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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 1/25/05 HB _____

SHORT TITLE Procurement of Lawyer Services SB 153

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

Relates to SB 207

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Administrative Office of the Courts (AOC)
 Public Education Department (PED)
 Corrections Department (CD)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 153 amends the Procurement Code and requires all contracts with lawyers or law firms which exceed, or are “reasonably expected to exceed”, \$1 million be procured only by competitive sealed proposals. The bill also limits hourly fees for such contracts to \$1 thousand per hour. If the contract is on a flat or contingency fee basis, compensation is limited to the amount of hours worked divided into the fee. The AGO must approve contracts covered by the bill, and a copy of those contracts must be sent to the LFC.

Significant Issues

The AGO provided the following:

- The bill does not limit its application to state agency contracts, so it presumably will re-

quire local governments to submit their contracts exceeding \$1million with lawyers or law firms to the AGO and LFC.

- The bill will prevent the state and local governments from entering into emergency or sole source contracts with lawyers or law firms if the amount of the attorney fees will exceed \$1million. We assume that is the total cost of the contract, regardless of its term. It requires the governmental entity to estimate the cost of the contract and then decide whether to submit it to the AGO and LFC. The bill does not address situations where attorney fees are awarded by a court to an attorney or law firm representing the state or local government. It will also require the governmental entity to calculate compensation during the term of the contract so as not to exceed the \$1thousand/ hour cap, which presumably would apply to all work performed by a law firm, regardless of the number of attorneys and other staff assigned to the contract.
- There are situations where certain law firms and attorneys are in fact “sole source” providers, specializing in obscure areas of the law. This bill will prevent the state and local governments from entering into such contracts if the compensation is expected to exceed \$1 million. The calculations required by the bill to ensure that compensation does not exceed the cap may be onerous for contract administrators.
- The bill does not specifically limit its application to contracts for legal services. It refers to a contract “with a lawyer or law firm” which presumably includes persons licensed as attorneys who are not providing legal services.
- The bill targets only fees paid to law firms and lawyers, yet does not deal with hourly rates paid to other professionals.

FISCAL IMPLICATIONS

It is unclear whether the bill will result in savings to the state and local public bodies.

ADMINISTRATIVE IMPLICATIONS

The bill will require state agencies and local public bodies to utilize competitive sealed proposals for contracts subject to its provisions. This might require an additional administrative staff for existing personnel.

RELATIONSHIP

Relates to SB 207, Attorney General Review of Certain Contracts.

TECHNICAL ISSUES

The PED provided the following:

- The bill does not specify the time period for calculating the threshold amount of \$1 thousand. Complex litigation may require a number of years to reach completion; it may also be difficult to predict the duration and complexity of certain matters.
- It appears that the limitation applies to the services governed by a single contract. A law firm

may have multiple contracts, which total in excess of \$1 thousand.

- The bill does not specify whether the hourly fee determination is calculated solely on the basis of lawyer time.
- Subsection A includes expenses in the amount used to calculate the applicability of the provision; Subsection B, however, subtracts expenses from the fee prior to the calculation of the hourly fee. These provisions may be inconsistent.

DW/rs