

# HOUSE BILL REPORT

## SSB 5081

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### As Reported by House Committee On: State Government

**Title:** An act relating to increasing transparency of state government expenditures related to state employees, state vendors and other public entities.

**Brief Description:** Increasing transparency of state government expenditures related to state employees, state vendors and other public entities.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Miloscia, Hill, Bailey, Becker and Dammeier).

#### **Brief History:**

##### **Committee Activity:**

State Government: 3/17/15, 4/1/15 [DPA].

#### **Brief Summary of Substitute Bill (As Amended by Committee)**

- Requires that information regarding collective bargaining agreements, leased facilities, procurement, and employee compensation be posted on websites accessible to the public.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass as amended. Signed by 4 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Appleton and Gregory.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Hawkins.

**Staff:** Marsha Reilly (786-7135).

#### **Background:**

Collective Bargaining.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Office of Financial Management (OFM) is the Governor's designee for negotiating collective bargaining agreements between public employers and the exclusive bargaining representatives of employees under the Personnel System Reform Act (PSRA), the Public Employee's Collective Bargaining Act (PECBA), ferry employees, and home-care providers considered public employees for purposes of bargaining.

#### Leased Facilities.

The OFM maintains an inventory system to account for all owned or leased facilities used by state government. Information required for the inventory system includes the facility owner and the location, type, condition, and size of each facility. The date and cost of original construction and major remodeling or renovation also must be included.

#### Procurement.

The Department of Enterprise Services (DES) is responsible for setting policy, standards, and procedures for procurement of goods and services by all state agencies. Generally, contracts for purchases of goods and services are based on a competitive solicitation process, with some exceptions, such as emergency contracts, sole source contracts, and performance-based contracts. Competitive solicitations may include electronic or web-based solicitations, bids, and signatures.

All contract opportunities must be posted on the state's enterprise vendor registration and bid notification system, as well as the name of each bidder and an indication of the successful bidder. Agencies are required to submit a list of all their contracts and renewals to the DES, and the DES is required to maintain a list of these contracts. The DES website includes a list of all state contracts, including any extensions, renewals, and contract changes.

Sole source contracts must be approved by the DES before any services are performed or goods provided. State law requires that sole source contracts must be available for public inspection at least 10 days prior to the proposed starting date.

Agencies are encouraged to enter into performance-based contracts. Performance-based contracts stipulate expected deliverables and performance measures or outcomes and may include consequences or incentives to ensure value to the state. Payment under such contracts should be contingent on the contractor achieving the performance outcomes.

The Director of the DES has the authority to debar any contractor based on a number of causes, including conviction of a criminal offense, a violation of contract provisions, or failure to perform the terms of one or more contracts.

#### Legislative Evaluation and Accountability Program.

The Legislative Evaluation and Accountability Program (LEAP) Committee was established in 1977 to be the Legislature's independent source of information and technology. The LEAP Committee provides fiscal information and technology for developing budgets, communicating budget decisions, and tracking revenue, expenditure, and staffing activity.

#### Employee Compensation.

The Director of the OFM (Director) has oversight of personnel administration of civil service rules and has the authority to adopt rules regarding such things as probationary periods,

transfers, promotional preference, and layoffs. Rules adopted by the Director may be superseded by the provisions of a collective bargaining agreement, but will affect only those employees in that bargaining agreement. The Washington Management Service (WMS) was established in 1993 as a separate personnel system for civil service managers within the executive branch of state government. Its purpose is to develop and maintain a professional managerial workforce, and to provide agencies increased flexibility for their management positions in the areas of hiring and setting compensation.

State agencies are required to report annually on the number of classified, WMS, and exempt employees in the agency, including any changes compared to the previous year's report; the number of bonuses and performance-based incentives awarded to agency staff; and the cost of each bonus or incentive awarded. A compilation of the data for each agency must be provided annually to the Governor and posted on the Department's website.

