

SB 805 Speaking Notes

Good Morning Chair Rosenbaum and Committee Members,

in Dist. 24

My name is Brian Smith and I'm the Purchasing Manager for Multnomah County and a resident of Senator Burdick's District 18.

In 2009, the proponents of the feasibility and cost analysis legislation made well intentioned claims about how these requirements would work in terms of preserving jobs from indiscriminate outsourcing by public agencies.

The original text of this particular law came from statutes that had been passed and in effect for some time in both Michigan and California. At the time of the work sessions, proponents acknowledged that they had no idea how well it was or wasn't working in those states at accomplishing these stated goals. Their intent was to "just try it out and see how it works".

We now have three years of experience with this law in Oregon and I would like to talk to you about my experience as someone who has implemented these provisions and can speak first hand about "how it works."

The summary is that the feasibility and cost analysis requirements result in plenty of additional bureaucracy and no demonstrable benefit to Multnomah County. I believe this is classic red tape, and the changes proposed by SB 805 and the -1 amendments simply heap additional requirements on public agencies.

Here are some facts about the last three years:

- 1) In Multnomah County, we've had 25 projects subject to these requirements. 7 of these were over \$2.5 Million.
- 2) We've only done one cost analysis- that was for fleet maintenance services, a project which was never procured because we combined these services with another government.
- 3) Multnomah County procures primarily services, and a lot of client services which are exempt from the provisions of this law. Many staff are confused about this laws applicability to their procurement and I tend to see staff err on going through the process of completing the documentation rather than risk being out of compliance.
- 4) On average, it takes about 3 hours of staff time to create and review each form.
- 5) On average, I spend 16 hours per year on the quarterly reporting to my Local Contract Review Board about these projects.

My experience is that the feasibility and cost analysis requirement adds both time and cost to our procurement processes but not value.

Regarding SB 805 and the -1 amendment, there are four items which stand out as particularly problematic:

First, estimating the profit the potential contractor would realize depends on so many factors outside the control of the contracting agency, e.g. contractor's size, debt load, employee productivity, that this would be no better than guessing. The -1 amendment requirement to do an RFI or RFQ does nothing to change this underlying fact. This section is impractical and should be amended out.

Second, this bill would prevent excluding proceeds or revenue from a sale or long term capital or other assets in the cost analysis. This is one-sided provision in that it precludes the contracting agency from determining the highest and best use of its assets and using that information in the decision to move forward with a procurement or not.

Third, I believe that the provisions for judicial review which are included in this bill would increase the likelihood that critical projects would experience delay due to litigation. The -1 amendment exacerbates this because it removes the awarding of court costs and attorney fees. This removes any disincentive to take (or threaten to take) to court each and every determination public agencies make.

Lastly, the -1 amendment adds barriers to the roadblocks created to keep agencies from conducting these procurements. It not only creates the additional burden of requiring the public agency to go through one public process of gathering information for the cost estimates but also requires the agency to update the cost analysis or reconsider their determination if someone doesn't agree with the data gathered through the public process. This is all before anyone who doesn't agree with the cost analysis can request judicial review.

All of these provisions were features of the original legislation and didn't pass muster then.

It has not been my experience that indiscriminate outsourcing of public services is a problem. The Feasibility and Cost Analysis requirements currently in statute have added additional bureaucracy and made our public procurement processes less efficient at a time when we are doing our best to provide greater efficiencies for taxpayers.

We have three years of experience with these requirements in Oregon and I believe that experience demonstrates that the provisions in this bill are both unnecessary and counterproductive. ~~For those~~ who would advocate for them, I would challenge them to bring data from the last three years which shows the need for these provisions and not simply more of "let's try this and see how it works".

Thank you once again for your time, and I would be happy to address any questions.