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HOUSE BILL 1133

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State of Washington

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By Representatives Valle, Ferguson, Belcher, Bowman, Sprenkle, Brekke, Pruitt, Dellwo, Sheldon, Morris, Jones, Betrozoff and Orr.

Read first time January 21, 1991. Referred to Committee on State Government.

1 AN ACT Relating to personal service contracts; amending RCW  
2 39.29.003, 39.29.018, and 39.29.006; adding new sections to chapter  
3 39.29 RCW; creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 39.29.003 and 1987 c 414 s 1 are each amended to read  
6 as follows:

7 It is the intent of this chapter to establish a policy of open  
8 competition for all personal service contracts entered into by state  
9 agencies, unless specifically exempted under this chapter. It is  
10 further the intent to provide for legislative and executive review of  
11 all personal service contracts (~~((negotiated without an open competitive  
12 process))~~) to centralize the location of personal service contracts for  
13 ease of public review, and ensure proper accounting of personal  
14 services expenditures.

1       **Sec. 2.** RCW 39.29.018 and 1987 c 414 s 5 are each amended to read  
2 as follows:

3       (1) Sole source contracts and modifications thereto shall be filed  
4 with the office of financial management and the legislative budget  
5 committee and made available for public inspection at least ten working  
6 days prior to the proposed starting date of the contract. Documented  
7 justification for sole source contracts shall be provided to the office  
8 of financial management and the legislative budget committee when the  
9 contract is filed.

10       (2) The office of financial management shall approve sole source  
11 contracts of ten thousand dollars or more and modifications thereto  
12 before any such contract or modification becomes binding and before any  
13 services may be performed under the contract. These requirements shall  
14 also apply to sole source contracts of less than ten thousand dollars  
15 if the total amount of such contracts and their amendments between an  
16 agency and the same consultant is ten thousand dollars or more within  
17 a fiscal year.

18       **Sec. 3.** RCW 39.29.006 and 1987 c 414 s 2 are each amended to read  
19 as follows:

20       As used in this chapter:

21       (1) "Agency" means any state office or activity of the executive  
22 and judicial branches of state government, including state agencies,  
23 departments, offices, divisions, boards, commissions, and educational,  
24 correctional, and other types of institutions.

25       (2) "Client services" means services provided directly to agency  
26 clients including, but not limited to, medical and dental services,  
27 employment and training programs, residential care, and subsidized  
28 housing.

1 (3) "Competitive solicitation" means a documented formal process  
2 providing an equal and open opportunity to qualified parties and  
3 culminating in a selection based on criteria which may include such  
4 factors as the consultant's fees or costs, ability, capacity,  
5 experience, reputation, responsiveness to time limitations,  
6 responsiveness to solicitation requirements, quality of previous  
7 performance, and compliance with statutes and rules relating to  
8 contracts or services.

9 (4) "Consultant" means an independent individual or firm  
10 contracting with an agency to perform a service or render an opinion or  
11 recommendation according to the consultant's methods and without being  
12 subject to the control of the agency except as to the result of the  
13 work. The agency monitors progress under the contract and authorizes  
14 payment.

15 (5) "Emergency" means a set of unforeseen circumstances beyond the  
16 control of the agency that either:

17 (a) Present a real, immediate threat to the proper performance of  
18 essential functions; or

19 (b) May result in material loss or damage to property, bodily  
20 injury, or loss of life if immediate action is not taken.

21 (6) "Evidence of competition" means documentation demonstrating  
22 that the agency has solicited responses from multiple firms in  
23 selecting a consultant.

24 (7) "Personal service" means professional or technical expertise  
25 provided by a consultant to accomplish a specific study, project, task,  
26 or other work statement. Personal services shall be procured to  
27 resolve a particular agency problem or issue or to expedite a specific  
28 project, the duration of which is short term. Agencies may procure  
29 personal services from private sources or other public agencies if they  
30 demonstrate need and are able to document insufficient staffing or

1 expertise to perform the service. This term does not include purchased  
2 services as defined under subsection (9) of this section. This term  
3 does include client services.

4 (8) "Personal service contract" means an agreement, or any  
5 amendment thereto, with a consultant for the rendering of personal  
6 services to the state which is consistent with RCW 41.06.380.

7 (9) "Purchased services" means services provided by a vendor to  
8 accomplish routine, continuing and necessary functions. This term  
9 includes, but is not limited to, services acquired under RCW 43.19.190  
10 or 43.105.041 for equipment maintenance and repair; operation of a  
11 physical plant; security; computer hardware and software maintenance;  
12 data entry; key punch services; and computer time-sharing, contract  
13 programming, and analysis.

14 (10) "Sole source" means a consultant providing professional or  
15 technical expertise of such a unique nature that the consultant is  
16 clearly and justifiably the only practicable source to provide the  
17 service. The justification shall be based on either the uniqueness of  
18 the service or sole availability at the location required.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.29 RCW  
20 to read as follows:

21 (1) Personal service contracts subject to competitive solicitation,  
22 and modifications thereto, shall be filed with the office of financial  
23 management and the legislative evaluation and accountability program  
24 committee and made available for public inspection at least ten working  
25 days before the proposed starting date of the contract. Each agency  
26 filing a personal service contract pursuant to this section shall  
27 include certification that the procedures and requirements adopted by  
28 the office of financial management pursuant to RCW 39.29.065 have been

1 met, and that the process used by the agency to competitively solicit  
2 potential consultants has been documented.

3 (2) The legislative evaluation and accountability program committee  
4 shall approve personal service contracts, and modifications thereto,  
5 subject to solicitation of ten thousand dollars or more before any such  
6 contract becomes binding and before any services may be performed under  
7 the contract. The legislative evaluation and accountability program  
8 committee may forward questionable contracts to the fiscal committees  
9 of the legislature for further review.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 39.29 RCW  
11 to read as follows:

12 The office of financial management shall maintain a list of all  
13 personal service contracts entered into by state agencies during each  
14 fiscal year. The list shall identify the contracting agency, the  
15 contractor, the purpose of the contract, effective dates and periods of  
16 performance, and whether the contract, including amendments, was  
17 competitively procured or awarded on a sole source basis. The office  
18 of financial management shall also ensure that state accounting  
19 definitions and procedures are consistent with RCW 39.29.006 and permit  
20 the reporting of personal services expenditures by agency and by type  
21 of service. Designations of type of services shall include, but not be  
22 limited to, management and organizational services, legal services,  
23 financial services, social or technical research, marketing, and  
24 employee training or recruiting services.

25 NEW SECTION. **Sec. 6.** (1) The legislative evaluation and  
26 accountability program committee shall conduct a study of agency  
27 expenditures for personal services incurred during the 1989-91  
28 biennium. The study shall:

1 (a) Review all contracts for personal services and their  
2 amendments, including emergency contracts and contracts for services  
3 exempted by RCW 39.29.040 except architectural and engineering  
4 contracts;

5 (b) Determine whether contracts for personal services have met the  
6 requirements of chapter 39.29 RCW and have complied with the office of  
7 financial management's requirements for using outside consultants; and

8 (c) Determine the extent and use of contract amendments and the  
9 need for improvements to state accounting procedures, definitions, and  
10 controls relating to personal services expenditures.

11 (2) The legislative evaluation and accountability program committee  
12 may limit its review to the ten agencies that incurred the most  
13 expenditures for personal services during the biennium.

14 (3) The legislative evaluation and accountability program committee  
15 shall report its findings and make recommendations for improvements to  
16 the fiscal committees of the legislature on or before December 1, 1991.

17 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect immediately.