#### Office of Minority and Women's Business Enterprises.

The Office of Minority and Women's Business Enterprises (OMWBE) certifies businesses owned and controlled by minorities, women, and socially and economically disadvantaged persons for participation in several public works and procurement programs. State agencies and educational institutions are required to adopt a plan, in consultation with the OMWBE, to insure that minority and women-owned businesses have an opportunity to participate in procurement and public works contracts. Each year, the OMWBE notifies the Governor, the State Auditor, and the Joint Legislative Audit and Review Committee of the agencies and educational institutions who are not in compliance with the provisions of the chapter on minority and women's business enterprises.

#### Contracting Out.

The 2011 legislation that reorganized and consolidated state government central service agencies included a number of provisions directed at expanding the contracting out of state services. At the beginning of each fiscal biennium through June 30, 2018, the Office of Financial Management (OFM) is required to conduct a review of the programs and services performed by the Department of Enterprise Services (DES) to determine whether the program or service may be performed by the private sector in a more cost-efficient and effective manner. In consultation with affected industry stakeholders, the OFM is required to select up to six activities or services that potentially could be provided by the private sector.

The "contracting out" procurement process must contain measurable standards for the performance of the contract. The OFM must consider the consequences and potential mitigation of improper or failed performance by the contractor. If service cannot be provided at a lower rate or more efficiently, the OFM will notify the DES, and the DES may cancel the bid. If the bid is cancelled, the OFM must notify the legislative fiscal committees. The DES, with the OFM, must establish a contract monitoring process to measure contract performance, costs, service, delivery, quality, and other contract standards, and cancel contracts that do not meet those standards. No contract may be renewed without a review of these measures.

The OFM reports on the results of these examinations biennially to the Legislature, providing information on any procurement process that does not result in a contract for the services. The Joint Legislative Audit and Review Committee (JLARC) must conduct a performance

audit of the implementation of contracting for services at the DES and report to the Legislature by January 1, 2018.

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### **Summary of Amended Bill:**

#### Collective Bargaining.

The OFM is required to post on its website collective bargaining agreements for employees under the PSRA and the PECBA, ferry employees, and home-care providers.

The website must be updated within 60 days of implementation of any agreement or revisions to an agreement. By January 1, 2016, the information contained in the summary of collective bargaining agreements must be incorporated into the state expenditure information website maintained by the LEAP Committee.

#### Leased Facilities.

By January 1, 2016, the inventory of owned and leased facilities used by state government must be incorporated into the state expenditure information website maintained by the LEAP Committee.

#### Procurement.

No later than January 1, 2016, the DES must maintain a website, accessible to the public, that contains a listing of sole source contracts, current contract opportunities on the state's enterprise vendor registration and bid notification system, debarred contractors, a listing of all contracts entered into by agencies during each fiscal year, and performance-based contracts.

Agencies are required to submit to the DES a list of performance-based incentives, bonuses, or awards paid under performance-based contracts. For purposes of posting performance-based contracts on the website, the following information is required: the name of the contracting agency; the name of the contractor; the purpose of the contract; the effective dates and periods of performance; a description of the performance incentive, bonus, or award clause; and the amount paid.

#### Legislative Evaluation and Accountability Program.

By January 1, 2016, in collaboration with the DES, the LEAP Committee must establish and make available to the public a state contracting information website that directs the public to existing databases and websites of:

- current contracting opportunities;
- sole source contract inspection opportunities;
- debarred contractors;
- an inventory of state agency contracts;
- a listing of contracting performance and compliance with OMWBE provisions;
- bonuses or awards paid under performance-based contracts; and
- any other information to increase public accessibility to state contracting opportunities or expenditures.

### Employee Compensation.

The annual report submitted by state agencies on the number of classified, WMS, and exempt employees in the agency, including any changes compared to the previous year's report; the number of bonuses and performance-based incentives awarded to agency staff; and the cost of each bonus or incentive awarded must be incorporated into the state expenditure information website maintained by the LEAP Committee.

The OFM must prepare summaries of compensation and fringe benefits provided to non-represented employees of executive branch agencies, excluding institutions of higher education. Separate summaries must be prepared for WMS employees and for employees exempt from civil service, and must include generally the same information required in the summaries for collective bargaining agreements. The summaries must be posted on the OFM's website within 60 days of the beginning of each fiscal biennium and updated whenever changes occur.

