



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 2107

PRINTERS NO. 4118

PRIME SPONSOR: Baker

### COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
General Fund	\$0	\$0

**SUMMARY:** Amends Title 62 (Procurement) by adding a new Chapter 36 (Prohibited Contracts) which prohibits the Department of General Services from contracting with certain companies; and amends the Procurement Code to establish requirements for posting of and public access to procurement information; and adds requirements to Guaranteed Energy Savings Contracts.

**ANALYSIS:** Under HB 2107, the Department of General Services may not contract with a company to acquire or dispose of supplies, services or construction unless the company certifies that:

- it is not engaged in a boycott of persons or entities based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in free trade or commerce; and
- it will not engage in such a boycott for the duration of the contract.

Additionally, HB 2107 amends the Procurement Code to affirm that procurement records are subject to the Right-to-Know Law. The bill also requires the posting of various procurement records on the Department of General Services' Internet website or, in the case of an independent agency, on the agency's Internet website.

Public notice of an invitation for bids or request for proposals (RFPs) may be given by posting the invitation or RFP on the applicable Internet website. The following procurement records must be posted for a minimum of 30 days:

- Bid tabulations and bidder information, as soon as practicable after bid opening;
- Notices of contract award, as soon as practicable following the award;
- Any written determination that an offeror has been chosen for contract negotiation under the competitive sealed proposal method. Responsive proposals and the final negotiated contract are not required to be posted but must be made available upon request;
- Requests to award a contract under the sole source method of procurement, for seven days prior to approval of the request. Written determinations authorizing a sole source procurement must be posted;

- Any written determination relating to an emergency procurement, which describes the basis for the emergency and for the selection of the particular contractor;
- Fully executed contracts;
- Contract extension requests, for seven days prior to approval of the request.

The bill also requires any written determination that the sole source procurement of supplies (valued at over \$250,000) is in the best interests of the Commonwealth to be signed by the head of the purchasing agency. The bill requires an agency to obtain two quotes for an emergency procurement.

The bill also allows for the submission of quotes, rather than bids, for emergency procurements of supplies and allows the applicable agency to pay the supplier based on an invoice.

HB 2107 also requires a guaranteed energy savings contract to expressly state the financial obligations that an energy services company will require users to pay upon a declaration of savings. The bill requires that the contract, in addition to the quantification and guarantee of energy savings, shall expressly state, quantify and validate the budgetary sources of all energy-related cost savings and operating costs utilized to satisfy the financial obligations and performance during the term of the agreement.

In order to clarify what costs are qualified under the Guarantee Energy Savings Act, a definition is added for “operating costs,” which includes reductions in expenses, including energy-related cost savings, related to energy and water consuming equipment or the building envelope. The term includes operating and maintenance savings, and capital funds budgeted for projects that, due to the energy services company project, will not be necessary. This definition is in line with the definition under the Federal Energy Management Guidelines under the Federal Department of Energy.

This legislation also amends the definition of “energy conservation measure” to include the extension of heating, ventilating or air conditioning systems to new or renovated areas; and systems that provide indoor air quality improvements or improved climate control. “Energy-related cost savings” is defined as:

- A cost saving, except for an energy saving, that results from the implementation of an energy conservation measure.
- Sources of energy-related cost savings include only the following:
  - Avoided current or planned capital expense
  - Avoided renovation, renewal or repair costs as a result of replacing old and unreliable equipment and systems or thermal improvements to the building envelope.
- Also defines “energy services company” as a qualified provider of energy solutions, including designs and implementation of energy savings projects, retrofitting, energy conservation, energy infrastructure outsourcing, power generation and energy supply and risk management.

Effective date: 60 days

**FISCAL IMPACT:** According to the Department of General Services, the enactment of this legislation will have no adverse fiscal impact on Commonwealth funds.

**PREPARED BY:** Thomas Gwinn  
House Appropriations Committee (R)

**DATE:** October 26, 2016

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*