

2020 Legislative Activity Report

Cooperative purchasing legislative
activity for 2020.

TO: Sourcewell Board of Directors and Senior Leadership Team
FROM: Marcus Miller, General Counsel and Director of Government Relations
Dan Listug, Government Relations Counsel
Bill Otto, Government Relations Associate
DATE: 8/6/2020
RE: Annual government relations and advocacy update

UPDATED 2020 LEGISLATIVE ACTIVITY REPORT

The Sourcewell government relations practice is in its fifth year of advocating for cooperative purchase laws and regulations across the country.

The COVID-19 pandemic and resulting economic recession have impacted the business community to unprecedented levels. These impacts were also present across state capitols throughout the country. As a result, legislative activity not related to the pandemic dramatically slowed down or stopped altogether. For cooperative purchasing, this meant many positive legislative proposals did not become law.

During the 2020 legislative session, 4,700 pieces of legislation addressing the pandemic and economic matters were introduced across the country, with 3,968 enacted into law as of July 15, 2020. Due to this disruption, many states are likely to hold special sessions to address any remaining business before the end of the year. It is possible cooperative purchasing legislation may be addressed then.

This summary report highlights key legislative proposals across the country with a potential or actual impact on cooperative purchasing.

2020 HIGHLIGHTS

- Procurement legislation in 42 states, the District of Columbia, and the United States Congress;
- Over 1,500 procurement-related bills introduced;
- 161 cooperative purchasing-related bills introduced;
- 25 states considering cooperative purchasing-related legislation;
- 29 bills directly impacting cooperative purchasing; and
- Sourcewell engaged in actively lobbying in 6 states and Congress.

Sourcewell's government relations team remains focused on actively managing legislative proposals permitting the use of cooperative purchasing as a procurement tool. These proposals, if enacted, serve as the legal foundation eligible entities rely upon when they use Sourcewell contracts with awarded suppliers. Particularly in volatile times like the present, Sourcewell remains vigilant in identifying and acting upon the challenges and opportunities that may impact Sourcewell's ability to provide cooperative purchasing contracts. Sourcewell remains an industry leader in advocating for cooperative purchasing on behalf of purchasing members and the awarded supplier community.

To learn more about the Sourcewell legislative and government relations practice please contact Dan Listug at dan.listug@sourcewell-mn.gov or Bill Otto at bill.otto@sourcewell-mn.gov.

Alabama House Bill 38

Representative Terri Collins

Summary: Adds leases and lease/purchase agreements to the scope of cooperative purchasing laws applicable to schools and local governments, and clarifies related requirements.

Analysis: The bill was initially introduced by the Alabama School Boards Association and later expanded to include all schools and local governments. The provision does not apply to state agencies.

Due to the COVID-19 pandemic and related disruptions to the legislative session, the bill did not become law. It is unclear whether a special legislative session will be called to deal with remaining items from the 2020 regular session and additional pandemic-related legislation. Sourcewell supported the legislation and advocated for passage through instate lobbyists. Sourcewell will again advocate for passage of this language during the next session.

Bill status: The bill passed through the committee process in the House of Representatives and Senate and was pending action in both bodies. However, it did not pass pursuant to adjournment.

Alabama House Bill 239/Senate Bill 182

Representative Danny Garrett and Senator Arthur Orr

Summary: Abolishes the Division of Purchasing in the Alabama Department of Finance and replaces it with the Officer of the Chief Procurement Officer and provides for the appointment, qualifications, duties, and authority of the Chief Procurement Officer.

Analysis: Due to the COVID-19 pandemic and related disruptions to legislative session, the bill did not become law. It is unclear if a special legislative session will be called to deal with remaining items from the 2020 regular session and additional pandemic related legislation.

Sourcewell remained neutral on this bill.

Bill status: The bill passed the Senate and was pending action in the House of Representatives However, it did not pass pursuant to adjournment.

Alabama House Bill 333/Senate Bill 202

Representative Debbie Wood and Senator Will Barfoot

Summary: Clarifies the cooperative purchasing exemption for heating, ventilation, and air conditioning (HVAC) systems and standardizes the process used by the Examiners of Public accounts to review and approve for all types of cooperative purchasing.

Analysis: This legislation corrects an issue identified by Alabama Attorney General Opinion 2019-038, which found that the Examiners of Public Accounts applied different standards when reviewing HVAC systems than for other public works. Although the bill is specific to HVAC systems, the legislation will also improve the laws directing the examiners approval process across all types of cooperative purchasing.

Due to the COVID-19 pandemic and related disruptions to legislative session, the bill did not become law. It is unclear if a special legislative session will be called to deal with remaining items from the 2020 regular session and additional pandemic-related legislation.

Sourcewell introduced and advocated for the legislation through in-state lobbyists and will continue to advocate for passage of this language during the next session.

Bill status: The bill passed through the committee process in the Senate and was pending action in House of Representatives. However, it did not pass pursuant to adjournment.

