

---

HOUSE BILL 2560

---

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Chandler, Taylor, and Short

Read first time 01/17/12. Referred to Committee on Agriculture & Natural Resources.

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.

--- END ---