
SUBSTITUTE SENATE BILL 5741

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Haugen, Horn, Shin, Winsley, Oke and Parlette; by request of The Blue Ribbon Commission on Transportation)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to managed competition within the department of
2 transportation; adding a new section to chapter 41.06 RCW; and creating
3 new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that managed
6 competition has been used in a number of cities around the country as
7 a method to unleash creative ideas from the work force and has
8 potentially led to improvements and greater efficiencies. Managed
9 competition has been most successful in localities where the work force
10 is able to engage in full-scope collective bargaining. A process of
11 managed competition, therefore, should maintain a level playing field
12 between the public and private sectors and should ensure that any
13 competitive comparisons include comparable wages, medical, pension, and
14 any other benefits enjoyed by the respective private or public sector
15 workers.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.06 RCW
17 to read as follows:

1 (1) The department of transportation may purchase services,
2 including services that have been customarily and historically provided
3 by employees in the classified service under this chapter, by
4 contracting with individuals, nonprofit organizations, businesses,
5 employee business units, or other entities if the following criteria
6 are met:

7 (a) The invitation for bid or request for proposal contains
8 measurable standards for the performance of the contract;

9 (b) Employees in the classified service whose positions or work
10 would be displaced by the contract are provided an opportunity to offer
11 alternatives to purchasing services by contract and, if these
12 alternatives are not accepted, compete for the contract under
13 competitive contracting procedures in subsection (4) of this section;

14 (c) The contract with an entity other than an employee business
15 unit includes a provision requiring the entity to consider employment
16 of state employees who may be displaced by the contract;

17 (d) The department has established a contract monitoring process to
18 measure contract performance, costs, service delivery quality, and
19 other contract standards, and to cancel contracts that do not meet
20 those standards; and

21 (e) The department has demonstrated that the contract results in
22 savings or efficiency improvements. The department must consider the
23 consequences and potential mitigation of improper or failed performance
24 by the contractor.

25 (2) A provision contrary to or in conflict with this section in a
26 collective bargaining agreement in effect on the effective date of this
27 act is not effective beyond the expiration date of the agreement.

28 (3) Contracting for services that was authorized by law before the
29 effective date of this act is not subject to the processes set forth in
30 subsections (1) and (4) through (6) of this section.

31 (4) Competitive contracting must be implemented as follows:

32 (a) At least ninety days before the date the department requests
33 bids from private entities for a contract for services provided by
34 classified employees, the department shall notify the classified
35 employees whose positions or work would be displaced by the contract.
36 The employees will have sixty days from the date of notification to
37 offer alternatives to purchasing services by contract, and the
38 department shall consider the alternatives before requesting bids.

1 (b) If the employees decide to compete for the contract, they shall
2 notify the department of their decision. Employees must form one or
3 more employee business units for the purpose of submitting a bid or
4 bids to perform the services.

5 (c) The director of personnel, with the advice and assistance of
6 the department of general administration, shall develop and make
7 available to employee business units training in the bidding process
8 and general bid preparation.

9 (d) The implementation process must also be based upon inclusion of
10 the following minimum bid items: (i) Current certified prevailing
11 wages established by the department of labor and industries for the
12 classification of work to be performed under the proposed contract;
13 (ii) an overhead factor of not less than sixty-six percent of the base
14 prevailing wage rates; and (iii) equipment charges that reflect the
15 current fair market value rate.

16 (e) The director of general administration, with the advice and
17 assistance of the department of personnel, shall, by rule, establish
18 procedures to ensure that bids are submitted and evaluated in a fair
19 and objective manner and that there exists a competitive market for the
20 service. The rules must include, but not be limited to: (i)
21 Prohibitions against participation in the bid evaluation process by
22 employees who prepared the business unit's bid or who perform any of
23 the services to be contracted; (ii) provisions to ensure that no bidder
24 receives an advantage over other bidders and that bid requirements are
25 applied equitably to all parties; and (iii) procedures that require the
26 department to receive complaints regarding the bidding process and to
27 consider them before awarding the contract. Appeal of the department's
28 actions under this subsection is an adjudicative proceeding and subject
29 to the applicable provisions of chapter 34.05 RCW, the Administrative
30 Procedure Act, with the final decision to be rendered by an
31 administrative law judge assigned under chapter 34.12 RCW.

32 (f) An employee business unit's bid must include the fully
33 allocated costs of the service, including the cost of the employees'
34 salaries and benefits, space, equipment, materials, and other costs
35 necessary to perform the function. An employee business unit's cost
36 may not include the state's indirect overhead costs unless those costs
37 can be attributed directly to the function in question and would not
38 exist if that function were not performed in state service.

1 (g) The department of transportation may contract with the
2 department of general administration to conduct the bidding process.

3 (5) As used in this section:

4 (a) "Employee business unit" means a group of employees who perform
5 services to be contracted under this section and who submit a bid for
6 the performance of those services under subsection (4) of this section.

7 (b) "Indirect overhead costs" means the pro rata share of existing
8 department administrative salaries and benefits, and rent, equipment
9 costs, utilities, and materials associated with those administrative
10 functions.

11 (c) "Competitive contracting" means the process by which classified
12 employees of the department of transportation compete with businesses,
13 individuals, nonprofit organizations, or other entities for contracts
14 authorized by subsection (1) of this section.

15 (6) The joint legislative audit and review committee shall conduct
16 a performance audit of the implementation of this section, including
17 the adequacy of the appeals process in subsection (4)(d) of this
18 section, and report to the legislature by January 1, 2005, on the
19 results of the audit.

20 NEW SECTION. **Sec. 3.** Since managed competition is a relatively
21 new, untested concept at the state level, it is the intent of the
22 legislature that managed competition for transportation operations and
23 maintenance functions will occur contingent upon civil service reform
24 legislation becoming law.

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