

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**CORRECTED  
FISCAL NOTE**

**SB 40 – HB 340**

February 23, 2017

**SUMMARY OF BILL:** Defines “designer” as a construction design professional under contract with a “state agency,” defined as the University of Tennessee (UT), the Tennessee Board of Regents (TBR), or the State of Tennessee Real Estate and Asset Management (STREAM) Division of the Department of General Services (DGS).

Prohibits a designer from including any industry standard and customary additional service in the basic service agreement prior to the agreement being fully executed and signed. Entitles a designer to additional compensation from a state agency for any industry standard and customary additional service rendered to the agency which is not included in or reasonably inferred from the terms of a basic services agreement.

Authorizes a state agency and designer to negotiate what basic services may be included in the basic service agreement prior to execution. Any addition to the basic service agreement prior to execution is required to specify the compensation amount owed to the designer for the provision of each additional service.

Authorizes the inclusion of building information modeling (BIM) deliverables, at the minimum levels of development equivalent to or less than the American Institute of Architects (AIA) Level of Development (LOD) 300, to be in the basic services agreement. Prohibits a designer from including BIM deliverables exceeding LOD 300 in the basic services agreement. Entitles a designer to receive additional compensation for providing the following: (1) BIM at a higher level of development above LOD 300; (2) requests for additional embedded data in a model, such as COBie or other formats, whether data-based or geometrically based; (3) software licenses; (4) further model development and enhancement during the construction phase; and (5) provision of specific management or coordination requirements for a construction project. Prohibits any additional compensation to a designer for typical as-built or post-construction documentation requirements.

Requires a state agency to review all terms and requirements of a basic services agreement or other contract for the design of a construction project, prior to issuing a request for qualification (RFQ) for the purpose of determining the potential cost impact associated with unique modeling or data requirements relating to the design of the construction project.

Establishes that in the case of contractual dispute, the designer or state agency may petition the Secretary of State for a hearing before an administrative law judge. Requires the administrative law judge to award reasonable costs and attorney’s fees to a designer who prevails in an

administrative law hearing. This bill has an effective date of July 1, 2017, and will apply to any contract entered into or renewed on or such date.

**ESTIMATED FISCAL IMPACT:**

On February 20, 2017, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures – \$4,026,100/FY17-18  
\$4,539,300/FY18-19  
\$4,854,000/FY19-20  
\$4,312,600/FY20-21  
\$4,728,900/FY21-22 and Subsequent Years*

*Other Fiscal Impact – In each instance in which a designer is the prevailing party in a contractual dispute between the state and a designer, the designer will be awarded attorney’s fees, paid by the state, resulting in an increase in state expenditures estimated to exceed \$100,000 per such instance.*

Based on additional information received from the Department of Treasury, this impact has been determined to be in error. The corrected impact is estimated as follows:

**(CORRECTED)**

**Increase State Expenditures – \$4,386,100/FY17-18  
\$4,539,300/FY18-19  
\$4,854,000/FY19-20  
\$4,312,600/FY20-21  
\$4,728,900/FY21-22 and Subsequent Years**

**Other Fiscal Impact – In each instance in which a designer is the prevailing party in a contractual dispute between the state and a designer, the designer will be awarded attorney’s fees, paid by the state, resulting in an increase in state expenditures estimated to exceed \$100,000 per such instance.**

Corrected Assumptions:

- Under the proposed legislation, industry standard services and other additional services that are currently included in designers’ basic services fees will no longer be included in designers’ basic services fees.
- Designers will be authorized to invoice state agencies for specific services which will result in designers charging individual fees for separate service items when many services are lumped together into a total package of services under current law for which the state receives relative better pricing.
- Based on information provided by UT on previous legislation similar to this bill, allowing a designer to bill separately for additional services will increase state expenditures for UT by an average of seven percent, which equates to an increase in

state expenditures of \$1,385,948 in FY17-18; \$1,477,262 in FY18-19; \$1,745,166 in FY19-20; \$1,737,900 in FY20-21; and \$1,528,149 in FY21-22 and subsequent years.

- Based on information provided by TBR on previous legislation similar to this bill, allowing a designer to bill separately for additional services will increase state expenditures for TBR by an average of seven percent, which equates to an increase in state expenditures of \$2,351,009 in FY17-18; \$2,781,492 in FY18-19; \$2,828,238 in FY19-20; \$2,294,138 in FY20-21; and \$2,920,211 in FY21-22 and subsequent years.
- Based on information provided by the DGS, this bill would require DGS to represent itself in contested cases regarding designer construction contracts. Attorneys within DGS are hired specifically for experience and knowledge of real estate related functions and do not hold expertise with regards to designer construction; therefore, DGS would require one additional attorney position to handle designer construction litigation.
- A recurring increase in state expenditures of \$154,865 (salary \$125,000 + benefits \$18,102 + FICA \$9,563 + office lease \$1,600 + supplies \$600), and a one-time increase in state expenditures of \$4,300 (office furniture \$2,700 + computer \$1,600).
- Based on information provided by DGS, an increase in state expenditures is likely due to language in the bill which awards reasonable costs and attorney's fees to prevailing designer construction contractors in instances of contractual dispute. The exact amount that would be rewarded to a prevailing designer construction contractor is unknown, but is reasonably estimated to result in an increase in state expenditures of \$100,000 per case in which the prevailing party is the designer construction contractor.
- Based on information provided by the Secretary of State's office (SOS), this bill is estimated to result in an increase in formal complaints and subsequent hearings before an administrative law judge.
- There are approximately 500-1,000 active designer contracts of which state agencies are a party.
- Based on information provided by the SOS, one additional administrative law judge will be required to handle an increase in hearings filed specifically to contest disputes between the state and designer construction contractors seeking reimbursement for services performed which, as a result of this bill, will no longer be included in a basic services agreement.
- A recurring increase in state expenditures of \$125,717 (salary \$100,000 + benefits \$15,867 + FICA \$7,650 + office lease \$1,600 + supplies \$600), and a one-time increase in state expenditures of \$4,300 (office furniture \$2,700 + computer \$1,600).
- Based on information provided by the Department of Treasury, this bill would require the department to assist with BIM requirements, specifically in determining LOD 300 standards, developing a guidebook to understand such standards, developing a pilot program for such standards, and recommending revisions to standards to reflect the findings of such pilot program.
- Based on costs incurred from contracts entered into with consultants for similar work, the contract is estimated to result in a one-time increase in state expenditures of \$360,000.
- The total increase in state expenditures in FY17-18 is estimated to be \$4,386,139 (\$1,385,948 + \$2,351,009 + \$154,865 + \$4,300 + \$125,717 + \$4,300 + 360,000).
- The total increase in state expenditures in FY18-19 is estimated to be \$4,539,336 (\$1,477,262 + \$2,781,492 + \$154,865 + \$125,717).

- The total increase in state expenditures in FY19-20 is estimated to be \$4,853,986 (\$1,745,166 + \$2,828,238 + \$154,865 + \$125,717).
- The total increase in state expenditures in FY20-21 is estimated to be \$4,312,620 (\$1,737,900 + \$2,294,138 + \$154,865 + \$125,717).
- The total recurring increase in state expenditures in FY21-22 and subsequent years is estimated to be \$4,728,942 (\$1,528,149 + \$2,920,211 + \$154,865 + \$125,717).

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/jdb