

for capital purposes for schools (House Joint Resolution No. 4220) are validly submitted to and are approved and ratified by the voters at a general election held in November 1987. If the proposed amendments are not so approved and ratified, sections 1 through 12 of this act shall be null and void in their entirety.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 26, 1987.

Passed the Senate April 16, 1987.

Approved by the Governor May 18, 1987.

Filed in Office of Secretary of State May 18, 1987.

CHAPTER 414

[Engrossed Substitute House Bill No. 88]

PERSONAL SERVICE CONTRACTS

AN ACT Relating to personal service contracts; amending RCW 39.29.003, 39.29.006, 39.29.020, 39.29.040, and 43.19.190; adding new sections to chapter 39.29 RCW; repealing RCW 39.29.010, 39.29.030, 39.29.060, and 39.29.070; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 61, Laws of 1979 ex. sess. and RCW 39.29-.003 are each amended to read as follows:

It is the intent of this chapter to ~~((provide for a comprehensive legislative review of))~~ establish a policy of open competition for all personal service contracts ((negotiated within)) entered into by state ((government)) agencies, unless specifically exempted under this chapter((, and to centralize executive supervision of these expenditures by the office of financial management)). It is further the intent to provide for legislative and executive review of all personal service contracts negotiated without an open competitive process.

Sec. 2. Section 2, chapter 61, Laws of 1979 ex. sess. as amended by section 1, chapter 263, Laws of 1981 and RCW 39.29.006 are each amended to read as follows:

As used in this chapter:

(1) ~~((ⁿPersonal service contractⁿ means an agreement, or any amendment or renewal thereto, with an independent contractor for the rendering of personal services to the state.~~

~~((2) ⁿPersonal serviceⁿ means performing a specific study, project, or task which requires professional or technical expertise but does not mean personal service performed for the purpose of routine continuing and necessary services, including but not limited to routine maintenance, operation of~~

~~the physical plant, security, data entry, key punch services, and graphic design:~~

~~(3)) "Agency" means any state ((officer)) office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.~~

~~(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.~~

~~(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.~~

~~(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.~~

~~(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:~~

~~(a) Present a real, immediate threat to the proper performance of essential functions; or~~

~~(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.~~

~~(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.~~

~~(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.~~

~~(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.~~

~~(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.~~

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

NEW SECTION. Sec. 3. A new section is added to chapter 39.29 RCW to read as follows:

All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;
- (4) Contracts between a consultant and an agency of less than ten thousand dollars. However, contracts of two thousand five hundred dollars or greater but less than ten thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

NEW SECTION. Sec. 4. A new section is added to chapter 39.29 RCW to read as follows:

Emergency contracts shall be filed with the office of financial management and the legislative budget committee and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management and the legislative budget committee when the contract is filed.

NEW SECTION. Sec. 5. A new section is added to chapter 39.29 RCW to read as follows:

(1) Sole source contracts shall be filed with the office of financial management and the legislative budget committee and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management and the legislative budget committee when the contract is filed.

(2) The office of financial management shall approve sole source contracts of ten thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than ten

thousand dollars if the total amount of such contracts between an agency and the same consultant is ten thousand dollars or more within a fiscal year.

Sec. 6. Section 2, chapter 191, Laws of 1974 ex. sess. and RCW 39.29.020 are each amended to read as follows:

No state officer or activity of state government subject to this chapter shall expend any funds for personal service contracts (~~((without first complying with the provisions of RCW 39.29.010. Except in cases where filing delay has been authorized under RCW 39.29.010, no contract shall become effective until ten days following the date of filing pursuant to this chapter, or the effective date of the contract whichever is later))~~) unless the agency has complied with the competitive procurement and other requirements of this chapter. The state officer or employee executing the personal service contracts shall be responsible for compliance with the ~~((filing))~~ requirements of this chapter. Failure to comply with the ~~((filing))~~ requirements of this chapter shall subject the state officer or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract shall be subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter. The attorney general is responsible for prosecuting violations of this chapter.

