

# SENATE BILL REPORT

## EHB 2257

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, March 31, 2005  
Ways & Means, April 4, 2005

**Title:** An act relating to requiring state agencies to contract for goods and services in a manner consistent with the state's best interests.

**Brief Description:** Requiring state contracts to be in the state's best interests.

**Sponsors:** Representatives Williams, Conway, Morrell and Wood.

**Brief History:** Passed House: 3/16/05, 61-35.

**Committee Activity:** Labor, Commerce, Research & Development: 3/29/05, 3/31/05[DPA-WM, DNP, w/oRec].

Ways & Means: 4/4/05 [DPA(LCRD), w/oRec].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Hewitt, Keiser and Prentice.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Parlette.

**Staff:** Alison Mendiola (786-7483)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Labor, Commerce, Research & Development.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Kohl-Welles, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Parlette, Pflug, Roach and Schoesler.

**Staff:** Paula Faas (786-7449)

**Background:** The State of Washington contracts with individuals and companies outside of state government to provide certain services to the state and its residents. The state's

purchasing authority is generally organized into categories based on the type of service. These categories include the following:

- *Personal services.* This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- *Purchased services.* These services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- *Information services.* These services include data processing, telecommunications, office automation, and computerized information systems.
- *Public works.* This term refers to the construction, repair, or alteration of buildings and other real property.
- *Highway design and construction.* This term includes both architectural and engineering services, as well as construction services related to highways.
- *Printing services.* This term refers to the production of printed materials.

In addition, beginning July 1, 2005, the state may contract for services historically and traditionally provided by state employees, so long as the state complies with the contracting out provisions of the Civil Service Reform Act of 2002.

**Summary of Amended Bill:** The Office of Financial Management (OFM), in consultation with representatives of state agency management, business, labor, and agricultural groups, must develop and implement procurement policies and procedures necessary to determine whether certain contracts and subcontracts are in the state's best interests.

These policies and procedures must require consideration of the following when making decisions to enter into contract between the state and private parties:

- the extent to which the contract will be performed at a location outside the United States;
- the extent to which international trade agreements are applicable to the contract;
- the extent to which awarding the contract to a Washington business will result in job creation or retention or other economic benefits;
- the extent to which the contract involves solicitation or disclosure of personal information; and
- the extent to which decisions to locate certain facilities in Washington by businesses based in other countries and other states has resulted in job creation and other economic benefits.

OFM is to develop policies requiring the all parties seeking to enter into a contract or subcontract with the state must disclose what services will be performed outside of the United States, and where.

Contracts must forbid any party to the contract from increasing the extent of services performed outside the United States, beyond the amount previously disclosed, and forbid changing the country in which the service is to be performed, without written consent of the state agency.

Some contracts are exempt from these provisions. For example:

- OFM may determine that the only practicable source of the goods or services is clearly and

justifyably outside the United States. OFM is to provide the Legislature a list of the contracts

entered into under this provision by September 1 of each year.

- Contracts for less than \$50,000 relating to faculty research and study abroad programs are not subject to the provisions of Section 2.
- Contracts relating to the marketing of Washington agricultural commodities are not subject to the provisions of Section 2.

Public works contracts entered into by the state must be in the state's best interest.

OFM, in consultation with representatives of state agency management, business, labor, and agricultural groups, will study the indirect benefits and costs of adopting procurement policies giving Washington businesses a price preference when determining the lowest responsible bidder on certain contracts. These benefits must include job creation and retention, capital investment, tax revenue, and economic stimulus. OFM must report its findings, and any recommendations for legislation on price preferences, to the Legislature by December 1, 2005.

**Amended Bill Compared to Original Bill:** The amended bill adds a disclosure section, regarding what work is being performed outside of the United States, creates an exemption for certain types of contracts, adds that public works contracts entered into by the state must be in the state's best interest, and adds that OFM must also study the costs of adopting state procurement policies that provide Washington businesses a price preference. References to 39.29 in the engrossed bill are eliminated, and a new chapter is added to Title 39 RCW.

**Appropriation:** None.

**Fiscal Note:** Requested on March 28, 2005.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For (Amended Bill):** The purpose of this bill is to ensure that tax dollars are spent effectively to benefit the state and its residents. Other states have contract policies that benefit the state.

Language is needed to cover all state contracts, including public works projects. The offshoring of work, like parts for the Tacoma Narrows Bridge project, resulted in a loss of jobs to Washington State residents, and impacts the whole state, not just those who lost potential jobs.

**Testimony Against (Amended Bill):** There is a concern over the "best interests of the state" language as there is already language in statute that determines who that is; the lowest responsible bidder. Also, "best interests" is not specifically defined in the language of the bill. Thirty-five states, including Washington, have reciprocal preference statutes. OFM's study should look at this issue, and the consequence of Washington changing its procurement policies in light of our agreement with thirty-four other states.

Washington is dependent on trade. This bill could have negative consequences on our trading relations and increase the cost of state contracting, which would be a detriment, not a benefit to the state.

As polices are developed and implemented, OFM should have to make this process public as is the process under the Administrative Procedures Act, allowing for public comment.

**Who Testified:** PRO: Representative Williams; Representative Conway; Bev Hermanson, Washington Federation of State Employees (WFSE); Bob Doyle, WSFE; Ron Piksa, Ironworkers; Tom Hickman, Oregon Iron Workers; Dean Hartman, CMB; Anthony Butkovich, Ironworkers; Terry Seaman, Seidelhofer Iron Workers; and Dave Johnson, Washington State Building and Construction Trades Council.

CON: Kris Tefft, Association of Washington Businesses; Michael Transue, Associated General Contractors; Nancy Atwood, American Electronics Association (AEA); Susan Mielke, Washington Roundtable; and Cliff Webster, Architects and Engineers Legislative Council.