

HOUSE BILL REPORT

HB 1133

*As Reported By House Committee on:
State Government
Appropriations*

Title: An act relating to personal service contracts.

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

Sponsor(s): 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.

**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).

Background: State agencies have the option of contracting for "personal services," which are professional or technical services performed for 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 kinds 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.

Individual agencies keep track of 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.

The bill affects the duties of the Legislative Evaluation and Accountability Program (LEAP) Committee. LEAP staff provide legislators and the fiscal committee staffs with information necessary for evaluating agency expenditures, budgets, and other fiscal related matters. LEAP staff develop and maintain electronic databases, develop applications which enhance others' uses of these databases, and train and assist fiscal staff in the use of the budget databases as part of fiscal analysis. Currently there are 11 staff members for the LEAP Committee.

Summary of Substitute Bill: OFM is to insure that the costs, fees, or rates negotiated in sole source contracts over \$10,000 are reasonable and do not exceed costs that would have been charged if the contract had been bid competitively.

The number of personal service contracts subject to legislative, executive, and public review is expanded to include competitively bid contracts. Competitively bid personal service contracts over \$2500 are to be filed with OFM and with the LEAP Committee. In addition, competitively bid contracts for over \$10,000 must be reviewed by the LEAP Committee. The LEAP Committee is given the authority to conduct performance audits on contracts or forward questionable contracts to the fiscal committees of the Legislature.

OFM is directed to maintain a list of all personal service contracts entered into by state agencies during each fiscal

year. Clarification is made regarding the conditions under which an agency may procure personal services.

The LEAP Committee is directed to conduct a performance audit on agency expenditures on personal services contracts during the 1989-91 biennium. The LEAP committee is to report its findings and make recommendations for improvements by December 1, 1991.

Substitute Bill Compared to Original Bill: The original bill does not contain the provision requiring OFM to insure that rates negotiated in sole source contracts do not exceed rates that would have been charged if the contract had been competitively bid. In the original bill, the LEAP Committee is required to approve competitively bid contracts over \$10,000. In the substitute bill, the LEAP Committee must review these contracts and is given the authority to conduct performance audits. The original bill directs LEAP to study agency expenditures on personal service contracts in the 1989-91 biennium. The substitute bill clarifies that LEAP is to conduct a performance audit on these expenditures.

Fiscal Note: Requested February 27, 1991 (on substitute bill).

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: 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.

Testimony Against: 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.

Witnesses: 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).

**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).

New Background Information: 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 neither required to solicit contracts on a competitive basis, nor required to file contracts with any other state agency.

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on State Government: The striking amendment adopted by the Committee on Appropriations modifies several provisions of the substitute bill.

The requirement for agencies to file most competitively bid personal service contracts with OFM is eliminated, except for competitively bid contracts for management, organizational, and other specified services. Under the striking amendment, these competitively bid contracts must be filed with OFM, and OFM must approve the contracts before they become effective.

The striking amendment eliminates: (a) requirements that agencies file competitively bid contracts with LEAP, that LEAP review filed competitively bid contracts, and that LEAP

conduct a performance audit on 1989-91 personal service contract expenditures; (b) a requirement that OFM ensure that sole source contract fees do not exceed the fees that would have been charged had the contract been competitively bid; and (c) a provision in current law that exempts contracts valued under \$2,500 from personal service contract procedural requirements.

The striking amendment also clarifies language requiring agencies to document their need for procuring personal services, and requires agencies to file architectural and engineering contracts with OFM.

Finally, the striking amendment eliminates the emergency clause in the substitute bill.

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

Effective Date of Substitute Bill as Amended: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Witnesses: None.