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**SENATE BILL 6192**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators Braun, Brown, Darneille, Padden, Rivers, Short, Warnick, Wilson, L., and Wilson, C.

AN ACT Relating to addressing inadequate, deficient, or dangerous conditions at facilities and institutions operated or overseen by state agencies; amending RCW 41.06.142; adding a new section to chapter 43.09 RCW; adding a new section to chapter 43.20A RCW; adding a new section to chapter 43.60A RCW; adding a new section to chapter 43.216 RCW; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 43.09 RCW to read as follows:

(1) If the state auditor discovers that a facility or institution operated or overseen by the department of social and health services, department of veterans affairs, or department of children, youth, and families is found by a federal or state agency or court to be inadequate, deficient, or endanger clients, staff, or federal funding, the state auditor must notify the office of financial management of the finding.

(2) If the state auditor finds that the department of social and health services, department of veterans affairs, or department of children, youth, and families has failed to perform the activities required under sections 2 through 4 of this act, the state auditor must perform the activities on behalf of the agency. The agency must reimburse the state auditor for those costs from the agency's appropriations.

NEW SECTION. **Sec.**  A new section is added to chapter 43.20A RCW to read as follows:

(1) Whenever the conditions or care at a facility or institution operated or overseen by the department is found by a federal or state agency or court to be inadequate, deficient, or endanger clients, staff, or federal funding, the department must:

(a) Issue a press release to the media of the findings within five days;

(b) Produce a plan within thirty days to the governor and the state auditor detailing a timeline of actions to be taken to address the findings;

(c) Notify all legal representatives or custodians of residents at the facility or institution of the findings and the action plan within forty-five days and provide quarterly updates thereafter of the status of the plan until the federal or state agency or court finding reaches a final resolution; and

(d) Identify any alternative residential placement settings that may be available to residents.

(2) If the federal or state agency or court makes additional or revised findings of inadequacy, deficiency, or endangerment, the activities under subsection (1) of this section must be performed initially independent from any previous findings. However, the department may combine plans and quarterly updates thereafter to include all findings made by that federal or state agency or court.

(3) The activities required in subsections (1) and (2) of this section are supplemental to any other actions required by the department to address the findings of the federal or state agency or court and must be accomplished using existing appropriations.

(4) If the state auditor is required to perform the activities under this section on behalf of the department, the department must reimburse the state auditor for those costs.

NEW SECTION. **Sec.**  A new section is added to chapter 43.60A RCW to read as follows:

(1) Whenever the conditions or care at a facility or institution operated or overseen by the department is found by a federal or state agency or court to be inadequate, deficient, or endanger clients, staff, or federal funding, the department must:

(a) Issue a press release to the media of the findings within five days;

(b) Produce a plan within thirty days to the governor and the state auditor detailing a timeline of actions to be taken to address the findings;

(c) Notify all legal representatives or custodians of residents at the facility or institution of the findings and the action plan within forty-five days and provide quarterly updates thereafter of the status of the plan until the federal or state agency or court finding reaches a final resolution; and

(d) Identify any alternative residential placement settings that may be available to residents.

(2) If the federal or state agency or court makes additional or revised findings of inadequacy, deficiency, or endangerment, the activities under subsection (1) of this section must be performed initially independent from any previous findings. However, the department may combine plans and quarterly updates thereafter to include all findings made by that federal or state agency or court.

(3) The activities required in subsections (1) and (2) of this section are supplemental to any other actions required by the department to address the findings of the federal or state agency or court and must be accomplished using existing appropriations.

(4) If the state auditor is required to perform the activities under this section on behalf of the department, the department must reimburse the state auditor for those costs.

NEW SECTION. **Sec.**  A new section is added to chapter 43.216 RCW to read as follows:

(1) Whenever the conditions or care at a facility or institution operated or overseen by the department is found by a federal or state agency or court to be inadequate, deficient, or endanger clients, staff, or federal funding, the department must:

(a) Issue a press release to the media of the findings within five days;

(b) Produce a plan within thirty days to the governor and the state auditor detailing a timeline of actions to be taken to address the findings;

(c) Notify all legal representatives or custodians of residents at the facility or institution of the findings and the action plan within forty-five days and provide quarterly updates thereafter of the status of the plan until the federal or state agency or court finding reaches a final resolution; and

(d) Identify any alternative residential placement settings that may be available to residents.

(2) If the federal or state agency or court makes additional or revised findings of inadequacy, deficiency, or endangerment, the activities under subsection (1) of this section must be performed initially independent from any previous findings. However, the department may combine plans and quarterly updates thereafter to include all findings made by that federal or state agency or court.

