

Proposed Rules
of the
Department of Finance and Administration
Administration Division

Chapter 0620-03-07
Limitations of Liability in State Services

Presented herein are proposed amendments of the Department of Finance and Administration submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Department of Finance and Administration, Office of the General Counsel, Suite 2100, William R. Snodgrass Tennessee Tower located at 312 8th Avenue North, Nashville, Tennessee 37243 and in the Department of State, 8th floor, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: April Mayambu, Office of the General Counsel, Department of Finance and Administration Suite 2100, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243, (615) 741-0320.

The text of the proposed amendments is as follows:

Amendments

Rule 0620-03-07-.01 Policy Statement and Scope of Rules is amended by deleting this rule in its entirety and replacing it with the following language:

- (1) The General Assembly of Tennessee, in Public Chapter 722 of 2000, authorized this Department to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase services while accepting limitations of the liability of contractors for damage claims. Public Chapter 169 of 2007 provides that special permission under these rules is not required for agencies to grant limitations of liability unless the limitation is less than two times the value of the contract. Public Chapter 169 also provides that limitations of warranty can be accepted under the same standards as limitations of liability.
- (2) Public Chapter 722 of 2000 and Public Chapter 169 of 2007 forbid the State from accepting any limitation of the contractor's liability for intentional torts, criminal acts, or fraudulent conduct. Public Chapter 169 also forbids the State from accepting any limitation of liability for an amount less than two times the value of the contract without permission of the Commissioner of Finance and Administration under procedures provided in these rules. Furthermore, neither the Public Chapter nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability in State personal, professional, and consulting services contracts must be subject to these limitations.
- (3) These rules shall apply to contracts for the purchase of services that are procured pursuant to the Rules of the Department of Finance and Administration, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts. Approval under the procedure set forth in these rules is required only for requests for a limitation of liability for

below twice the value of the contract, so that the term "limitation of liability" or "limitation of a contractor's liability" in section 0620-03-07-.02 of these rules means limitations below twice the value of the contract.

- (4) The value of the contract shall be established by the maximum liability of the State as set forth in the contract. If there is no maximum liability or substantially similar provision in the contract, the Commissioner in his sole discretion will determine the value of the contract based on an assessment of the value of the goods and services received by the State under the contract.

Authority: Tenn. Code Ann. § 4-5-202 and Tenn. Code Ann § 12-4-119.

The proposed rules set out herein were properly filed in the Department of State on the 24th day of August, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of December, 2007. (FS 08-17-07; DBID 2658)