

**2009 Regular Legislative Session**  
**FISCAL ANALYSIS OF PROPOSED LEGISLATION**  
**Prepared by the Oregon Legislative Fiscal Office**

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**MEASURE NUMBER:** HB 2867

**STATUS:** B Engrossed

**SUBJECT:** Public procurement contracting codes and standards

**GOVERNMENT UNIT AFFECTED:** Department of Administrative Services, Department of Transportation, other State Agencies and Local Governments

**PREPARED BY:** John Terpening

**REVIEWED BY:** Laurie Byerly and Susie Jordan

**DATE:** June 23, 2009

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**2009-2011**

**2011-2013**

**EXPENDITURES:**

See Analysis

**EFFECTIVE DATE:** On Passage

**LOCAL GOVERNMENT MANDATE:** This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**ANALYSIS:** HB 2867 requires that contracting agencies subject to the Oregon Public Procurement Code perform a written cost analysis and feasibility study before conducting procurements for services with an estimated contract price that exceeds \$250,000. The purpose of the written analysis is to demonstrate that the contracting agency would incur less cost by contracting out the services than by performing the services with the agency's own personnel or resources. The purpose of the feasibility study is to demonstrate that the services are not feasible with the contracting agency's own personnel or resources. The measure outlines requirements of the cost analysis and allows for the agency to proceed with the procurement if certain requirements are met. The cost analysis requirement does not apply to cities and counties that meet population requirements, special districts, the Port of Portland, and procurements for Client Services. The Department of Administrative Services (DAS) is directed to consult with contracting agencies to evaluate and determine the extent to which the cost analysis and feasibility studies assisted the contracting agencies in making determinations. DAS is directed to report on the consultation and evaluation to the Legislature on January 10, 2011.

The measure requires that contracting agencies must include the scope of work, outline the contractor's duties, set expectations for contractor's performance, and specify clear consequences for contractor's failure to perform, when issuing an invitation to bid on a public contract. The measure also specifies criteria for the contracting agency to use in determining a contractor's responsibility and for prequalifying contractor.

The fiscal impact of the measure is indeterminate. State agencies that contract out for services note that at a minimum, the documentation and reporting requirements of the cost analysis and feasibility studies will increase staff workload. The amount of increased workload is determinate on the number of procurement contracts agencies have where the contract price exceeds \$250,000. Oregon Parks and Recreation Department, Economic and Community Development Department, Department of Education, and Construction Contractors Board anticipate that the increased staff time required for the cost analysis and feasibility study is absorbable within existing resources.

The Department of Transportation estimates 11 cost analysis and 22 feasibility studies would be required per month based on the Department's service contract statistics for 2008. The Department states that the amount of increased workload would require a permanent half-time Operations and Policy Analyst (0.5 FTE) and associated services and supplies cost to implement the bill's policy requirements and provide ongoing program support. Additionally the Department states that a limited duration Training and Development Specialist is required to implement and train on the process changes to public contract bids and the increased performance and qualification verification of contractors required by the measure. Total estimated cost for ODOT is \$248,768 Other Funds for the 2009-11 biennium.

DAS does not anticipate that it has the capacity to absorb the estimated workload within existing resources. DAS states that the amount of additional staff time required for consultation with state agencies and review of the reports, additional rulemaking and procedural development for state agencies, update training courses and materials for state agencies, and ongoing facilitation time with state agencies is indeterminate. DAS notes that the costs related to the Department of Justice Business Transactions Unit review of all contract language and rulemaking are also indeterminate.

Counties state that the fiscal impact is indeterminate due to the unknown number of public contracts individual counties may have that exceed \$250,000 and the varying size of counties staff and the ability to handle the increased workload.