(3) The activities required in subsections (1) and (2) of this section are supplemental to any other actions required by the department to address the findings of the federal or state agency or court and must be accomplished using existing appropriations.

(4) If the state auditor is required to perform the activities under this section on behalf of the department, the department must reimburse the state auditor for those costs.

**Sec.**  RCW 41.06.142 and 2011 1st sp.s. c 43 s 408 are each amended to read as follows:

(1) Any department, agency, or institution of higher education may purchase services, including services that have been customarily and historically provided by employees in the classified service under this chapter, by contracting with individuals, nonprofit organizations, businesses, employee business units, or other entities if the following criteria are met:

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

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

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

(d) The department, agency, or institution of higher education has established a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards, and to cancel contracts that do not meet those standards; and

(e) The department, agency, or institution of higher education has determined that the contract results in savings or efficiency improvements. The contracting agency must consider the consequences and potential mitigation of improper or failed performance by the contractor.

(2) Any provision contrary to or in conflict with this section in any collective bargaining agreement in effect on July 1, 2005, is not effective beyond the expiration date of the agreement.

(3) Contracting for services that is expressly mandated by the legislature or was authorized by law prior to July 1, 2005, including contracts and agreements between public entities, shall not be subject to the processes set forth in subsections (1), (4), and (5) of this section.

(4) Competitive contracting shall be implemented as follows:

(a) At least ninety days prior to the date the contracting agency requests bids from private entities for a contract for services provided by classified employees, the contracting agency shall notify the classified employees whose positions or work would be displaced by the contract. The employees shall have sixty days from the date of notification to offer alternatives to purchasing services by contract, and the agency shall consider the alternatives before requesting bids.

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

(c) The department of enterprise services, with the advice and assistance of the office of financial management, shall develop and make available to employee business units training in the bidding process and general bid preparation.

(d) The director of enterprise services, with the advice and assistance of the office of financial management, shall, by rule, establish procedures to ensure that bids are submitted and evaluated in a fair and objective manner and that there exists a competitive market for the service. Such rules shall include, but not be limited to: (i) Prohibitions against participation in the bid evaluation process by employees who prepared the business unit's bid or who perform any of the services to be contracted; (ii) provisions to ensure no bidder receives an advantage over other bidders and that bid requirements are applied equitably to all parties; and (iii) procedures that require the contracting agency to receive complaints regarding the bidding process and to consider them before awarding the contract. Appeal of an agency's actions under this subsection is an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, with the final decision to be rendered by an administrative law judge assigned under chapter 34.12 RCW.

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

(f) A department, agency, or institution of higher education may contract with the department of enterprise services to conduct the bidding process.

(5) As used in this section:

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

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

(c) "Competitive contracting" means the process by which classified employees of a department, agency, or institution of higher education compete with businesses, individuals, nonprofit organizations, or other entities for contracts authorized by subsection (1) of this section.

(6) The processes set forth in subsections (1), (4), and (5) of this section do not apply to:

(a) RCW 74.13.031((~~(5)~~)) (6);

(b) The acquisition of printing services by a state agency; and

(c) Contracting for services or activities by the department of enterprise services under RCW 43.19.008 and the department may continue to contract for such services and activities after June 30, 2018.

(7) The processes set forth in subsections (1), (4), and (5) of this section do not apply to the consolidated technology services agency when contracting for services or activities as follows:

(a) Contracting for services and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility that are approved by the technology services board created in RCW ((~~43.41A.070~~)) 43.105.285.

(b) Contracting for services and activities recommended by the chief information officer through a business plan and approved by the technology services board created in RCW ((~~43.41A.070~~)) 43.105.285.

(8)(a) The processes set forth in subsections (1), (4), and (5) of this section do not apply to contracting for services or activities by the department of social and health services, the department of veterans affairs, and the department of children, youth, and families to address findings by a federal or state agency or court that conditions or care at a facility or institutions operated or overseen by the agency is inadequate, deficient, or endangers clients, staff, or federal funding. This section applies only to contracts for services and activities made after the office of financial management receives notification from the state auditor under section 1 of this act or after the state auditor receives a plan from an agency detailing a timeline of actions to be taken to address the findings.

(b) Except as provided in this subsection, the processes set forth in subsections (1), (4), and (5) of this section do apply to contracts for services or activities after the federal or state agency or court determines that its findings have been resolved. Any contract that used the authority under (a) of this subsection may continue for the term of the contract.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**