
SENATE BILL 5206

State of Washington

64th Legislature

2015 Regular Session

By Senators Becker, Miloscia, Bailey, Braun, Padden, Hewitt, Hill, Dammeier, Honeyford, and Parlette

Read first time 01/15/15. Referred to Committee on Accountability and Reform.

1 AN ACT Relating to state audit findings of noncompliance with
2 state law; amending RCW 43.09.310 and 41.06.142; and adding a new
3 section to chapter 43.09 RCW.

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

5 **Sec. 1.** RCW 43.09.310 and 2005 c 387 s 2 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (2) of this section, the
8 state auditor shall annually audit the statewide combined financial
9 statements prepared by the office of financial management and make
10 post-audits of state agencies. Post-audits of state agencies shall be
11 made at such periodic intervals as is determined by the state
12 auditor. Audits of combined financial statements shall include
13 determinations as to the validity and accuracy of accounting methods,
14 procedures and standards utilized in their preparation, as well as
15 the accuracy of the financial statements themselves. A report shall
16 be made of each such audit and post-audit upon completion thereof,
17 and one copy shall be transmitted to the governor, one to the
18 director of financial management, one to the state agency audited,
19 one to the joint legislative audit and review committee, one each to
20 the standing committees on ways and means of the house and senate,
21 one to the chief clerk of the house, one to the secretary of the

1 senate, and at least one shall be kept on file in the office of the
2 state auditor. A copy of any report containing findings of
3 noncompliance with state law shall be transmitted to the attorney
4 general and shall be subject to the process provided in section 2 of
5 this act.

6 (2) Audits of the department of labor and industries must be
7 coordinated with the audits required under RCW 51.44.115 to avoid
8 duplication of audits.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.09
10 RCW to read as follows:

11 (1) Within thirty days of receipt of an audit under RCW 43.09.310
12 containing findings of noncompliance with state law, the subject
13 state agency shall submit a response and a plan for remediation to
14 the governor, the state auditor, the office of financial management,
15 the joint legislative audit and review committee, and the relevant
16 fiscal and policy committees of the senate and house of
17 representatives.

18 (2) If, at the next succeeding audit of the subject state agency,
19 the state auditor determines that the subject state agency has failed
20 to make substantial progress in remediating the noncompliance with
21 state law, the state auditor shall notify the entities specified in
22 subsection (1) of this section.

23 (3) Within six months of receipt of a notification under
24 subsection (2) of this section, the office of financial management
25 shall issue a request for bids or a request for proposals to contract
26 with a public or private entity to perform the function that is the
27 subject of the audit finding of noncompliance with state law. The
28 subject state agency is barred from submitting a proposal or bid for
29 the contract. Within six months of the issuance of the request, the
30 office of financial management shall award the contract and supervise
31 its administration. The cost of the contract shall be borne by the
32 subject agency.

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

35 (1) Any department, agency, or institution of higher education
36 may purchase services, including services that have been customarily
37 and historically provided by employees in the classified service
38 under this chapter, by contracting with individuals, nonprofit

1 organizations, businesses, employee business units, or other entities
2 if the following criteria are met:

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

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

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

13 (d) The department, agency, or institution of higher education
14 has established a contract monitoring process to measure contract
15 performance, costs, service delivery quality, and other contract
16 standards, and to cancel contracts that do not meet those standards;
17 and

18 (e) The department, agency, or institution of higher education
19 has determined that the contract results in savings or efficiency
20 improvements. The contracting agency must consider the consequences
21 and potential mitigation of improper or failed performance by the
22 contractor.

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

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

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

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

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

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

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

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

33 (f) A department, agency, or institution of higher education may
34 contract with the department of enterprise services to conduct the
35 bidding process.

36 (5) As used in this section:

37 (a) "Employee business unit" means a group of employees who
38 perform services to be contracted under this section and who submit a
39 bid for the performance of those services under subsection (4) of
40 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 processes set forth in subsections (1), (4), and (5) of
11 this section do not apply to:

12 (a) RCW 74.13.031(~~(5)~~) (6);

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

15 (c) Contracting for services or activities by the department of
16 enterprise services under RCW 43.19.008 and the department may
17 continue to contract for such services and activities after June 30,
18 2018; and

19 (d) Contracting for services and activities pursuant to section 2
20 of this act.

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

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

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

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