
SENATE BILL 6268

State of Washington

62nd Legislature

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By Senators Swecker, Sheldon, Schoesler, Roach, Tom, and Hobbs

Read first time 01/16/12. Referred to Committee on Energy, Natural Resources & Marine Waters.

1 AN ACT Relating to achieving efficiencies in the stocking of trout
2 in freshwater areas to enhance recreational fishing opportunities;
3 amending RCW 41.06.142; adding a new section to chapter 77.18 RCW;
4 creating a new section; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.18 RCW
7 to read as follows:

8 (1)(a) By July 1, 2014, and thereafter, the department shall
9 annually use at least fifty percent of all operating moneys expended to
10 produce or obtain trout for purposes of stocking freshwater areas to
11 enhance recreational fishing opportunities on contracts with registered
12 aquatic farmers, as defined in RCW 15.85.020.

13 (b) The department shall work diligently to achieve the expeditious
14 implementation of the requirements of (a) of this subsection, and shall
15 incrementally increase the use of contracts with registered aquatic
16 farmers in the following manner:

17 (i) During fiscal year 2013, the department shall expend at least
18 fifteen percent of relevant operating expenditures on these contracts;

1 (ii) During fiscal year 2014, the department shall expend at least
2 thirty percent of relevant operating expenditures on these contracts;
3 and

4 (iii) By July 1, 2014, and thereafter, the department shall fully
5 implement the requirements of (a) of this subsection.

6 (c)(i) The operating expenditures subject to this subsection
7 consist of all operating objects of expenditure including operations
8 and maintenance, administration, and personnel including retirement,
9 medical, and other benefits used by the department to produce or obtain
10 trout, including trophy trout, trout fry, and trout fingerlings in
11 order to stock freshwater areas for the purpose of enhancing
12 recreational fishing opportunities.

13 (ii) Current contracting levels for trout production from
14 registered aquatic farmers do not count towards the requirements of
15 this subsection. The department shall determine current contracting
16 levels by calculating the mean average percentage of the annual
17 operating expenditures subject to this section, as described under this
18 subsection (1)(c), used by the department to obtain trout through
19 contracts with registered aquatic farmers during the 2009 through 2011
20 fiscal years.

21 (2) In determining what trout production to obtain through
22 contracts with registered aquatic farmers in order to meet the
23 requirements of subsection (1) of this section, the department shall
24 consider factors including the following:

25 (a) The actual total annual direct and indirect costs of trout
26 production at department trout production facilities including, but not
27 limited to: All operating objects of expenditure including operations
28 and maintenance, administration, and personnel including retirement,
29 medical, and other benefits; equipment and depreciation; and capital
30 costs including future capital costs and debt service payments on those
31 future capital costs;

32 (b) The relative effectiveness and cost-efficiency of the various
33 categories of department trout production, including trophy trout,
34 trout fry, and trout fingerlings;

35 (c) The relative effectiveness and cost efficiency of the
36 department's trout production under (a) and (b) of this subsection as
37 compared to obtaining the production through contracts with registered
38 aquatic farmers;

1 (d) The relative effectiveness, cost efficiency, and sustainability
2 of the department's various trout production facilities; and

3 (e) The results of the comprehensive performance audit conducted
4 under section 2 of this act.

5 (3) Consistent with RCW 43.01.036, the department must submit a
6 progress report to the appropriate standing committees of the senate
7 and house of representatives by September 1st of each year that
8 includes an update on the implementation of subsection (1) of this
9 section, information and analysis derived from the considerations under
10 subsection (2) of this section, and any legislative recommendations.

11 NEW SECTION. **Sec. 2.** (1) By July 1, 2013, the state auditor shall
12 complete a comprehensive audit, in accordance with RCW 43.09.470, of
13 the department of fish and wildlife's program to produce, obtain, and
14 stock freshwater areas with trout to enhance recreational fishing
15 opportunities.

16 (2) This section expires June 30, 2014.

