract.

An electronic copy of each reported contract must be available through the website.

C. SECTION DIRECTORY:

Section 1. Provides definitions and requires the Department of State to create and manage a website containing certain contractual information.

Section 2. Provides an effective date of July 1, 2008.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be indeterminate savings to individuals or organizations able to access free copies of contracts. Currently costs may be incurred for obtaining copies of these public records.

D. FISCAL COMMENTS:

Department of State estimates the fiscal impact of HB 181 will be \$873,058 (non-recurring) and \$372,121 (recurring) to that agency. Manual data extraction from existing and future contracts, plus any resources required to convert paper documents into electronic contract files, may have a negative fiscal impact on other state agencies and those local governmental entities electing to participate. The amount of fiscal impact is indeterminate at this time.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

There is no requirement for local governmental entities to participate in the project, nor has funding been identified to support their participation. Absent such a requirement, it is unclear how Department of State will secure the cooperation from local governmental entities necessary for compliance with this new statutory obligation under the bill. In addition, the HB 181 definition of "Governmental entity" does not encompass all which enter into contracts such as the Cabinet, Legislative and Judicial branches of government, state universities, and community colleges.

HB 181 does not provide direction or guidance regarding the time period for maintaining and displaying information available through the website. Neither is Department of State authorized to create Rule to address this access requirement. Storage duration requirements would impact hardware needs and associated costs.

The Department of State has indicated it may be required to contract for software development in order to create the website specified by HB 181. It anticipates the minimum development time for this project would be one year following necessary funding and the legislation becoming law.

Currently, all contracts meeting the eligibility criteria do not exist in an electronic format or as a single file. Some local governmental entities may currently lack the resources necessary for converting all paper contracts or combining files. Standardized contract descriptive titles or codes will need to be developed to permit meaningful searches. Each contract holder will be responsible for determining and assigning the appropriate standardized title(s) or code(s). A secure process will be needed in order to transmit data to Department of State, or permit database updating by designated individuals at the agency or local governmental entity level. Development of a training program or administrative procedures manual would be necessary for standardization and support of entities providing data for the project. A dedicated "help desk" may be required to support database loading and updating.

The degree to which information available on the website will be comprehensive is dependent upon the level of participation by local governmental entities. Completeness and accuracy of displayed information and contracts available through the website will be dependent upon a variety of factors. At the participating entity level, these include staff availability and workload, plus the priority assigned to the project. Quality assurance measures may need to be developed in order to ensure the accuracy of information being received from the participants.

**D. STATEMENT OF THE SPONSOR**

The goal of HB 181 is to provide transparency in government spending. It requires the creation of an online database detailing comprehensive state and local government expenditure information including expenditures, grants and contracts. It will provide citizens with the ability to see what our governments are spending, thereby fulfilling the vision of Thomas Jefferson when he said, "We might hope to see the finances of the Union as clear and intelligible as a merchant's books, so that every member of Congress and every man of any mind in the Union should be able to comprehend them, to investigate abuses, and consequently to control them."

In order to best accomplish this goal a “strike all” amendment will be offered at the first Committee hearing adapting model legislation from ALEC. The points raised in the analysis will be addressed by the “strike all” and the fiscal impact should be significantly less. (Several other states have enacted similar legislation without significant expenditure.) As soon as the “strike all” is available, I will make it available to all Committee members.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

In the Committee on Audit & Performance meeting held on January 9, 2008, the Committee adopted a strike-all amendment. As amended, the bill requires the Executive Office of the Governor, as opposed to the Department of State, to provide a portal for website links disclosing certain spending by state and local governmental entities under certain contracts. It expands the definition of “Governmental entity” to be more all-encompassing to include all branches of government and provides requirements concerning the content of the websites. It provides for an effective date of January 1, 2009.