

HOUSE BILL REPORT

HB 2122

As Reported by House Committee On: Ways & Means

Title: An act relating to clarifying the intent of chapter 520, Laws of 2009, and chapter 291, Laws of 2010, by making retroactive and technical amendments with respect to child welfare services.

Brief Description: Clarifying the administration of child welfare services.

Sponsors: Representatives Kagi and Carlyle.

Brief History:

Committee Activity:

Ways & Means: 5/23/11 [DPS].

Brief Summary of Substitute Bill

- Provides that the Legislature expressly mandated the Department of Social and Health Services (DSHS) to contract for child welfare services and service coordination through a Request for Proposal and is not subject to competitive requirements.
- Requires that by December 1, 2011, the DSHS must enter into performance-based contracts with a substantially decreased number of entities from child welfare services and not renew current contracts with providers for child welfare services.
- Provides that the act applies both prospectively and retroactively to cover all actions taken by the DSHS to implement Second Substitute House Bill 2106 (2009) and Substitute Senate Bill 6832 (2010).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Hunter, Chair; Darneille, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle,

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.

Chandler, Cody, Dickerson, Haigh, Hinkle, Kagi, Parker, Ross, Schmick, Springer, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 7 members: Representatives Hasegawa, Vice Chair; Haler, Hudgins, Hunt, Kenney, Ormsby and Seaquist.

Staff: Melissa Palmer (786-7388) and Linda Merelle (786-7092).

Background:

In 2009 the Legislature passed Second Substitute House Bill 2106 (2SHB 2106). The Legislature directed the Department of Social and Health Services (DSHS) to convert its existing contracts for child welfare services to performance-based contracts by January 1, 2011. These contracts would link the contractors' performance to the level and timing of reimbursement for services. The provisions of the bill also directed the DSHS to decrease the number of contracts for child welfare services.

In 2010 the Legislature passed Substitute Senate Bill 6832 (SSB 6832), which allowed the DSHS to consolidate and convert its existing contracts for child welfare services to performance-based contracts until July 1, 2010. The consolidation and conversion was to be accomplished without jeopardizing federal funding.

On February 18, 2011, the DSHS issued a Request for Proposal (RFP) for performance-based contracts. Under the Personnel System Reform Act of 2002, state agencies may contract for services customarily and historically performed by state employees if the agency provides 90 days notice to the affected employees, who have 60 days to offer alternatives to the purchase of services by contract and then may compete for the contract if the agency does not accept the alternatives. If, however, the contracting is expressly mandated by the Legislature, then for those contracts the agency is not subject to these requirements. Under 2SHB 2106, the Legislature mandated that the DSHS convert to performance-based contracts, and the legislation declared that conversion was not subject to the competitive bidding process.

Upon issuance of the contract, the DSHS did not allow the affected employees to offer alternatives to the purchase of services by contract. On May 5, 2011, the Washington Federation of State Employees (WFSE) filed a motion for preliminary injunction in Thurston County Superior Court, asking the court to stop the DSHS from proceeding with the RFP. On May 13, 2011, the court issued an oral ruling granting the WFSE's motion for preliminary injunction, and enjoining the DSHS from proceeding with its solicitations of the February RFP. The court found that the scope of the RFP exceeded the Legislative mandate, and as a result, the issuance of the RFP was not exempt from the competitive bidding process. The injunction was ordered to remain in place until the DSHS complied with the requirements of the competitive bidding process.

Summary of Substitute Bill:

The contracting of services under RCW 74.13.360 and RCW 74.13.372 through a request for proposal are expressly mandated by the Legislature and are not subject to competitive bidding requirements. By December 1, 2011, the DSHS shall not renew its current contracts for child welfare services and must enter into performance-based contracts with a substantially decreased number of providers. The provisions of this bill apply both prospectively and retroactively to cover all actions taken by the DSHS to implement 2SHB 2106 (2009) and SSB 6832 (2010).

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the Legislature expressly mandated the DSHS to contract for service coordination component of case management and for other services through a RFP. The contracting for service coordination through the RFP process is exempt from the competitive bidding processes. The DSHS is not to renew its current contracts effective December 1, 2011, rather than July 1, 2011.

Appropriation: None.

Fiscal Note: Requested on May 22, 2011.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This legislation is not different from House Bill 2106 (HB 2106), but clarifies implementation and is consistent with the manner in which the DSHS has been acting through this process. State employees should be commended and recognized because their work is critical and complex. In no way are lead agencies in the RFP meant to replace state employees. They are meant to work hand-in-hand. In our system, a child can have radically different experiences depending on where they live in the state. There were two parts to HB 2106: Part 1 was to convert Children's Administration contracts to performance-based contracts.

Performance-based contracts with lead agencies will improve case outcomes. Currently, there are 10,000 transactions per month on existing contracts. Part 2 of HB 2106 is to develop two pilot sites. The intent of Phase 1 of HB 2106 was not to contract out state jobs. Clarification in this bill is appreciated, and performance-based contracting should not be viewed in a competitive way. This provides a tool kit for state employees. This will help achieve true outcomes to children in the state.

House Bill 2106 brought providers together like a community. Providers are proud of this work. A partnership is needed between the DSHS and community providers to allow the DSHS to focus on case management and reuniting families. There is confusion in the system. Families are making every effort, but phone calls are not answered and referrals are not being made. This bill will clarify concerns around HB 2106. Implementation of HB

2106 has never been seen by private partners as taking away case management from the state employees. House Bill 2122 supports the good work that went into HB 2106. As a small agency, working with a lead agency was a welcome opportunity. Racial disproportionality is an issue in Washington. It can be addressed through this legislation. Child welfare is a community problem and we need to address it.

There are concerns about this effort but kids should not have to wait for those to be worked out. The intent is to improve outcomes.

(Opposed) We are vehemently opposed to House Bill 2122 (HB 2122). Two years ago HB 2106 was passed by the Legislature. It allowed the DSHS to turn contracts into performance-based contracts, and develop two pilot sites that included contracting out case management. Contracting out of case management functions was included in the performance-based contracts RFP. The WSFE sued the DSHS over this, and the judge recently ruled in the WFSE's favor. The ruling said that transfer of duties under this RFP would be significant. It went on to say that HB 2106 undermines the pilot project. Before you today, HB 2122 undermines the pilot project. If HB 2122 goes forward, you are allowing case management projects to become the norm statewide.

Persons Testifying: (In support) Susan Dreyfus, Department of Social and Health Services; Byron Mannering; Bridget Collins; Sharon Osborn, Children's Home Society of Washington; Melanie Stewart, Pierce County Alliance; Cynthia Grayson, Association of African American Service Providers; Jen Estroff, Children's Alliance; and Tom Parker, Catholic Conference.

(Opposed) Greg Devereux, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.