

CHAPTER 55**(HB 387)**

AN ACT relating to the reporting of full-time employees and contractors and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

- (1) *Within fifteen (15) days after the effective date of this Act, and on a quarterly basis thereafter, the secretary of the Personnel Cabinet shall report to the Legislative Research Commission the number of employees in each program cabinet and department of the executive branch of state government. The report shall include the number of all full-time classified and unclassified employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department.*
- (2) *Within fifteen (15) days after the effective date of this Act, and on a quarterly basis thereafter, the secretary of the Finance and Administration Cabinet shall report to the Legislative Research Commission the number of individuals working on a full-time equivalent and recurring basis, listed by contract or agreement and cabinet.*
- (3) *As used in this subsection, "recurring basis" means continuous employment for a period of not less than ninety (90) days.*

➔Section 2. KRS 45A.553 is amended to read as follows:

- (1) After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.
- (2) The state agency entering into the contract shall provide for an evaluation of the performance of any privatization contract awarded in excess of five hundred thousand dollars (\$500,000) annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract. The performance evaluation shall be forwarded to the Auditor of Public Accounts and the Legislative Research Commission. The evaluation shall be subject to review by the Auditor of Public Accounts, who shall report any findings to the Legislative Research Commission.
- (3) *The secretary of the Finance and Administration Cabinet shall report the number of individuals working the equivalent of full-time hours under contracts or agreements identified by this section to the Legislative Research Commission on an annual basis.*

➔Section 3. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:
 - (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
 - (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;
 - (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
 - (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth *or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65* that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and

agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:

1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
 2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
 3. Agreements between state agencies as required by federal or state law;
 4. Agreements between state agencies and state universities or colleges *only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired*, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
 5. Agreements involving child support collections and enforcement;
 6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
 7. Nonfinancial agreements;
 8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
 9. Exchanges of confidential personal information between agencies;
 10. Agreements between state agencies and rural concentrated employment programs; or
 11. Any other agreement that the committee deems inappropriate for consideration;
- (e) "Motion picture or entertainment production" means the same as defined in KRS 148.542;
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;
- (g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:
1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
 2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
 3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
 4. Agreements between a state agency and rural concentrated employment programs;
 5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; or
 6. Any other contract that the committee deems inappropriate for consideration;

(h) "Tax incentive agreement" means an agreement executed under KRS 148.546; and

(i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.

- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 4. KRS 45A.695 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
- (a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;
 - (b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
 - (c) The total projected cost of the contract or agreement and source of funding;
 - (d) The total projected duration of the contract or tax incentive agreement;
 - (e) Payment information, in detail;
 - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
 - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of

the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.
- (10) (a) *No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.*
- (b) *Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.*
- (c) *Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.*
- (d) *Each invoice shall contain the following information:*
1. *A description of the matter covered by the invoice;*
 2. *The date each service was performed;*
 3. *A full description of each service;*
 4. *The name and title of each individual who worked on the matter, and the time the individual spent on the matter;*
 5. *The subject matter and recipient of any correspondence;*
 6. *A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;*
 7. *The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;*
 8. *An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;*
 9. *The total charge for each matter;*
 10. *The combined total for services and disbursements for the billing period;*
 11. *The tax identification number of the entity awarded the personal service contract; and*
 12. *An indication on each invoice of whether or not the invoice is final.*
- (e) *The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed, and expenses actually incurred.*
- (f) *The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.*

➔Section 5. Whereas the Commonwealth has been and continues to experience a financial crisis, and this information is necessary to prepare accurate budgets which take into account the financial climate, and to provide for

greater scrutiny of, and accountability for, public contracts, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 5, 2010.