
HOUSE BILL 1385

State of Washington

58th Legislature

2003 Regular Session

By Representatives Mielke, Ericksen, Woods, Schindler, Anderson, Shabro, Ahern, Jarrett, Talcott, Clements, Chandler, Buck, Boldt, Benson, Schoesler, Nixon, Pflug, Holmquist and McMahan

Read first time 01/24/2003. Referred to Committee on State Government.

1 AN ACT Relating to incentives to increase transportation revenues
2 by requiring the secretary of transportation to report to the
3 legislature regarding contracting out, and prohibiting collective
4 bargaining agreements with state employees from bargaining away the
5 ability of a state agency to contract out; amending RCW 41.06.142,
6 41.80.020, and 41.80.910; adding a new section to chapter 47.01 RCW;
7 repealing RCW 41.06.380 and 41.06.382; providing an effective date; and
8 declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.01 RCW
11 to read as follows:

12 The secretary of transportation shall report no later than November
13 30th of every even-numbered year to the house of representatives and
14 senate transportation committees on both current practices regarding
15 contracting out and on further opportunities for contracting out within
16 the department. In recommending programs that might be performed by
17 the private sector, the secretary shall place emphasis on programs that
18 could be undertaken at a lower cost by the private sector than by state
19 employees, and on programs in which the use of the private sector could

1 augment the department's workforce in order to increase the
2 department's capacity to complete projects as quickly as possible. The
3 secretary may issue the report electronically by publishing it on the
4 department's web site and by transmitting the report electronically to
5 all members of the house of representatives and senate transportation
6 committees.

7 **Sec. 2.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
8 read as follows:

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

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

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

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

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

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

35 (2)(a) Departments, agencies, and institutions of higher education
36 are prohibited from bargaining matters pertaining to purchasing by
37 contract.

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

4 (3) Contracting for services that is expressly mandated by the
5 legislature or was authorized by law prior to July 1, 2005, including
6 contracts and agreements between public entities, shall not be subject
7 to the processes set forth in subsections (1) and (4) through (6) of
8 this section.

9 (4) Competitive contracting shall be implemented as follows:

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

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

21 (c) The director of personnel, with the advice and assistance of
22 the department of general administration, shall develop and make
23 available to employee business units training in the bidding process
24 and general bid preparation.

25 (d) The director of general administration, with the advice and
26 assistance of the department of personnel, shall, by rule, establish
27 procedures to ensure that bids are submitted and evaluated in a fair
28 and objective manner and that there exists a competitive market for the
29 service. Such rules shall include, but not be limited to: (i)
30 Prohibitions against participation in the bid evaluation process by
31 employees who prepared the business unit's bid or who perform any of
32 the services to be contracted; (ii) provisions to ensure no bidder
33 receives an advantage over other bidders and that bid requirements are
34 applied equitably to all parties; and (iii) procedures that require the
35 contracting agency to receive complaints regarding the bidding process
36 and to consider them before awarding the contract. Appeal of an
37 agency's actions under this subsection is an adjudicative proceeding

1 and subject to the applicable provisions of chapter 34.05 RCW, the
2 administrative procedure act, with the final decision to be rendered by
3 an administrative law judge assigned under chapter 34.12 RCW.

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

11 (f) A department, agency, or institution of higher education may
12 contract with the department of general administration to conduct the
13 bidding process.

14 (5) As used in this section:

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

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

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

26 (6) The joint legislative audit and review committee shall conduct
27 a performance audit of the implementation of this section, including
28 the adequacy of the appeals process in subsection (4)(d) of this
29 section, and report to the legislature by January 1, 2007, on the
30 results of the audit.

31 **Sec. 3.** RCW 41.80.020 and 2002 c 354 s 303 are each amended to
32 read as follows:

33 (1) Except as otherwise provided in this chapter, the matters
34 subject to bargaining include wages, hours, and other terms and
35 conditions of employment, and the negotiation of any question arising
36 under a collective bargaining agreement.

1 (2) The employer is not required to bargain over matters pertaining
2 to:

3 (a) Health care benefits or other employee insurance benefits,
4 except as required in subsection (3) of this section;

5 (b) Any retirement system or retirement benefit; or

6 (c) Rules of the director of personnel or the Washington personnel
7 resources board adopted under section 203, chapter 354, Laws of 2002.

8 (3) Matters subject to bargaining include the number of names to be
9 certified for vacancies, promotional preferences, and the dollar amount
10 expended on behalf of each employee for health care benefits. However,
11 except as provided otherwise in this subsection for institutions of
12 higher education, negotiations regarding the number of names to be
13 certified for vacancies, promotional preferences, and the dollar amount
14 expended on behalf of each employee for health care benefits shall be
15 conducted between the employer and one coalition of all the exclusive
16 bargaining representatives subject to this chapter. Any such provision
17 agreed to by the employer and the coalition shall be included in all
18 master collective bargaining agreements negotiated by the parties. For
19 institutions of higher education, promotional preferences and the
20 number of names to be certified for vacancies shall be bargained under
21 the provisions of RCW 41.80.010(4).

22 (4) The employer and the exclusive bargaining representative shall
23 not agree to any proposal that would prevent the implementation of
24 approved affirmative action plans or that would be inconsistent with
25 the comparable worth agreement that provided the basis for the salary
26 changes implemented beginning with the 1983-1985 biennium to achieve
27 comparable worth.

28 (5) The employer and the exclusive bargaining representative shall
29 not bargain over matters pertaining to management rights established in
30 RCW 41.80.040 or over matters pertaining to purchasing services by
31 contract.

32 (6) Except as otherwise provided in this chapter, if a conflict
33 exists between an executive order, administrative rule, or agency
34 policy relating to wages, hours, and terms and conditions of employment
35 and a collective bargaining agreement negotiated under this chapter,
36 the collective bargaining agreement shall prevail. A provision of a
37 collective bargaining agreement that conflicts with the terms of a
38 statute is invalid and unenforceable.

1 (~~(7) This section does not prohibit bargaining that affects~~
2 ~~contracts authorized by RCW 41.06.142.)~~)

3 **Sec. 4.** RCW 41.80.910 and 2002 c 354 s 411 are each amended to
4 read as follows:

5 (1) Sections 203, 204, 213 through 223, 227, 229 through 231, 241,
6 243, 246, 248, 301, 302, 304 through 307, 309 through 316, 318, 319,
7 and 402 of this act take effect July 1, 2004.

8 (2) Section 224 of this act takes effect March 15, 2005.

9 (3) Sections (~~(208-7)~~) 234 through 238(~~(7)~~) and 403 of this act take
10 effect July 1, 2005.

11 (4) Sections 225, 226, 233, and 404 of this act take effect July 1,
12 2006.

13 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each
14 repealed:

15 (1) RCW 41.06.380 (Purchasing services by contract not prohibited--
16 Limitations) and 1979 ex.s. c 46 s 2; and

17 (2) RCW 41.06.382 (Purchasing services by contract not prohibited--
18 Limitations) and 1979 ex.s. c 46 s 1.

19 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 July 1, 2003.

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