Georgia House Bill 963

Representative Bonnie Rich

Summary: Amends the authority, duties, and procedures for state purchasing; provides that certain terms shall be void and unenforceable if they are included in certain types of state contracts; requires the state Department of Administrative Services (DOAS) to provide information related to these contract requirements on its website; specifies that bids, offers, or proposals and registers thereof shall be subject to the public disclosure relating to open records; and provides new authority for the department to enter into or authorize agreements with cooperative purchasing organizations.

Analysis: Omnia Partners advocated for the amendment in response to an agency opinion stating DOAS did not have authority to enter into cooperative purchasing agreements with for-profit companies. The statute now includes the general term "cooperative purchasing" organization. The original legislation seeking to make this change, House Bill 952, failed to meet deadlines resulting from pandemic related disruptions. The language was only later added to the DOAS bill.

Bill status: The bill passed the legislature and was sent to Governor for approval on June 30, 2020. Awaiting action of Governor.

Illinois Senate Bill 2004

Senator Don Harmon

Summary: Amends the Illinois Procurement Code to exempt procurements made by public institutions of higher education, including purchases by Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Southern Illinois University, University of Illinois, Western Illinois University, and, for purposes of this Code only, the Illinois Mathematics and Science Academy.

Analysis: This law would allow the exempt institutions to define their own purchasing rules, including the use of cooperative purchasing, through policy.

Bill status: The bill passed through the Senate committee process and is awaiting action in the House of Representatives.

Louisiana House Bill 772

Representative Daryl Deshotel

Summary: Prohibit use of the federal General Services Administration supply schedules to purchase a good when the good is available in sufficient quantity and at a comparable price from a Louisiana-based vendor with an existing state procurement contract.

Analysis: The bill defines "comparable price" to mean a price no more than 10 percent above the price offered by any Louisiana licensed dealer or distributor for that same good on the General Services Administration supply schedule. Similar legislation could be introduced affecting cooperative purchasing agreements. However, no such threat has emerged.

Bill status: The bill received no consideration and did not pass pursuant to adjournment.

Louisiana House Bill 800

Representative Daryl Deshotel

Summary: Establishes requirements and regulations relative to Louisiana price schedule contracts, including cooperative purchasing contracts.

Analysis: The bill would require Office of State Purchasing to publish via its website all "price schedule contracts" including public cooperative purchasing contracts. It also defines procedures to be used by agencies when two or more contracts have "identical or substantially similar goods" and the expected cost is over \$25,000. This bill would impose additional burdens of purchasing agencies and could have a negative impact on use of cooperative contracts.

Bill status: The bill received no consideration and did not pass pursuant to adjournment.

Mississippi House Bill 407

Representative Donnie Bell

Summary: Amends Mississippi purchasing law and revises requirements of using reverse auctions as the preferred method of receiving bids; allows state agencies to determine reverse auctions are not in the best interest of the state as approved by the Public Procurement Review Board; and allows local governments to determine reverse auctions are not in the best interest of the state as approved by its governing body.

Analysis: Since January 1, 2018, state and local governments in Mississippi have been required to use reverse auctions as the primary method of receiving bids when entities conduct competitive bidding. While the cooperative purchasing authority state law was not directly impacted by this change, it has resulted in decreased use and approval of cooperative purchasing contracts.

Bill status: The bill passed the House of Representatives but did not received consideration in the Senate.

Mississippi Senate Bill 2329

Senator Angela Burks Hill

Summary: Amends Mississippi purchasing law and revises requirement of using reverse auctions as the preferred method if receiving bids and allows local governments to determine reverse auctions are not in the best interest of the state as approved by its governing body.

Analysis: The bill is similar to House Bill 407 but includes only local governments and not state agencies.

Bill status: The bill received no consideration and did not pass pursuant to adjournment.

Mississippi Senate Bill 2215

Senator Lydia Chassaniol

Summary: Requires the Department of Finance to conduct a biennial review of the state commodity and personal services contracting process and exempts certain contracts from reverse auction requirements.

Analysis: In addition to loosening of the reverse auction requirements, this legislation would create a biennial review process for state contracting. Mississippi is perhaps the most restrictive cooperative purchasing state because the law requires state adoption of any cooperative contract before it can be utilized by any state agency or local government. These provisions provide an opportunity to demonstrate the inherent inefficiency in this system and to advocate for eventual legislation to allow local governments clear authority to utilize cooperative contracts without approval of the state.

Bill status: This bill passed the Senate, was amended in the House of Representatives, and was awaiting a concurrence vote on the amended language in the Senate, which did not occur.

Nebraska Legislative Bill 790

Senator Julie Slama

Summary: Allows the state Department of Administrative Services to join competitively bid cooperative purchasing contracts involving one or more political subdivisions in other states rather than seeking new bids for an independent contract.

Analysis: This legislation would expand the use of cooperative purchasing contracts by allowing the state to use contracts entered into by and with political subdivisions of other states. The bill also authorizes the state purchasing function to take the lead in negotiations with other governmental entities for the purposes of cooperative procurement.

