FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Cates	**ORIGINAL DATE**	2/6/2025
SHORT TITLE	Contract Adjustments Under Procurement Code	**BILL NUMBER**	House Bill 119
		ANALYST	Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			See Fiscal Implications			

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 305 and Senate Bill 206.

Sources of Information

LFC Files

<u>Agency Analysis Received From</u>
General Services Department
Health Care Authority
Early Childhood Education and Care Department
Workforce Solutions Department
Retiree Health Care Authority

<u>Agency Analysis was Solicited but Not Received From</u>
Department of Health
Department of Information Technology

SUMMARY

Synopsis of House Bill 119

House Bill 119 (HB119) creates an exemption in the Procurement Code to allow increases to executed state agency contracts for salary and benefits adjustment that are due to a change in state law. State agencies would be required to respond to requests for contract amendments in writing, within 45 days of the effective date of the law. Additionally, the bill would require agencies responsible for paying Medicaid or Medicare providers to request increases to reimbursement rates from the federal Centers for Medicare and Medicaid Services.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HB119 could increase state agency contracting costs, although it appears such increases may or may not be approved by the state agency contracting for services. While the bill provides that a contractor may request an amendment and that the state agency must respond in writing, there is no indication a state agency must approve the requested amendment. However, the bill could allow state agencies to approve contract amendments without an accompanying increase in the scope of work without going through a competitive procurement process to ensure the agency is receiving the best price. LFC has, since 2016, issued three Program Evaluation Unit reports noting that the overuse of Procurement Code exemptions and other loopholes have often led to state overspending. These reports have specifically noted the use of contract amendments to increase compensation for contractors rather than opting to undergo a competitive process to ensure both fairness in the procurement process and value for taxpayers. These reports have recommended that the statute providing for procurement code exemptions be limited to a specific dollar threshold.

The Early Childhood Education and Care Department notes the bill could require the department to increase expenses, reallocate funds from one area of service to another, and increase costs related to monitoring and compliance. The department reports it would likely need to invest additional resources in financial planning.

In addition to allowing possible contract increases, the bill would require the Health Care Authority to seek increased reimbursement rates for Medicaid providers due to statutory adjustments to compensation and benefits. The Health Care Authority notes Medicaid rates are supported by $2 billion in general fund appropriations, and a requirement to increase rates could have a substantial, but currently incalculable, impact on the general fund. HCA also notes this bill could require the authority to request a rate change without allocating the state portion of any increase, potentially leading to deficits in the Medicaid program.

Similarly, the bill would require agencies that pay Medicare providers to seek rate increases. The Retiree Health Care Authority notes Medicare rates are adjusted based on a schedule determined by the federal Medicare Payment Advisory Committee. The agency notes this schedule may not accommodate changes outside of the regular review cycle in response to a state law.

Because it is not clear what future bills might impact salaries and benefits it is not possible for LFC or state agencies to calculate the potential fiscal impact of HB119. Further, analysis from several agencies note it is unclear which bills could possibly apply. (See “Technical Issues.”) However, analysis, particularly from HCA, notes the potential impact could be substantial.

SIGNIFICANT ISSUES

HB119 proposes changes to the Procurement Code that could lead to contract costs that are less advantageous to the state. Competitive procurement is a gold standard by which governments ensure that public funds are being put to good use. Competitive procurement, wherein the government solicits goods or services and then reviews and compares proposals from potential sellers, gives the state the information it needs to make informed choices to do business with those that offer the best quality, price, and value. Because of the value competitive procurement brings to the government, several reports from the Office of the State Auditor, the LFC's

Program Evaluation Unit, and the National Association of State Procurement Officials have highlighted the hazards of government reliance on exemptions from competitive procurement.

State procurement is overseen by the State Purchasing Division of the General Services Department. Analysis from the agency notes current policies already allows contractors to request modifications to contracts for any reason, including increase in labor rates. Requests are negotiated between the agency and the contractor, considering both the contractor's justification and the agency's available budget. As a result, HB119 may not be necessary if the goal is to allow agencies to renegotiate contracts due to changes in state law.

ADMINISTRATIVE IMPLICATIONS

Several agencies suggested agencies could find it difficult to respond to requests for contract adjustments within 45 days. State Purchasing may need to increase support for several agencies in the event of such requests, which could lead to increased costs within the division. There may also be risks to the state that could result from agencies that are unable to respond to requests for contract adjustments. Notably, HCA suggests the department would need six months to complete rate studies to support increases in Medicaid rates, more than the 45 days allowed by the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Analysis from the Department of Workforce Solutions notes the bill could impact proposed legislation, such as House Bill 11, which would create a Paid Family and Medical Leave Act. The analysis notes that in the current version of that bill, rates would be set by regulation and not by statute, and the department suggest expanding HB119 to include regulatory changes in addition to statutory changes. However, this change could open the provisions of this bill up to any number of other regulatory changes that are not anticipated and may only become clear in retrospect. This change could have the effect of increasing state agency costs for major programs like Medicaid without direct legislative action.

HB119 relates to House Bill 305, which would require agencies to increase contractual compensation in response to increases in the minimum wage, and Senate Bill 206, which amends a variety of provisions of the Procurement Code.

TECHNICAL ISSUES

The Workforce Solutions Department notes the bill does not define the term "compensation and benefits" and different sections of current law define these terms differently. Given that the bill would require actions due to legislation that address "compensation and benefits," it may be important to clearly define these terms.

HCA notes the phrase "accommodate any increase to the Medicaid provider's expenses" should be clarified and defined.

The Retiree Health Care Authority notes the bill refers to "a contract with a state agency" without clearly defining the type of contract, vendors involved, or the services that would be affected.

ALTERNATIVES

The bill would apply to future legislation that makes adjustments to benefits and compensation, but would leave it to agencies to determine if a contracts terms should be adjusted. It may be difficult for some agencies to determine if the Legislature intended for contracts to be adjusted subsequent to the passage of a particular bill. The Legislature may more clearly signal legislative intent by including temporary provisions in a bill that make adjustment to benefits and compensation, granting the agency authority to make contract adjustments pursuant changes from that bill. This, however, could increase the estimated fiscal impact of such bills.

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