17 **Sec. 3.** RCW 41.06.142 and 2011 1st sp.s. c 43 s 408 are each
18 amended to read as follows:

19 (1) Any department, agency, or institution of higher education may
20 purchase services, including services that have been customarily and
21 historically provided by employees in the classified service under this
22 chapter, by contracting with individuals, nonprofit organizations,
23 businesses, employee business units, or other entities if the following
24 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 offer
29 alternatives to purchasing services by contract and, if these
30 alternatives are not accepted, compete for the contract under
31 competitive contracting procedures in subsection (4) of this section;

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

35 (d) The department, agency, or institution of higher education has
36 established a contract monitoring process to measure contract

1 performance, costs, service delivery quality, and other contract
2 standards, and to cancel contracts that do not meet those standards;
3 and

4 (e) The department, agency, or institution of higher education has
5 determined that the contract results in savings or efficiency
6 improvements. The contracting agency must consider the consequences
7 and potential mitigation of improper or failed performance by the
8 contractor.

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

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

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

18 (a) At least ninety days prior to the date the contracting agency
19 requests bids from private entities for a contract for services
20 provided by classified employees, the contracting agency shall notify
21 the classified employees whose positions or work would be displaced by
22 the contract. The employees shall have sixty days from the date of
23 notification to offer alternatives to purchasing services by contract,
24 and the agency shall consider the alternatives before requesting bids.

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

29 (c) The department of enterprise services, with the advice and
30 assistance of the office of financial management, shall develop and
31 make available to employee business units training in the bidding
32 process and general bid preparation.

33 (d) The director of enterprise services, with the advice and
34 assistance of the office of financial management, shall, by rule,
35 establish procedures to ensure that bids are submitted and evaluated in
36 a fair and objective manner and that there exists a competitive market
37 for the service. Such rules shall include, but not be limited to: (i)
38 Prohibitions against participation in the bid evaluation process by

1 employees who prepared the business unit's bid or who perform any of
2 the services to be contracted; (ii) provisions to ensure no bidder
3 receives an advantage over other bidders and that bid requirements are
4 applied equitably to all parties; and (iii) procedures that require the
5 contracting agency to receive complaints regarding the bidding process
6 and to consider them before awarding the contract. Appeal of an
7 agency's actions under this subsection is an adjudicative proceeding
8 and subject to the applicable provisions of chapter 34.05 RCW, the
9 administrative procedure act, with the final decision to be rendered by
10 an administrative law judge assigned under chapter 34.12 RCW.

11 (e) An employee business unit's bid must include the fully
12 allocated costs of the service, including the cost of the employees'
13 salaries and benefits, space, equipment, materials, and other costs
14 necessary to perform the function. An employee business unit's cost
15 shall not include the state's indirect overhead costs unless those
16 costs can be attributed directly to the function in question and would
17 not exist if that function were not performed in state service.

18 (f) A department, agency, or institution of higher education may
19 contract with the department of enterprise services to conduct the
20 bidding process.

21 (5) As used in this section:

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

25 (b) "Indirect overhead costs" means the pro rata share of existing
26 agency administrative salaries and benefits, and rent, equipment costs,
27 utilities, and materials associated with those administrative
28 functions.

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

33 (6) The processes set forth in subsections (1), (4), and (5) of
34 this section do not apply to:

35 (a) RCW 74.13.031(5);

36 (b) The acquisition of printing services by a state agency; ~~(and)~~

37 (c) Contracting for services or activities by the department of

1 enterprise services under RCW 43.19.008 and the department may continue
2 to contract for such services and activities after June 30, 2018; and
3 (d) Contracting by the department of fish and wildlife under
4 section 1 of this act.

5 (7) The processes set forth in subsections (1), (4), and (5) of
6 this section do not apply to the consolidated technology services
7 agency when contracting for services or activities as follows:

8 (a) Contracting for services and activities that are necessary to
9 establish, operate, or manage the state data center, including
10 architecture, design, engineering, installation, and operation of the
11 facility that are approved by the technology services board created in
12 RCW 43.41A.070.

13 (b) Contracting for services and activities recommended by the
14 chief information officer through a business plan and approved by the
15 technology services board created in RCW 43.41A.070.

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