Bill status: The bill received positive consideration in committee and is expected to progress when the legislature returns from recess.

New Jersey Assembly Bill 3539

Assemblyman Daniel Benson

Summary: Authorizes the state Department of Transportation to contract for certain services, equipment, and materials without participation from or approval by the state Department of Treasury.

Analysis: This bill authorizes the department to enter into contracts for the procurement of winter operation services, snow fighting equipment and maintenance equipment, and materials without participation from or approval from any other state department, division, agency, commission, or authority as currently prescribed by law.

Bill status: The bill is pending committee consideration.

New York Assembly Bill 5791

Assemblyman Joseph Giglio

Summary: Authorizes the Department of Environmental Conservation to engage in cooperative purchasing and authorizes intergovernmental agreements between public agencies.

Analysis: The legislation seeks to expand the use of cooperative purchasing and to address the need to procure expensive environmentally sensitive products which can be too expensive to purchase individually. This legislation is introduced routinely, and has not advanced through the legislative process. It is noteworthy that the agency currently has the ability to use cooperative purchasing, but this language allows this agency to go outside of the state's contracts or solicit its own.

Bill status: The bill is pending committee consideration.

New York Assembly Bill 6755/Senate Bill 6404

Assemblyman Mark Walczyk and Senator Betty Little

Summary: Clarifies the authority of municipalities and districts to contract for services jointly with the federal government and any state or other municipality.

Analysis: The intent of the legislation is to make service contracts related to engineering and other professional services subject to piggybacking. The existing law apparently is interpreted to apply to services related to heating, ventilation, and air conditioning systems, electrical, and plumbing, but not to services where something is not directly installed, maintained or repaired. This legislation is introduced routinely and fails to progress through the legislative process due in part to advocacy by the professional engineers association who preferred to be able to compete on each solicitation.

Bill status: The bill is pending committee consideration.

New York Assembly Bill 10139/Senate Bill 7933

Assemblyman Fred Thiele and Senator James Gaughran

Summary: Extends provisions of the general municipal law relating to granting localities greater contract flexibility and cost savings by permitting certain shared purchasing among political subdivisions.

Analysis: This bill would extend the authority of New York State municipalities, school districts, and other local governmental entities to purchase from existing federal, state, and local government contracts for goods or services that were competitively bid. If this bill is not approved, the authority to realize these savings and efficiencies will expire on July 31, 2021. Extending this statute, a year before its sunset date will allow local governments to continue to use cooperative purchasing and avoid the need to contingently prepare a request for proposal for goods or services in the event the statute is not extended beyond its expiration date.

Bill status: The bill is pending committee consideration.

New York Senate Bill 612

Senator Phil Boyle

Summary: Requires public contracts to be open for use by municipalities not originally party to such agreements unless such agreements expressly state otherwise.

Analysis: The bill will automatically permit any municipality to purchase off another municipality's contract even if the contract does not have a term that indicates it is available for cooperative purchasing use. The bill author has introduced this routinely since 2015 and it has never advanced through the legislative process.

Bill status: The bill is pending committee consideration.

Oklahoma Senate Bill 79

Senator Michael Bergstrom

Summary: Authorizes cooperative purchasing agreements for public buildings and public works projects.

Analysis: The legislation would expand cooperative purchasing authority and enable any school district to participate in public construction contracts with public agency procurement unit or external procurement unit in addition to the public agencies authorized by current law Any district that participates in a public construction contract or purchases commodities from public entities satisfies the requirement of the district to seek competitive bids or proposals for the purchase of the commodities and services. The measure defines public agencies and public procurement units as the state of Oklahoma, political subdivisions, and other various entities created by statute.

Bill status: The bill did not pass pursuant to adjournment.

Oklahoma Senate Bill 1422

Thompson

Summary: Modifies provisions of the Oklahoma Central Purchasing Act relating to state agency purchasing.

Analysis: This legislation defines cooperative purchasing entities and requires that cooperative contracts shall not be utilized unless the purchasing cooperative has executed a competitive procurement process, in lieu of current law which required compliance with all provisions and competitive bid requirements defined in the Oklahoma Central Purchasing Act.

Bill status: Enacted.

Virginia House Bill 467/Senate Bill 418

Delegate Mark Keam and J. Chapman Petersen

Summary: Amends the Virginia Public Procurement Act to allow public bodies to utilize cooperative procurement for construction projects not exceeding \$200,000.

Analysis: Current law significantly limits authority of public bodies to purchase construction services through cooperative purchasing agreements. The bill would restore authority for construction contracts not exceeding \$200,000. The legislation was prompted by localities seeking greater flexibility to procure construction services through cooperative purchasing. Sourcewell was not involved in promoting the bill, but continue to monitor legislative activity in Virginia relating to construction services for opportunities to improve and restore the authority for public bodies to procure construction through cooperative purchasing. Indefinite quantity construction contracts are being utilized through joint purchasing in the state.

Bill status: The bill received no consideration and did not pass pursuant to adjournment.