

## CHAPTER 1153

### OVERSIGHT OF GOVERNMENTAL SERVICES AND PUBLIC EXPENDITURES

*S.F. 2410*

AN ACT relating to government accountability and concerning service contract requirements, contractual requirements for certain entities receiving public moneys, requirements for joint agreements involving governmental entities, additional review by the auditor of state, the authority of the citizens' aide, employment rights of employees making a disclosure of information, and the authority of the legislative oversight committee, and including an implementation provision and making penalties applicable.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I GOVERNMENT ACCOUNTABILITY

##### Section 1. NEW SECTION. 8F.1 PURPOSE.

This chapter is intended to create mechanisms to most effectively and efficiently monitor the utilization of public moneys by providing the greatest possible accountability for the expenditure of public moneys.

##### Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, "agency" does not mean the Iowa public employees' retirement system created under chapter 97B, the public broadcasting division of the department of education created under section 256.81, the statewide fire and police retirement system created under chapter 411, or an agricultural commodity promotion board subject to a producer referendum.

2. "Compensation" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. "Intergovernmental entity" means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit or subdivision thereof. "Intergovernmental entity" does not include an organization established or agreement made in accordance with chapter 28E between state agencies.

4. "Oversight agency" means an agency that contracts with and disburses state or federal moneys to a recipient entity.

5. "Private agency" means an individual or any form of business organization, including a nonprofit organization, authorized under the laws of this state or any other state or under the laws of any foreign jurisdiction.

6. "Recipient entity" means an intergovernmental entity or a private agency that enters into a service contract with an oversight agency to provide services which will be paid for with local governmental, state, or federal moneys.

7. "Service" or "services" means work performed for an oversight agency or for its client.

8. a. "Service contract" means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision of services. When there is a contract for goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists. "Service contract" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision of services. For purposes of this chapter, a service contract only exists when an individual service contract or a series of service contracts entered into between an oversight agency and a recipient entity exceeds five hundred thousand dollars or when the grant or contract together with other grants or contracts awarded to the recipient entity by the oversight agency during the oversight agency's fiscal year exceeds five hundred thousand dollars in the aggregate.

b. "Service contract" does not mean any of the following:

(1) A contract that involves services related to transportation or the construction, reconstruction, improvement, repair, or maintenance of the transportation system.

(2) A contract concerning the public safety peace officers' retirement system created under chapter 97A, the judicial retirement system governed by chapter 602, article 9, or the deferred compensation plan established by the executive council pursuant to section 509A.12.

(3) A contract for services provided for the operation, construction, or maintenance of a public utility, combined public utility, or a city enterprise as defined by section 384.24.<sup>1(1)</sup>

(4) A contract for dual party relay service required by section 477C.3 or for the equipment distribution program established under the authority of section 477C.4.

(5) A contract for services provided from resources made available under Title XVIII, XIX, or XXI of the federal Social Security Act.

(6) A contract for a court-appointed attorney.

(7) A contract with a federally insured financial institution that is subject to mandatory periodic examinations by a state or federal regulator.

(8) Any allocation of state or federal moneys by the department of education to subrecipients on a formula or noncompetitive basis.

(9) A contract for services provided by a person subject to regulation under Title XIII of the Code.

(10) A contract for vendor services.

(11) A contract concerning an entity that has contracted with the state and is licensed and regulated by the insurance division of the department of commerce.

(12) A contract with outside counsel or special counsel executed by the executive council pursuant to section 13.3 or 13.7.

(13) A contract that is subject to competitive bidding for the construction, reconstruction, improvement, or repair of a public building or public improvement.

9. "Vendor services" means services or goods provided by a vendor that are required for the conduct of a state or federal program for an organization's own use or for the use of beneficiaries of the state or federal program and which are ancillary to the operation of the state or federal program under a service contract and not otherwise subject to compliance requirements of the state or federal program. For purposes of this subsection, "vendor" means a dealer, distributor, merchant, or other seller which provides goods and services within normal business operations, provides similar goods or services to many different purchasers, and operates in a competitive environment.

### Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

1. As a condition of entering into a service contract with an oversight agency, a recipient entity shall certify that the recipient has the following information available for inspection by the oversight agency and the legislative services agency:

a. Information documenting the legal status of the recipient entity, such as agreements establishing the entity pursuant to chapter 28E or other intergovernmental agreements, articles of incorporation, bylaws, or any other information related to the establishment or status of the entity. In addition, the information shall indicate whether the recipient entity is exempt from federal income taxes under section 501(c), of the Internal Revenue Code.

b. Information regarding the training and education received by the members of the governing body of the recipient entity relating to the duties and legal responsibilities of the governing body.

c. Information regarding the procedures used by the governing body of the recipient entity to do all of the following:

(1) Review the performance of management employees and establish the compensation of those employees.

(2) Review the recipient entity's internal controls relating to accounting processes and procedures.

(3) Review the recipient entity's compliance with the laws, rules, regulations, and contractual agreements applicable to its operations.

(4) Information regarding adopted ethical and professional standards of operation for the governing body and employees of the recipient entity and information concerning the implementation of these standards and the training of employees and members of the governing body on the standards. The standards shall include but not be limited to a nepotism policy which shall provide, at a minimum, for disclosure of familial relationships among employees and between employees and members of the governing body, policies regarding conflicts of interest, standards of responsibility and obedience to law, fairness, and honesty.

d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

2. The certification required by this section shall be signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, and shall state that the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. Prior to entering into a service contract with a recipient entity, the oversight agency shall determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract. If the oversight entity is unable to determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract, the oversight entity shall request such information from the recipient entity as described in subsection 1 to make a determination. If the oversight agency determines from the information provided that the recipient entity cannot reasonably be expected to comply with the requirements of the service contract, the oversight agency shall not enter into the service contract.

Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

1. a. As a condition of continuing to receive state or federal moneys through an oversight agency for a service contract, a recipient entity shall file an annual report with the oversight agency and with the legislative services agency within ten months following the end of the recipient entity's fiscal year.

b. However, the annual report shall not be required to be filed under any of the following circumstances:

(1) The recipient entity reports information otherwise required to be included in an annual report described in subsection 2 to the oversight agency pursuant to federal or state statutes or rules. The information otherwise required to be reported to the oversight agency shall be filed with the legislative services agency.

(2) The recipient entity is recognized by the Internal Revenue Code as a nonprofit organization or entity and provides a copy of the internal revenue service form 990 for all fiscal years in which service contract revenues are reported.

2. The annual report required to be filed pursuant to this section shall contain the following:

a. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to the service contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

b. Financial information relating to service contracts with the oversight agency during the preceding year, including the costs by category to provide the contracted services.

c. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the recipient entity covering the preceding year.

d. Corrective action taken or planned by the recipient entity in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

e. Any changes in the information submitted in accordance with section 8F.3.

f. A certification signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. A recipient entity shall be required to submit such information as requested by the oversight agency or the legislative services agency relating to the entity's expenditure of state and federal moneys.

Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

Any service contract awarded to a recipient entity shall provide that the oversight agency may terminate the service contract if the recipient entity, during the duration of the contract, fails to comply with the requirements of this chapter. In addition, the service contract shall provide a mechanism for the forfeiture and recovery of state or federal funds expended by a recipient entity in violation of the laws applicable to the expenditure of the money or the requirements of the service contract and this chapter.

Sec. 6. Section 8E.208, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Performance measurement is essential to ensuring adequate accountability over public resources and the exchange of public resources for desirable and acceptable public benefits. Performance measurement must include an assessment of whether agencies have adequate control procedures in place, and whether those control procedures are operating effectively, to determine that agencies are receiving or providing services of adequate quality, public resources are being used effectively and efficiently, and public resources are being used for appropriate and meaningful activities.

Sec. 7. Section 28E.6, Code 2005, is amended to read as follows:

28E.6 ADDITIONAL PROVISIONS.

1. If the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement

shall also include:

1- a. Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

2- b. The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking.

2. The entity created or the administrator or joint board specified in the agreement shall be a governmental body for purposes of chapter 21 and a government body for purposes of chapter 22 unless the entity created or agreement includes public agencies from more than one state.

3. All proceedings of each regular, adjourned, or special meeting of the entity created or the administrator or joint board specified in the agreement, including the schedule of bills allowed, shall be published after adjournment of the meeting in a newspaper of general circulation within the geographic area served by the entity created or the administrator or joint board specified in the agreement. The entity created or the administrator or joint board specified in the agreement shall furnish a copy of the proceedings to be published to the newspaper within one week following adjournment of the meeting. The publication of the schedule of bills allowed shall include a list of all salaries paid for services performed, showing the name of the person or firm performing the service and the amount paid. However, the names and gross salaries of persons regularly employed by the entity created or the administrator or joint board specified in the agreement shall only be published annually. This subsection shall not apply if the entity or the administrator or joint board specified in the agreement includes public agencies from more than one state.

Sec. 8. ELECTRONIC SUBMISSION OF CONTRACTS - REPORT. The department of administrative services shall submit a report concerning steps necessary to provide for the electronic submission and retention of contracts by the department. The department shall submit the report, with its findings and recommendations, to the general assembly by December 1, 2006. The report shall identify any costs associated with implementing the recommendations of the report.

Sec. 9. IMPLEMENTATION PROVISION.

1. This division of this Act applies to service contracts entered into or renewed by an oversight agency, as those terms are defined in section 8F.2 as created in this division of this Act, on or<sup>2(2)</sup> after October 1, 2006.

2. The section of this division of this Act amending Code section 28E.6 is applicable on or<sup>3(3)</sup> after July 1, 2006.

## DIVISION II AUDITOR OF STATE DUTIES

Sec. 10. Section 11.36, Code 2005, is amended by striking the section and inserting in lieu thereof the following:  
11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

1. The auditor of state may, at the request of a department, review, during normal business hours upon reasonable notice of at least twenty-four hours, the audit working papers prepared by a certified public accountant covering the receipt and expenditure of state or federal funds provided by the department to any other entity to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements have been substantially complied with or believes a complete or partial reaudit is necessary based on the provisions of section 11.6, subsection 4, paragraph "a", or "b", the auditor of state shall notify the certified public accountant and the department of the actions the auditor of state believes are necessary to determine that the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist departments with actions to determine that the entity is in substantial compliance. Departments shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

2. The auditor of state may, at the request of a department, review the records covering the receipt and expenditure of state or federal funds provided by the department to any other entity which has not been audited by a certified public accountant to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements have been substantially complied with, the

auditor of state shall notify the department of the actions the auditor of state believes are necessary to determine that the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist a department with actions to determine that the entity is in substantial compliance. Departments shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

3. When, in the auditor of state's judgment, the auditor of state finds that sufficient information is available to demonstrate that an entity receiving state or federal funds from a department may not have substantially complied with the laws, rules, regulations, and contractual agreements governing those funds, the auditor of state shall notify the department providing those funds to the entity of the auditor of state's finding. The department shall cooperate with the auditor of state to establish actions to be taken to determine whether substantial compliance with those laws, rules, regulations, and contractual agreements has been achieved by the entity receiving the state or federal funds from the department. Departments shall reimburse the auditor of state for any actions taken by the auditor of state to determine whether the entity has substantially complied with the laws, rules, regulations, and contractual agreements governing the funds provided by the department for costs expended after the date the auditor of state notifies the department of an issue involving substantial compliance pursuant to the requirements of this subsection.

Sec. 11. NEW SECTION. 11.37 ACCESS TO CONFIDENTIAL INFORMATION.

1. The auditor of state, when conducting any audit or review required or permitted by this chapter, shall at all times have access to all information, records, instrumentalities, and properties used in the performance of the audited or reviewed entities' statutory duties or contractual responsibilities. All audited or reviewed entities shall cooperate with the auditor of state in the performance of the audit or review and make available the information, records, instrumentalities, and properties upon the request of the auditor of state.

2. If the information, records, instrumentalities, and properties sought by the auditor of state are required by law to be kept confidential, the auditor of state shall have access to the information, records, instrumentalities, and properties, but shall maintain the confidentiality of all such information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the auditor of state shall not have access to the income tax returns of individuals.

DIVISION III  
CITIZENS' AIDE DUTIES  
- DISCLOSURES OF  
INFORMATION

Sec. 12. Section 2C.9, subsection 1, Code 2005, is amended to read as follows:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency except as otherwise provided by this chapter. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

Sec. 13. NEW SECTION. 2C.11A SUBJECTS FOR INVESTIGATIONS - DISCLOSURES OF INFORMATION.

The office of citizens' aide shall investigate a complaint filed by an employee who is not a merit system employee or an employee covered by a collective bargaining agreement and who alleges that adverse employment action has been taken against the employee in violation of section 70A.28, subsection 2. A complaint filed pursuant to this section shall be made within thirty calendar days following the effective date of the adverse employment action. The citizens' aide shall investigate the matter and shall issue findings relative to the complaint in an expeditious manner.

Sec. 14. Section 70A.28, subsection 2, Code 2005, is amended to read as follows:

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, a disclosure of information to the office of citizens' aide, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

Sec. 15. Section 70A.28, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. Subsection 2 may also be enforced by an employee through an administrative action pursuant to the requirements of this subsection if the employee is not a merit system employee or an employee covered by a collective bargaining agreement. An employee eligible to pursue an administrative action pursuant to this subsection who is discharged, suspended, demoted, or otherwise reduced in pay and who believes the adverse employment action was taken as a result of the employee's disclosure of information that was authorized pursuant to subsection 2, may file an appeal of the adverse employment action with the public employment relations board within thirty calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of the citizens' aide pursuant to section 2C.11A. The findings issued by the citizens' aide may be introduced as evidence before the public employment relations board. The employee has the right to a hearing closed to the public, but may request a public hearing. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the person appointing the employee was in violation of subsection 2, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

DIVISION IV  
LEGISLATIVE OVERSIGHT

Sec. 16. Section 2.45, subsection 5, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The committee shall implement a systematic process of reviewing the reports required to be filed with the legislative services agency pursuant to section 8F.4.

Approved June 1, 2006

## Endnotes

### **1 (Popup - Popup)**

<sup>1</sup> See chapter 1182, §68 herein

### **2 (Popup - Popup)**

<sup>2</sup> The word "and" probably intended

### **3 (Popup - Popup)**

<sup>3</sup> The word "and" probably intended