

SSB 5248 - H AMD 335

By Representative Ericksen

WITHDRAWN 04/08/2003

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

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

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

14 (2)(a) The department of transportation is prohibited from
15 bargaining matters pertaining to purchasing by contract.

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

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

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

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

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

36 (c) The director of personnel, with the advice and assistance of

1 the department of general administration, shall develop and make
2 available to employee business units training in the bidding process
3 and general bid preparation.

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

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

27 (f) A department, agency, or institution of higher education may
28 contract with the department of general administration to conduct the
29 bidding process.

30 (5) As used in this section:

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

34 (b) "Indirect overhead costs" means the pro rata share of existing
35 agency administrative salaries and benefits, and rent, equipment costs,
36 utilities, and materials associated with those administrative
37 functions.

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

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

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

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

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

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

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

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

23 (3) Matters subject to bargaining include the number of names to be
24 certified for vacancies, promotional preferences, and the dollar amount
25 expended on behalf of each employee for health care benefits. However,
26 except as provided otherwise in this subsection for institutions of
27 higher education, negotiations regarding the number of names to be
28 certified for vacancies, promotional preferences, and the dollar amount
29 expended on behalf of each employee for health care benefits shall be
30 conducted between the employer and one coalition of all the exclusive
31 bargaining representatives subject to this chapter. Any such provision
32 agreed to by the employer and the coalition shall be included in all
33 master collective bargaining agreements negotiated by the parties. For
34 institutions of higher education, promotional preferences and the
35 number of names to be certified for vacancies shall be bargained under
36 the provisions of RCW 41.80.010(4).

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

7 (5) The employer and the exclusive bargaining representative shall
8 not bargain over matters pertaining to management rights established in
9 RCW 41.80.040 or over matters pertaining to purchasing services by
10 contract by the department of transportation.

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

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

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

22 (1) The "prevailing rate of wage", for the intents and purposes of
23 this chapter, shall be the rate of hourly wage, usual benefits, and
24 overtime paid in the locality, as hereinafter defined, to the majority
25 of workers, laborers, or mechanics, in the same trade or occupation.
26 In the event that there is not a majority in the same trade or
27 occupation paid at the same rate, then the average rate of hourly wage
28 and overtime paid to such laborers, workers, or mechanics in the same
29 trade or occupation shall be the prevailing rate. If the wage paid by
30 any contractor or subcontractor to laborers, workers, or mechanics on
31 any public work is based on some period of time other than an hour, the
32 hourly wage for the purposes of this chapter shall be mathematically
33 determined by the number of hours worked in such period of time.

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

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

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

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

19 (4) An "interested party" for the purposes of this chapter shall
20 include a contractor, subcontractor, an employee of a contractor or
21 subcontractor, an organization whose members' wages, benefits, and
22 conditions of employment are affected by this chapter, and the director
23 of labor and industries or the director's designee.

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

26 All determinations of the prevailing rate of wage shall be made by
27 the industrial statistician of the department of labor and industries
28 using a stratified random sampling methodology.

29 NEW SECTION. **Sec. 6.** (1) Section 2 of this act takes effect July
30 1, 2005.

31 (2) Section 3 of this act takes effect July 1, 2004."

32 Correct the title.

EFFECT: The Department of Transportation is prohibited from

bargaining over matters pertaining to purchasing services by contract.

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.

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