

HOUSE BILL REPORT

ESHB 1133

*As Passed House
March 15, 1991*

Title: An act relating to personal service contracts.

Brief Description: Changing review and approval of personal service contracts.

Sponsor(s): By House Committee on State Government (originally sponsored by Representatives Valle, Ferguson, Belcher, Bowman, Sprenkle, Brekke, Pruitt, Dellwo, Sheldon, Morris, Jones, Betrozoff and Orr).

Brief History:

Reported by House Committee on:
State Government, February 26, 1991, DPS;
Appropriations, March 9, 1991, DPS(SG)-A;
Passed House, March 15, 1991, 98-0.

**HOUSE COMMITTEE ON
STATE GOVERNMENT**

Majority Report: *That Substitute House Bill No. 1133 be substituted therefor, and the substitute bill do pass.* Signed by 7 members: Representatives Anderson, Chair; Pruitt, Vice Chair; Bowman, Assistant Ranking Minority Member; Chandler; Grant; O'Brien; and Sheldon.

Minority Report: *Do not pass.* Signed by 3 members: Representatives McLean, Ranking Minority Member; R. Fisher; and Moyer.

Staff: Linda May (786-7135).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on State Government be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.* Signed by 28 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Appelwick; Belcher; Bowman; Braddock; Brekke; Dorn; Ebersole; Ferguson;

Fuhrman; Hine; Lisk; May; McLean; Mielke; Nealey; Peery; Pruitt; Rust; H. Sommers; Valle; Vance; Wang; and Wineberry.

Staff: Karl Herzog (786-7271).

Background:

State agencies have the option of contracting for "personal services," which are professional or technical services performed by state agencies by independent consultants. Normally agencies contract for personal services to address a short term need, to work on a special project, or to provide for a short time a specialized skill for which the agency is not permanently staffed. Personal services purchased range from relatively simple graphic design work to more complex services such as advice on agency reorganization or testimony as an expert witness in litigation.

Agencies procure these services through the use of personal service contracts. There are a number of different kind of personal service contracts. In most cases, these contracts must be competitively bid. The requirement for competitive bidding of personal service contracts may, however, be waived under certain circumstances. Exceptions include sole source contracts, emergency contracts and expert witness contracts.

Currently there is no central filing requirement for competitively bid personal service contracts. Contracts for over \$2500 which are sole source, emergency, or expert witness contracts must be filed with the Office of Financial Management (OFM) and the Legislative Budget Committee (LBC). Contracts filed with OFM and the LBC are available for public inspection. In addition, sole source contracts for over \$10,000 from a single contractor must receive prior approval from OFM. OFM approval is required if one sole source contract is for over \$10,000 or if the addition of a new contract puts the amount received by the contractor from that agency over \$10,000 for sole source contracts.

When procuring architectural and engineering services under current law, agencies must solicit statements of qualifications from architectural and engineering firms, select a firm deemed to be the most highly qualified to provide services for a proposed project, and negotiate a contract with the selected firm at a price which is fair and reasonable. Agencies are not required to solicit contracts on a competitive basis, nor are they required to file contracts with any other state agency.

Currently there are no special provisions in the personal service contracts statutes regarding contracts between state agencies and state legislators, or between state agencies and companies employing a state legislator.

Summary of Bill:

New provisions dictate that an agency may procure personal services only if it documents that (1) the service is critical to agency responsibilities, or is mandated or authorized by the Legislature; (2) insufficient staffing or expertise is available within the agency to perform the service; and (3) other qualified public resources are not available to perform the service.

The responsibilities of the Office of Financial Management (OFM) in regard to personal service contracts are expanded as follows:

(1) OFM is to maintain a list of all personal service contracts entered into by state agencies during each fiscal year. The list is to include for each contract the contracting agency, the contractor, the purpose of the contract, the cost, and whether the contract was competitively bid or awarded as sole source.

(2) In addition to approving sole source contracts over \$10,000, OFM is to approve modifications to these contracts. OFM will also ensure that the costs negotiated in these sole source contracts are reasonable. Modifications to any sole source contracts are to be filed with OFM and with the LBC.

(3) Competitively bid personal service contracts relating to management consulting, organization development, marketing, communications, or employee training and recruiting must be filed with and approved by OFM.

(4) Contracts entered into by any state agency for architectural and engineering services are to be filed with OFM.

The filing threshold of \$2500 is removed for competitively bid, sole source, and emergency contracts. New rules are established regarding personal service contracts between state agencies and state legislators. Such a contract must be personally approved in writing by the agency director or commission chair, and by the director of OFM. The contract must be filed with the House or Senate Ethics Committee within five business days of being signed.

Fiscal Note: Available. New fiscal note requested on March 10, 1991.

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

Testimony For: (State Government): The State is spending millions of dollars on these contracts. State employees complain about consultants taking their jobs. Other states control their contracts more closely. These contracts should be more in the public view. LBC is inundated with other demands, so the new oversight responsibility is given to LEAP. Use of consultants may be an open door to corruption. The bill should also apply to local government.

(Appropriations): None.

Testimony Against: (State Government): There is no clarification of what "short term" means in terms of when it is appropriate for an agency to procure personal services. Having all contracts filed at OFM will reinstate what was removed by legislation in 1987. There is a Constitutional problem regarding division of executive and legislative powers by giving LEAP approval authority over competitively bid contracts. The competitive solicitation process works well now. Having to wait for 10 working days for public and LEAP review of competitively bid contracts will be costly. Having competitively bid contracts available for public inspection for 10 days is not long enough for the public. There is no direction given as to where a member of the public should bring a complaint after public review of a contract.

(Appropriations): None.

Witnesses: (State Government): Representative Georgette Valle (in favor); Len McComb, Office of Financial Management (suggested amendments); Linda Sheler, Office of State Auditor (findings of Auditor's 1990 audit of personal service contracts); Bob Fitchitt, LEAP Committee staff (impacts to LEAP); Benella Caminita, retired state employee (in favor with amendments); and Michael Stewart and John Pettit, Council of Presidents, University of Washington (opposed).

(Appropriations): None.