

<b>LFC Requester:</b>	<b>Simon</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** Feb. 1, 2025 *Check all that apply:*  
**Bill Number:** SB 206 Original  Correction   
 Amendment  Substitute

**Sponsor:** Padilla, Lundstrom, Garratt **Agency Name**  
**Short Title:** Procurement Changes **and Code** State Ethics Commission (410)  
**Title:** \_\_\_\_\_ **Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: The Procurement Code's default rule is that government procurement of goods and services should follow a competitive, sealed process. *See* § 13-1-102. But the Procurement Code is mainly a catalogue of exceptions to this default rule, providing when the procuring government agency has significant or complete discretion to decide how to select a contractor the government will do business with. *See generally* § 13-1-102 through -199. This is *favoritism under law*: the executive's relatively unconstrained ability to select government contractors without the use of any competitive selection process. This unfettered discretion exists because of legislative decisions to limit the reach and application of the Procurement Code's default rule of a requirement of a competitive, sealed process. While such discretion makes government procurement mercifully less cumbersome for government agencies, it concomitantly increases the scope for favoritism in contracting by those executive officials and employees who ultimately make procurement decisions in their respective agencies.

Senate Bill 206 makes several adjustments to the Code, the overlapping theme of which is to extend favoritism under law, further limiting those classes of government contracts and purchases that must result from a competitive, sealed process. Senate Bill 206 does this by: amending the definitions of a state public works project and a local public works project to have minimum contract amounts of \$100,000 (up from \$50,000), an amount which triggers the required use of competitive, sealed qualifications-based proposals (Sections 1, 5); adding categories of contracts to which the Procurement Code does not apply at all (Section 6); increasing the dollar amount for small purchases by state agencies that do not require the involvement of the state purchasing agent (Section 7); increasing the small purchases exception to the use of competitive, sealed bids to \$100,000 (up from \$60,000) for procurements of both tangible items of personal property (goods) and professional services (Section 12); allowing procurements up to \$60,000 by direct purchase order (Section 12); expanding the maximum term for professional service contracts from four to eight years (Section 15); and removing any maximum term on "public-private partnership agreements," which are newly defined as agreements in which a public partner accepts a private contribution (Sections 2, 15).

Senate Bill 206 also makes amendments to make the process of procurement clearer and less burdensome on government agencies in other ways. For example, the bill adds a definition of "best obtainable price," which largely follows executive agency practice (Section 3); excises the requirement that government agencies must publish invitation for bids or requests for proposals in newspapers of general (but ever dwindling) circulation, allowing the procuring agency to post the invitation for bids or the RFP on the state purchasing agent's website (Section 8); and allows more flexibility in which government employees may negotiate contracts for architectural, landscape architectural, engineering, or surveying services (Section 11).

#### **FISCAL IMPLICATIONS**

There are no fiscal implications for the State Ethics Commission. The Commission issues advisory opinions and advisory letters interpreting the Procurement Code and enforces the Code's provisions. While Senate Bill 206 might change the content of the Commission's work with respect to the Code, the bill is unlikely to affect the volume of that work.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

### Section 2:

Section 2 creates a new definition of public-private partnership agreement as “an agreement between at least one public partner and one private partner in which the public partner accepts a private contribution to the research, development, design, construction, financing, implementation, operation or maintenance of any public asset or public benefit.” It is not obvious from this definition what such agreements are (and are not)—*i.e.*, whether they are a species of professional services contracts that the government seeks to procure. Nor is it clear how the Procurement Code speaks to how such agreements are to be procured. Relatedly, the Procurement Code does not separately define “public partner” or “private partner.”

### Section 6:

Section 13-1-98 provides that the Procurement Code shall not apply to certain categories of procurement. Section 6 amends Section 13-1-98 to exempt several additional categories of contracts: contracts between ECECD with licensed childcare businesses; contracts to acquire and replace capital licenses; contracts for the digitization of state or federal records; contracts for appraisals or surveys for the sale or purchase of real property; and ECECD's procurement of “slots” for child care assistance.

Section 13-1-98 not only exempts these procurements from the requirement of a sealed, competitive bid/proposal process, but also from the basic disclosure, anti-corruption and conflict-of-interest provisions of the Code, set forth in Sections 13-1-190 through 13-1-195, which together prohibit bribes and kickbacks, require disclosure of campaign contributions, prohibit contemporaneous employment with both the government and contracting party, and prohibit the use of confidential information for private gain. There is no sound policy reason why these basic disclosure, anti-corruption and conflict-of-interest provisions should not apply to an ever-expanding set of unrelated procurements and contracts through perennial additions to Section 13-1-98. As the Legislature exempts more and more government procurement from procurement law, Section 13-1-98 perhaps should be amended to read that the “provisions of Section 13-1-102 [the Procurement Code] shall not apply to: . . .” That amendment would exempt the categories of procurement set forth in Section 13-1-98 from the requirement of a competitive, sealed process, while leaving the anti-corruption and disclosure provisions of the Procurement Code applicable to that same set of government purchases and contracts.

Section 6 also amends Section 13-1-98(V) to confirm that the exemption for government “purchases of advertising in all media” does not include purchases of marketing services. This amendment is consistent with the State Ethics Commission's interpretation of Section 13-1-98(V)'s exemption for “purchases of advertising in all media” does *not* exempt advertising-adjacent services (such as design and marketing) that government agencies often procure in

connection with ad-buys in media. The Commission is actively litigating this issue of statutory interpretation in state district court. *See* Compl., *State Ethics Comm'n v. Lindsey, et al.*, D-809-CV-2024-00091 (8th Jud. Dist. Ct., Jun. 20, 2024).

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**