

LEGISLATIVE BILL 519

Approved by the Governor June 6, 1995

Introduced by Chambers, 11; Wesely, 26

AN ACT relating to contracts; to state intent; to void certain contingent fee contracts as prescribed; to define terms; to provide procedures for review and approval of contracts for personal services; and to provide for applicability of provisions.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that:

(1) Article IV, section 6, of the Constitution of Nebraska requires that the affairs of the state be economically and efficiently administered and thereby imposes a duty to expend no more for any service than it is worth;

(2) The types and provisions of contracts executed on behalf of the state have a direct bearing on the economical and efficient administration of the affairs of the state; and

(3) Fee-for-service contracts are the usual, customary, and accepted manner of contracting on behalf of the state.

Sec. 2. Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by the state or by any person on behalf of the state after the effective date of this act is void unless executed by the Governor upon thirty days' notice to the public at large.

Sec. 3. Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by (1) the University of Nebraska, (2) the Nebraska state colleges, or (3) any other board, commission, or agency established by the Constitution of Nebraska after the effective date of this act is void unless executed by the highest executive officer thereof upon thirty days' notice to the public at large.

Sec. 4. For purposes of sections 1 to 4 of this act:

(1) Contingent fee means any fee, whether commission, percentage, brokerage, finder's fee, or contingent fee or otherwise denominated, which is a percentage or portion of the amount or value recovered, obtained, or involved;

(2) Contingent fee contract means any contract or agreement which provides for payment of a contingent fee; and

(3) State means any department or agency of the state other than (a) the University of Nebraska, (b) the Nebraska state colleges, and (c) any other board, commission, or agency established by the Constitution of Nebraska.

Sec. 5. The Director of Administrative Services shall review and approve or disapprove any contract for personal services between a private entity and any state agency, other than (1) the University of Nebraska, (2) the Nebraska state colleges, and (3) any other board, commission, or agency established by the Constitution of Nebraska, if, on the effective date of the contract, the personal services are performed by permanent state employees of the agency and will be replaced by services performed by the private entity. The contract shall be subject to the public bidding procedures established in sections 81-145 to 81-162 except in emergencies approved by the Governor.

For purposes of this section, contract for personal services means an agreement by a contractor to provide human labor but does not mean a contract to supply only goods or personal property. The term includes contracts with private service providers, consultants, and independent service contractors.

Sec. 6. (1) A state agency that seeks to enter into a contract described in section 5 of this act with a private entity shall submit the following information to the Director of Administrative Services: (a) The proposed contract, (b) a review of the long-term actual cost savings, (c) the measurable goals for improving the quality of the service, and (d) an assessment of the feasibility of alternatives within the agency to contracting for performance of the service.

(2) In calculating the cost savings under subsection (1) of this section, the state agency shall project, for twelve months and for sixty months, the following:

(a) Direct costs, including salary and fringe benefits;

(b) Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist

if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;

(c) Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and

(d) Additional costs of performance of the work by state employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.

Sec. 7. A state agency that seeks to enter into a contract described in section 5 of this act shall also submit to the Director of Administrative Services a formal plan of assistance to the state employees of such state agency who will be displaced by such contract. The plan shall include, but need not be limited to, the following provisions:

(1) Efforts by the state agency to place displaced employees in vacant positions in that agency or another state agency;

(2) Provisions in the contract for personal services, if feasible, for the hiring of displaced employees by the contractor; and

(3) Demonstration by the state agency that it has taken formal and positive steps in considering alternatives to such contract, including reorganization, reevaluation of service, and reevaluation of performance.

Sec. 8. The Director of Administrative Services may approve a proposed contract if:

(1) The potential economic advantage of contracting is not outweighed by the public's interest in having the particular services performed directly by the state agency;

(2) The contract does not adversely affect the state's affirmative action efforts;

(3) The contract will include adequate control mechanisms to insure that the services are provided pursuant to the terms of the contract; and

(4) The private entity is fairly compensating its employees.

Sec. 9. The Director of Administrative Services shall, within forty-five days after receipt of the information described in sections 6 and 7 of this act from the state agency, prepare a report detailing why the proposed contract was approved or disapproved. The report shall be delivered to the chairperson of the Appropriations Committee of the Legislature and the Legislative Fiscal Analyst.

Sec. 10. The Department of Administrative Services shall adopt and promulgate rules and regulations to carry out sections 5 to 9 of this act. Such rules and regulations shall apply to the Director of Administrative Services in carrying out his or her duties pursuant to such sections.

Sec. 11. Sections 5 to 10 of this act shall not apply to the Nebraska Consultants' Competitive Negotiation Act.

Sections 5 to 10 of this act shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.