Sec. 7. Section 4, chapter 61, Laws of 1979 ex. sess. as amended by section 3, chapter 33, Laws of 1986 and RCW 39.29.040 are each amended to read as follows:

~~((Except as provided in RCW 39.29.070;))~~ This chapter does not apply to:

(1) Contracts specifying a fee of less than two thousand five hundred dollars if the total of ~~((such))~~ the contracts from that agency with the contractor within a ~~((twelve-month period))~~ fiscal year does not exceed two thousand five hundred dollars;

~~(2) ((Contracts awarded through competitive bids if the bidding follows a formal, documented bid procedure and if the request for bids is advertised through the media normally used by the particular service being sought: PROVIDED, That for management purposes, the office of financial management may require the filing of certain contracts exempted under this subsection;~~

~~(3) Contracts where the contracting agency recognizes that an employee-employer relationship exists;~~

~~(4))~~ Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

~~((5))~~ (3) Intergovernmental agreements awarded to any ~~((public corporation))~~ governmental entity, whether federal, state, or local and any department, division, or subdivision thereof; ~~((and~~

(6)) (4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other ((public corporation)) governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW; and

(8) Contracts for the employment of expert witnesses for the purposes of litigation, except that such contracts shall be filed within the same time period as emergency contracts.

NEW SECTION. Sec. 8. A new section is added to chapter 39.29 RCW to read as follows:

To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts.

NEW SECTION. Sec. 9. A new section is added to chapter 39.29 RCW to read as follows:

As requested by the legislative auditor, the office of financial management shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts.

Sec. 10. Section 3, chapter 32, Laws of 1969 as last amended by section 1, chapter 103, Laws of 1980 and RCW 43.19.190 are each amended to read as follows:

The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature

except as requested by said legislature: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by cooperative hospital service organizations as defined in section 501(c) of the Internal Revenue Code, or its successor: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services (~~authorized for direct acquisition from vendors by state organizations and filed under the provisions of RCW 39.29.010 through 39.29.030~~) as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935 as now or hereafter amended;

(3) Provide the required staff assistance for the state supply management advisory board through the division of purchasing;

(4) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies: PROVIDED, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, as now or hereafter amended, or from policies established by the director after consultation with the state supply management advisory board: PROVIDED FURTHER, That delegation of such authorization to a state agency, including an educational institution, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(5) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(6) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(7) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(8) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications after receiving the recommendation of the supply management advisory board;

(10) Provide for the maintenance of inventory records of supplies, materials, and other property;

(11) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(12) Publish procedures and guidelines for compliance by all state agencies, including educational institutions, which implement overall state purchasing and material control policies;

(13) Conduct periodic visits to state agencies, including educational institutions, to determine if statutory provisions and supporting purchasing and material control policies are being fully implemented, and based upon such visits, take corrective action to achieve compliance with established purchasing and material control policies under existing statutes when required.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 191, Laws of 1974 ex. sess., section 44, chapter 151, Laws of 1979, section 3, chapter 61, Laws of 1979 ex. sess. and RCW 39.29.010;

(2) Section 3, chapter 191, Laws of 1974 ex. sess., section 1, chapter 225, Laws of 1981 and RCW 39.29.030;

(3) Section 1, chapter 33, Laws of 1986 and RCW 39.29.060; and

(4) Section 2, chapter 33, Laws of 1986 and RCW 39.29.070.

NEW SECTION. Sec. 12. *This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

*Sec. 12 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 26, 1987.

Passed the Senate April 26, 1987.

Approved by the Governor May 18, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 12, Engrossed Substitute House Bill No. 88, entitled:

"AN ACT Relating to personal service contracts."

This bill establishes a policy of open competition for all personal service contracts and directs the Office of Financial Management to establish procedures for competitive solicitation, record-keeping, reporting and filing of contracts to implement this bill.

Section 12 declares an emergency and directs that the bill take effect immediately. The Office of Financial Management must have time to establish the required procedures and communicate these new procedures to all state agencies, institutions, boards and commissions. Allowing this bill to become effective upon signing, with no procedures established, would result in confusion for state agencies attempting to carry on their contracting activities and comply with new requirements which have not been fully developed. A normal ninety day effective date will allow the program to be fully developed and give agencies the opportunity to understand the new procedures which should assist compliance.

With the exception of section 12, Engrossed Substitute House Bill No. 88 is approved."

CHAPTER 415

[Substitute House Bill No. 767]

RESPIRATORY CARE PRACTITIONERS—CERTIFICATION

AN ACT Relating to respiratory care; reenacting and amending RCW 18.120.020 and 18.130.040; adding a new chapter to Title 18 RCW; making an appropriation; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that it is necessary to regulate the practice of respiratory care at the level of certification in order to protect the public health and safety. The settings for these services may include, health facilities licensed in this state, clinics, home health agencies, physicians' offices, and public or community health services. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advisory committee" means the Washington state advisory respiratory care committee.

(2) "Department" means the department of licensing.

(3) "Director" means the director of licensing or the director's designee.

(4) "Respiratory care practitioner" means an individual certified under this chapter.

(5) "Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

(6) "Rural hospital" means a hospital located anywhere in the state except the following areas: