

HOUSE BILL REPORT

E2SSB 5943

As Reported by House Committee On:
Early Learning & Children's Services

Title: An act relating to performance-based contracts for the provision of child welfare services.

Brief Description: Requiring performance-based contracts for the provision of child welfare services.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Stevens, Fairley, Regala, McAuliffe, Jarrett, Tom, Brandland, Kauffman, Kline, Delvin and Shin).

Brief History:

Committee Activity:

Early Learning & Children's Services: 3/24/09, 3/27/09 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House)**

- Directs the Department of Social and Health Services (DSHS) to implement performance-based contracts for the delivery of child welfare services in two demonstration sites beginning January 1, 2011.
- Establishes a Performance Contracting Oversight Committee to provide guidance, structure, and technical assistance, to develop criteria, and to select sites for implementation of the contracts.
- Requires an evaluation of the demonstration sites with recommendations to the Governor and the Legislature.
- Permits the Governor, based on the recommendations, to direct expansion, adjustment, or termination of the pilots.
- Directs the Caseload Forecast Council, the Office of Financial Management, and the DSHS to submit a proposal to the Legislature and the Governor by November 2010, with details necessary for reinvesting savings from the reduced foster care caseload into expanding the delivery of evidence-based prevention and intervention services in the two demonstration regions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

Majority Report: Do pass as amended. Signed by 4 members: Representatives Kagi, Chair; Roberts, Vice Chair; Goodman and Seaquist.

Minority Report: Without recommendation. Signed by 3 members: Representatives Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Angel.

Staff: Sydney Forrester (786-7120)

Background:

The Children's Administration (CA) within the Department of Social and Health Services (DSHS) provides child protection services and child welfare services to children and their families. The licensing of child-serving agencies and facilities as well as foster parents is provided by the Division of Licensed Resources (DLR) within the DSHS. The DLR licenses foster homes, child-placing agencies, group homes, youth shelters, and crisis residential centers.

Child protection services include the receipt, investigation, and initial response to allegations of child abuse and neglect and these functions are provided exclusively by the CA. Child welfare services include in-home services designed to prevent maltreatment; out-of-home care for children who cannot remain safely in their homes; case management; and adoption services. The Office of the Attorney General (AG) assists the CA in the legal case management of children's dependency cases and termination of parental rights cases. Historically, about 30 percent of child welfare services have been provided by licensed child-placing agencies with whom the CA contracts. In addition, the CA contracts with over 1,000 community-based providers to deliver specific prevention and intervention services. Because these contracts are on a fee-for-service basis, however, it is difficult to link the contractors' performance with other efforts to achieve the desired outcomes of the child welfare system. Child-placing agencies provide some case management services for children in their care, but the vast majority of child welfare case management work is provided by state employees.

Partners for Our Children (POC) is an independency public-private partnership aimed at improving Washington's child welfare system. The partnership consists of the DSHS, the University of Washington School of Social Work, and the regional philanthropic community.

Performance-based contracting is a technique for structuring all aspects of an acquisition around the purpose and outcome desired, as opposed to the process by which the work is to be performed. Proponents of this method of contracting assert that used appropriately, performance-based contracts encourage contractors to be innovative and to find cost-effective ways of delivering enhanced services. The rationale is that by shifting the focus from process to results, performance contracting also promise better outcomes.

Current provisions of the state's collective bargaining law allow for state agencies to contract for services traditionally provided by state employees under certain conditions, and allows state employees to form employee business units for the purpose of bidding on such contracts according to certain rules. Among other requirements, the state agency must have

determined the contract results in cost savings or efficiency improvements, and the state employee business unit must include in its bid the fully allocated costs of the function to be performed under the contract.

Summary of Amended Bill:

The CA is directed to implement two demonstration sites for delivering child welfare services through performance-based contracting with private non-profit agencies. One site will contract out all services, including case management and the other site will contract all services except case management. The contracts must be flexible enough to allow providers to offer adequate, appropriate, and relevant evidence-based and promising services. Child protective services and licensing will continue to be provided only by state employees.

The contracts shall be for the delivery of prevention, intervention, and remedial services to:

- families at risk of an out-of-home placement;
- families with a child in out-of-home care; and
- children who are in foster care and awaiting adoption.

Performance-based contracting for child welfare services is exempted from the existing competitive bid provisions for state employees covered under collective bargaining agreements. Similar competitive bid provisions are established for the contracting of child welfare services in the demonstration sites. The competitive bid provisions created by the bill differ from existing provisions by removing the requirement for the agency to demonstrate a cost savings up front and clarifying the elements to be included in a bid from an employee business unit. Any provision in a currently effective collective bargaining agreement that is contrary to or in conflict with the implementation of performance-based contracting is effective only until the agreement expires. Employees of the DSHS in the demonstration sites may form employee business units and submit competitive bids to provide the services under a performance-based contract.

A Performance Contracting Oversight Committee (Committee) is established to provide oversight, structure, guidance, and technical assistance for implementation. The Committee will establish criteria for the contracts and select the demonstration sites. The criteria to be used in developing the contracts must include:

- the services to be delivered under the contracts in order to assure providers have the flexibility to provide adequate, appropriate, and relevant evidence-based and promising services to individual children and families;
- the outcome measures to be used to evaluate performance under the contracts and the tools to be utilized to collect and report data on performance;
- the procedure for referring families to contracted providers, including clear protocols for continued communication or coordination between contracted providers, the CA, and Indian tribes in order to assure child safety and well-being and to promote the family's engagement;
- the rate structures of the contracts, including incentives and reinvestments, if any, as well as how performance will be linked to opportunities to bid on future contracts;

- a plan for communicating with the multiple child-serving systems within the demonstration sites regarding implementation of the contracts, including clear descriptions of new roles and functions of contracted case managers, where appropriate. The communication plan shall include a process for early and ongoing communications throughout the demonstration sites, including a process for establishing and maintaining communication with Indian tribes and organizations within the demonstration sites;
- methods to be used for monitoring contract performance, assuring quality of services, and ensuring compliance with state and federal laws including, but not limited to, requirements tied to federal funding for foster care and the Indian Child Welfare Act (ICWA), as well as the related guidelines and protocols established between the state and tribes;
- estimates of start-up costs, including a discussion of how those costs will be distributed under the contracts; and
- recommendations for the distribution of legal and financial risk and liability between the state and contracted partners.

Upon selections of the demonstration sites the Committee will notify the Governor and Legislature and will convene site teams to prepare phased transition plans. The Committee will provide periodic updates on development of transition plans. By December 1, 2010, the Committee will brief the Governor and the Legislature on the final plans. The phased implementation of the performance-based contracts will begin January 1, 2011. The Committee will provide quarterly updates to the Governor and the Legislature beginning March 31, 2011, on the progress of implementation and operations at demonstration sites.

Membership on the Committee must include representation from:

- private nonprofit agencies currently serving families referred by the CA, including a licensed child-placing agency;
- the Children's Administration;
- the Division of Licensed Resources;
- experts in performance-based contracting;
- the Office of the Attorney General;
- the Washington Federation of State Employees;
- the Office of the Family and Children's Ombudsman (OFCO);
- the Indian Policy Advisory Committee convened within the DSHS;
- the Superior Court Judges' Association;
- Partners for Our Children;
- the Legislature; and
- foster care providers.

Partners for Our Children will evaluate the implementation and operation of the demonstration sites and provide annual reports to the Governor and the Legislature beginning January 1, 2013. By December 31, 2013, the CA and POC shall provide the Governor and Legislature with recommendations for expansion, continued operation, or adjustment of the demonstration sites. Based on the recommendations, the Governor may direct expansion of the demonstration sites based on the same criteria used for demonstration sites or may direct the demonstrations to terminate.

One or more knowledgeable representatives from the Caseload Forecast Council, the Office of Financial Management, and the DSHS jointly must develop a proposal for consideration by the Legislature and the Governor allowing for the savings from reduced foster care caseloads in the demonstration regions to be reinvested in the demonstration regions to expand evidence-based and promising practices to prevent the need for or reduce the duration of foster care placements. The agencies shall brief the Governor and the Legislature by November 30, 2010.

Amended Bill Compared to Original Bill:

The striking amendment removes all provisions of the original bill. The amended bill directs the implementation of performance-based contracting in two demonstration sites beginning January 1, 2011, rather than mandating the contracting out of all child welfare services statewide by 2014. A Performance Contracting Oversight Committee is established to provide oversight, guidance, structure, and to develop the criteria for the contracts. The amended bill also requires development of a proposal for the reinvestment of savings from reduced foster care caseloads.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 28, 2009.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 3, relating to the convening of the Performance Contracting Oversight Committee, which takes effect immediately.

Staff Summary of Public Testimony:

(In support) Over the past 20 years the Legislature and others have tried multiple ways to get to improved outcomes. We have convened task forces and work groups and have even received help from the Boeing Lean Team. But the changes we want have not been achieved. Rather, we saw a spike in child deaths in 2008 and an increase in complaints against the agency over the past several years. The court recently indicated the level of care we provide children in foster care still does not meet constitutional standards. At the symposium convened last fall by the POC, we examined the history of child welfare services in Washington. Historically, almost all services were provided by the private sector. In the 1970s this began shifting to where today, the state provides nearly all case management for child welfare cases.

Other states and jurisdictions have used performance-based contracting and have seen improved results. Without flexible contracts that are focused on and clearly tied to outcomes, we cannot hold contractors accountable. The collective bargaining law allowing for the contracting out of jobs traditionally performed by state employees has been tried three times since 2001. Currently, the rules for this process are on appeal from a lawsuit so it would be unwise to allow those rules to delay the process intended by this bill. This bill is not meant to disrespect frontline caseworkers. It is meant to try and address the problems in a system

that is not designed to allow them to do their jobs. The concerns from the Indian tribes can be addressed by clarifying the intent that tribes be allowed to bid on the contracts.

This is an opportunity to improve outcomes for children by better partnership with the many human services agencies across the state. The private child welfare providers in Washington bring over 500 years of experience serving children and families. Each community-based agency brings unique resources to the children and families it serves. The breadth and scope of the nonprofit agencies, many of which are statewide, means they are up to the tasks and opportunities presented by this bill. We encourage thoughtful and continued discussion on this bill and commend efforts to seize the moment to improve the future.

(In support with concerns on striking amendment) About 50 percent of tribal children do not live on the reservations so the tribal child welfare system cannot serve all these children. It is important that the ICWA be included in the bill along with other federal laws the contractors will need to adhere to. The tribes and the state have worked hard to develop and implement protocols for communications and notice about tribal children and we would want to be sure these agreements are also honored by private contractors.

This is a very positive step to improving child welfare services. The Office of Public Defense (OPD) has been using performance contracts for some time. There is a great need for improved services to families and OPD attorneys are always trying to assist parents with accessing needed services. We would request the OPD be added to the Committee.

It will be important for the oversight process to include an upfront look at the requirements for obtaining a waiver from the federal government for the use of Title IV-E funds. It also will be important to pay close attention to tracking the current efforts to address racial disproportionality in the system and what will be needed to maintain consistency when private providers begin doing more case management work. We also have concerns that those private providers who are religion-based, as many of them are, will not be a good fit with gay and lesbian youth needing child welfare services. Performance-based contracts are not a magic bullet. We should be cautious because when the focus is on a target performance measure, the contractor may overlook the needs of children and families and not account for local differences. When you examine the success of performance-based contracting in other states, it is important to remember those systems are still working on getting it right, some after 14 years of trying.

(Neutral) The CA, as Washington's public child welfare agency, is continually evaluating and improving the quality of our services to the children and families we serve. Everyday 2,800 CA employees work to keep children safe, make families stronger, and improve the health of our communities. Many of our staff are professionals with advanced degrees who have dedicated their lives to helping others. They work hard, and by and large, they do excellent work. The proposed striking amendment acknowledges the work that our social workers perform by the measured approach to the department's transition to performance-based contracts, and by providing the opportunity for employees whose positions would be displaced with an opportunity to offer alternatives to the department contracting out for these services, and, if the alternatives are not workable, these employees can compete for the contracts.

The CA currently contracts out more than \$200 million worth of services each year. Much of the rest of our services budget is paid to foster parents who are licensed, but not contracted. The CA values the relationships we have with our service providers and we do see opportunities to further improve both the relationship and outcomes for children and families. Public child welfare is a very complicated business. The CA has been, and still is, engaged in numerous change and improvement initiatives in recent years. Some of these initiatives are of our own doing and some by outside forces. These initiatives have put considerable strain on the system.

The CA appreciates the thoughtful approach contained in the proposed striking amendment, which would include the selection of the two sites by the Committee that will consider the infrastructure and capacity of the sites and the willingness and ability of CA staff, community providers, and other stakeholders to effectively collaborate in the development and implementation of performance-based contracts for the delivery of child welfare services.

We also appreciate the provisions contained in this striker that identify the areas that will be the core responsibility of government, and a clear identification of the services to be provided by the "supervising agencies" in the two demonstration sites.

(Information only) Because Washington has waived sovereign immunity and because we have joint and several liability, it will be very important to consider these issues as contracts are negotiated. There are no clear answers, and both the state and private agencies will need to have a clear understanding of the allocation of risk and potential liability under performance-based contracts, particularly for children in out-of-home placements.

(With concerns on striking amendment) The Washington Federation of State Employees realize the intent is to improve outcomes. We were adamantly opposed to the bill as it passed the Senate. While the striking amendment has some improvements over the original bill, we remain strongly opposed to any change to collective bargaining law and find that portion of the bill and striking amendment very offensive and we would like to see sections 6 and 7 removed. We believe you already have authority to implement the demonstration sites. What really needs fixing is how workers are managed, not the case management done by caseworkers. These demonstration sites are testing the wrong thing.

We appreciate starting slowly with demonstration sites so we can see how this approach will work. The work that has been done under the ICWA should become part of the contracts developed under this bill. In the recommendations back to the Governor, the tribes should be recognized in a government-to-government relationship. Because of the Indian children who are at-risk in the system, the tribes would like to be part of those recommendations.

(With concerns) Because there is a push to return children home and a push to terminate parental rights, when these become the targets for performance, we are not making good decisions based on needs of the children. This entire process could cost an incredible amount of money and probably not achieve the outcomes we want. Agencies serving the very challenging cases are not going to be able to achieve the same outcomes as other agencies.

(Opposed to original bill) The Colville Tribes share the desire to improve services for children who are at risk of out-of-home placement as well as for their parents. We agree the system must be strengthened, but there is not consensus on what exactly needs improvement. Mandating the restructuring of the administration and delivery of child welfare through contracting alone will not improve services, nor will it enhance child safety and well-being unless there is commitment from all who are involved. Putting all eggs in the basket of performance-based contracting assumes the benefits of this approach are beyond question. Research does not support this assumption. The DSHS would have to be adequately staffed, trained, and coordinated to perform contract negotiation and monitoring. Additional funding would be required. The DSHS's monitoring of contracts cannot provide all the necessary checks to assure accountability and transparency.

We cannot expect market competition to guarantee service quality. There may be uneven competition and a monopoly could result. Distributive inequities in service provisions within and across different contracts have been observed in other states that have used this approach. Constitutional claims will arise if there is only a single contractor available in an area. Given the unfortunate role faith-based organizations have played in separating Indian children from their families and culture, the delegation of state authority to these entities, particularly the authority to petition for termination of parental rights, does not bode well for relations between these entities and tribes. The bill's assumption that speed, efficiency, and permanency are to be valued does not fit well with our culture. Termination of parental rights is contrary to our laws. We do not believe that the wholesale adoption of performance-based contracting as proposed by E2SSB 5943 will guarantee improvement, but rather that it may foster unintended and harmful consequences.

Child welfare needs to remain a public job. The OFCO and the Legislature already provide enough accountability. The bill does not adequately address prevention. The dependency process is not a benign alternative to preventing child abuse and neglect. What we need are more preventive and early services to prevent the need for foster care.

(Opposed to original bill and striking amendment) Social workers and foster parents have made a lot of progress and this bill would undo those relationships and there would be no accountability. If all foster parents are required to be licensed with private agencies, we want foster parents to have a voice in the decision-making processes. Foster parents' experiences with private agencies is not all positive. We doubt some of the private contractors will be able to meet the needs of all the children. Foster parents should have a choice about who they work with and who licenses them.

The problem is not about who is doing the work, it is about what is being done. Removing the current system from state employees to the private providers won't necessarily fix the problems we have. The CA should not be allowed to shop for contracts with providers.

Persons Testifying: (In support) Senator Hargrove, prime sponsor; Tom Rembiesa, Ruth Dykeman Children's Center; Jim Theofelis, Mockingbird Society; Laurie Lippold, Children's Home Society; and Gary Malkasian, Foster Care Justice Alliance.

(In support with concerns on striking amendment) Rebecca Peck, Samish Indian Nation; Mike Moran, Hoh, Samish, and Umatilla Tribes; Judge Kathryn Nelson, Superior Court Judges' Association; and Joanne Moore, Office of Public Defense.

(Neutral) Randy Hart, Department of Social and Health Services; Donna Christensen, Washington State Catholic Conference; and Janet St. Clair, Lutheran Community Services.

(Information only) Steve Hassett, Office of the Attorney General.

(With concerns on striking amendment) Dawn Vyvyan, Yakama Nation; and Alia Griffing, Washington Federation of State Employees.

(With concerns) Kasey Cote.

(Opposed to original bill) Miguel Perez-Gibson and Karen Condon, Confederated Tribes of the Colville Reservation; Judge Kathryn Nelson, Superior Court Judges' Association; and Terri Jones, Washington Federation of State Employees.

(Opposed to original bill and striking amendment) Mike and Beth Canfield, Foster Parent Association of Washington State; Mel Curtiss, Gateways for Youth and Families; Deborah Boudreau; and Susan Moore, Foster Parent Association of Washington State.

Persons Signed In To Testify But Not Testifying: None.