### Contracting Out.

Prior to issuing a request for a proposal to contract out services customarily and historically provided by a public employee or employees, an agency must conduct a comprehensive cost to benefit assessment that identifies a savings or efficiency improvement greater than the additional cost to purchase the service. This assessment must include:

- an estimate of the cost of performance by public employees;
- an estimate of the cost of performance of the services if contracted out; and
- a statement of the performance objectives to be achieved by contracting out.

The assessment may also include an assessment of the potential adverse impacts on the public from outsourcing the contract, such as loss of employment.

The agency must prepare a written record of the basis of the decision to contract out, including the comprehensive cost to benefit assessment and an itemization of performance standards.

Upon completion of a contract, or every five years if the contract is not yet completed, the agency must file a report with the DES documenting the contractor's performance, itemizing contract extensions and change orders, and stating remedial actions and costs of such actions.

Agreements to contract out must include a number of terms, including a cancellation clause, periodic performance review, compensation for public employee time expended in achieving full performance of the contract's objectives, employment and wage information about contractors and subcontractors, and a waiver of confidentiality with respect to basic financial information related to the contract.

The provisions requiring the OFM to identify six central service functions each biennium to potentially contract out are amended. In considering whether an activity can be contracted out at a reduced cost and with greater efficiency, the DES must consider the cost of the agency staff time and resources that may be required to monitor and ensure proper performance of the contract by the contractor.

In conducting the required audit of the performance of the "contracting out" provisions, the JLARC's analysis must, at a minimum, include:

- an estimate of the cost of performance of the selected activities, if the activities had been performed by public employees, including fully allocated costs of the service, employees' salaries and benefits, space, equipment, materials, and other costs necessary to perform the service;
- an estimate of the cost of performance of the contract by the contractor, including the cost of any change orders or contract revisions, and the costs of allocating sufficient public employee staff time and resources to monitor the contract and ensure its proper performance by the contractor;
- an analysis of the extent to which performance objectives were achieved by outsourcing the contract; and
- an assessment of potential adverse impacts on the public of outsourcing the contract.

### **Amended Bill Compared to Substitute Bill:**

The striking amendment removes the provisions requiring the OFM to prepare a summary of collective bargaining agreements and to provide links to salary schedules, pay ranges, and other information on state or federal agency websites when posting the agreements on a website.

A number of provisions were added relating to contracting out services formerly provided by public employees. Agencies are required to prepare a written record of the basis of the decision and a comprehensive cost to benefit assessment when contracting out to purchase services that were formerly provided by public employees. In making a determination to contract out, the cost of the agency staff time and resources required to monitor and ensure proper performance of the contract by the vendor must be considered.

Agreements to contract out must include a number of terms, including a cancellation clause, periodic performance review, compensation for public employee time expended in achieving full performance of the contract's objectives, employment and wage information about contractors and subcontractors, and a waiver of confidentiality with respect to basic financial information related to the contract.

The JLARC's report regarding contracting out must include: an estimate of the cost of performance of the selected activities if the activities had been performed by public employees; an estimate of the cost of performance of the contract by the vendor, including the cost of any change orders or contract revisions and the costs of allocating sufficient public employee staff time and resources to monitor the contract and ensure its proper performance by the vendor; an analysis of the extent to which performance objectives were achieved by outsourcing the contract; and an assessment of adverse economic impacts on the public of outsourcing the contract.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill represents a good management tool that allows access to a lot of information, and makes it easier to compare information. The changes suggested regarding more disclosure on state vendors and contracting out are good.

(With concerns) Collective bargaining agreements are already posted online, as is other information on state employees. For those reasons, it is recommended that section 1, subsections (2), (3), and (6) be stricken. This would remove the requirement for the lengthy and onerous summaries of the collective bargaining agreements. More work can be done to disclose information on state vendors and contracting out. A technical fix to change a reference to the Federal Relations Labor Act to the National Labor Relations Act is recommended in section 5 of the bill.

(Opposed) None.

**Persons Testifying:** (In support) Rowland Thompson, Allied Daily Newspapers.

(With concerns) Alia Griffins, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.