

1 **SSB 5248 - H AMD 0331 WITHDRAWN 4/8/03**
2 By Representative Ericksen

3 On page 1, strike everything after the enacting clause and
4 insert the following:

5 "NEW SECTION. **Sec. 1.** The legislature finds that there is a
6 pressing need for reform of the way in which the transportation
7 system in Washington is constructed and maintained. The legislature
8 finds that if the private sector can perform a service faster and
9 cheaper than state government, as demonstrated under the provisions
10 of Chapter 354, Laws of 2002, then the Department of Transportation
11 should not be hindered by state law from providing services in the
12 most cost effective manner. The legislature also finds that
13 reforming current laws governing the payment of prevailing wages to
14 ensure the accuracy of such wages is necessary to recapture public
15 support for future expansion of the transportation system in
16 Washington.

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

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

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

27 (b) Employees in the classified service whose positions or work
28 would be displaced by the contract are provided an opportunity to
29 offer alternatives to purchasing services by contract and, if these

1 alternatives are not accepted, compete for the contract under
2 competitive contracting procedures in subsection (4) of this
3 section;

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

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

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

17 (2)(a) The Departments of Transportation is prohibited from
18 bargaining matters pertaining to purchasing by contract.

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

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

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

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

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

1 (c) The director of personnel, with the advice and assistance
2 of the department of general administration, shall develop and make
3 available to employee business units training in the bidding
4 process and general bid preparation.

5 (d) The director of general administration, with the advice and
6 assistance of the department of personnel, shall, by rule,
7 establish procedures to ensure that bids are submitted and
8 evaluated in a fair and objective manner and that there exists a
9 competitive market for the service. Such rules shall include, but
10 not be limited to: (i) Prohibitions against participation in the
11 bid evaluation process by employees who prepared the business
12 unit's bid or who perform any of the services to be contracted;
13 (ii) provisions to ensure no bidder receives an advantage over
14 other bidders and that bid requirements are applied equitably to
15 all parties; and (iii) procedures that require the contracting
16 agency to receive complaints regarding the bidding process and to
17 consider them before awarding the contract. Appeal of an agency's
18 actions under this subsection is an adjudicative proceeding and
19 subject to the applicable provisions of chapter 34.05 RCW, the
20 administrative procedure act, with the final decision to be
21 rendered by an administrative law judge assigned under chapter
22 34.12 RCW.

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

31 (f) A department, agency, or institution of higher education
32 may contract with the department of general administration to
33 conduct the bidding process.

34 (5) As used in this section:

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

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

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

10 (6) The joint legislative audit and review committee shall
11 conduct a performance audit of the implementation of this section,
12 including the adequacy of the appeals process in subsection (4)(d)
13 of this section, and report to the legislature by January 1, 2007,
14 on the results of the audit.

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

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

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

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

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

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

29 (3) Matters subject to bargaining include the number of names
30 to be certified for vacancies, promotional preferences, and the
31 dollar amount expended on behalf of each employee for health care
32 benefits. However, except as provided otherwise in this subsection
33 for institutions of higher education, negotiations regarding the
34 number of names to be certified for vacancies, promotional
35 preferences, and the dollar amount expended on behalf of each
36 employee for health care benefits shall be conducted between the
37 employer and one coalition of all the exclusive bargaining
38 representatives subject to this chapter. Any such provision agreed

1 to by the employer and the coalition shall be included in all
2 master collective bargaining agreements negotiated by the parties.
3 For institutions of higher education, promotional preferences and
4 the number of names to be certified for vacancies shall be
5 bargained under the provisions of RCW 41.80.010(4).

6 (4) The employer and the exclusive bargaining representative
7 shall not agree to any proposal that would prevent the
8 implementation of approved affirmative action plans or that would
9 be inconsistent with the comparable worth agreement that provided
10 the basis for the salary changes implemented beginning with the
11 1983-1985 biennium to achieve comparable worth.

12 (5) The employer and the exclusive bargaining representative
13 shall not bargain over matters pertaining to management rights
14 established in RCW 41.80.040 or over matters pertaining to
15 purchasing services by contract by the Department of
16 Transportation.

17 (6) Except as otherwise provided in this chapter, if a conflict
18 exists between an executive order, administrative rule, or agency
19 policy relating to wages, hours, and terms and conditions of
20 employment and a collective bargaining agreement negotiated under
21 this chapter, the collective bargaining agreement shall prevail.
22 A provision of a collective bargaining agreement that conflicts
23 with the terms of a statute is invalid and unenforceable.

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

26 **Sec. 4.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read
27 as follows:

28 (1) The "prevailing rate of wage", for the intents and purposes
29 of this chapter, shall be the rate of hourly wage, usual benefits,
30 and overtime paid in the locality, as hereinafter defined, to the
31 majority of workers, laborers, or mechanics, in the same trade or
32 occupation on nonpublic construction projects. In the event that
33 there is not a majority in the same trade or occupation paid at the
34 same rate, then the average rate of hourly wage and overtime paid
35 to such laborers, workers, or mechanics in the same trade or
36 occupation shall be the prevailing rate. If the wage paid by any
37 contractor or subcontractor to laborers, workers, or mechanics on
38 any public work is based on some period of time other than an hour,

1 the hourly wage for the purposes of this chapter shall be
2 mathematically determined by the number of hours worked in such
3 period of time.

4 (2) The "locality" (~~((for the purposes of this chapter shall be~~
5 ~~the largest city in))~~ is the county wherein the physical work is
6 being performed.

7 (3) The "usual benefits" for the purposes of this chapter shall
8 include the amount of:

9 (a) The rate of contribution irrevocably made by a contractor
10 or subcontractor to a trustee or to a third person pursuant to a
11 fund, plan, or program; and

12 (b) The rate of costs to the contractor or subcontractor which
13 may be reasonably anticipated in providing benefits to workers,
14 laborers, and mechanics pursuant to an enforceable commitment to
15 carry out a financially responsible plan or program which was
16 communicated in writing to the workers, laborers, and mechanics
17 affected, for medical or hospital care, pensions on retirement or
18 death, compensation for injuries or illness resulting from
19 occupational activity, or insurance to provide any of the
20 foregoing, for unemployment benefits, life insurance, disability
21 and sickness insurance, or accident insurance, for vacation and
22 holiday pay, for defraying costs of apprenticeship or other similar
23 programs, or for other bona fide fringe benefits, but only where
24 the contractor or subcontractor is not required by other federal,
25 state, or local law to provide any of such benefits.

26 (4) An "interested party" for the purposes of this chapter
27 shall include a contractor, subcontractor, an employee of a
28 contractor or subcontractor, an organization whose members' wages,
29 benefits, and conditions of employment are affected by this
30 chapter, and the director of labor and industries or the director's
31 designee.

32 **Sec. 5.** RCW 39.12.015 and 1965 ex.s. c 133 s 2 are each
33 amended to read as follows:

34 All determinations of the prevailing rate of wage shall be made
35 by the industrial statistician of the department of labor and
36 industries using a stratified random sampling methodology."

Effect: Prohibits DOT from collectively bargaining away the ability to contract out for services.

Provides that the prevailing wage will be determined using a random stratified sampling method based on the county in which the work is being performed.