

# HOUSE BILL REPORT

## ESSB 5921

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to social services.

**Brief Description:** Revising social services programs.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Regala and Carrell).

**Brief History:**

**Committee Activity:**

Ways & Means: 5/5/11, 5/11/11 [DPA].

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

- Temporarily suspends WorkFirst activity requirements for certain Temporary Assistance for Needy Families (TANF).
- Establishes a legislative task force to oversee a variety of activities, including the WorkFirst redesign, developing outcome, and accountability measures.
- Implements a 60-month time limit for families where a TANF benefit is provided on behalf of their child, subject to hardship extensions.
- Directs the Department of Social and Health Services (DSHS) to adopt rules establishing income eligibility for TANF benefits for a child, other than a foster child, who lives with a caregiver other than his or her parent, effective November 2011.
- Allows the DSHS to permanently disqualify families who have been terminated due to noncompliance three or more times.
- Directs the DSHS to implement competitive performance-based contracting for all WorkFirst work activities.
- Prohibits the use of electronic benefits cards for certain products and activities including cigarettes, liquor, tattoos, and adult entertainment.
- Directs businesses to disable the ability of an ATM or point-of-sale machine to accept electronic benefits cards at certain establishments and directs the

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*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.*

suspension of licenses for businesses that do not comply with these provisions.

- Specifies that as a condition of receiving a child care subsidy, an applicant must seek child support enforcement through the DSHS and authorizes the DSHS to provide child support enforcement but not retain the support collected on behalf of these families.
- Directs the Department of Early Learning (DEL) and the DSHS, in consultation with interested parties, to explore options to track child care attendance and to evaluate the current child care eligibility system.
- Directs the DSHS to develop strategies to increase financial literacy and opportunities for public assistance recipients to maintain bank accounts.
- Establishes an Office of Fraud and Accountability (OFA) within the DSHS and specifies the responsibilities of the OFA.
- Directs the State Auditor to appoint a fraud ombudsman to audit the work of the OFA within the DSHS and requires a report be submitted to the Legislature.
- Directs the DSHS to establish an employee incentive program pilot for employees who work directly with participants in the WorkFirst program.

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended. Signed by 24 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan and Wilcox.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Chandler and Ross.

**Staff:** Melissa Palmer (786-7388).

### **Background:**

*Temporary Assistance for Needy Families.* Temporary Assistance for Needy Families (TANF) is a federal block grant established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The TANF program replaced the Aid to Families with Dependent Children program, which had provided grants to poor families with children since the 1930s. States use TANF block grants to operate their own programs. State programs differ, but operate in accordance with the following purposes set forth in federal law:

- to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

- to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- to encourage the formation and maintenance of two-parent families.

The basic federal TANF block grant has been set at \$16.6 billion since it was established in 1996. States are required to spend their own funds on programs for needy families or face financial penalties; this is referred to as the maintenance of effort requirement. Federal law requires states to have a child support enforcement program that complies with federal requirements in order to receive federal funds for child support enforcement and Temporary Assistance for Needy Families (TANF) programs. As a condition of receiving TANF cash benefits, a family must assign its child support rights to the state during the months it receives TANF.

*WorkFirst.* Washington's TANF program, created in 1997, is called WorkFirst and is administered by the Department of Social and Health Services (DSHS). The TANF benefits are provided to two distinct populations in Washington: child-only cases and WorkFirst cases.

- *Child-only Cases:* The TANF grants are used for children and not adults in the home. Child-only cases have few eligibility requirements or follow-up checks, unless the child was placed in a home on a dependency order by the Children's Administration.
- *WorkFirst Cases:* Eligible adults receive various forms of assistance while they participate in activities that will help them connect to the workforce.

Parents with children who receive TANF are required to participate in activities designed to lead to employment. Following an initial assessment, each recipient signs an Individual Responsibility Plan which outlines the activities the recipient is required to attend if the recipient has adequate child care and transportation. The activities generally fall into categories of barrier removal (chemical dependency treatment, English as a Second Language etc.), job search, education and training, and community jobs.

When participants fail to meet WorkFirst participation requirements, they face sanctions or reduced grants. Participants who are out of compliance with requirements for four months are terminated, but may reapply. The TANF benefits are limited to 60 months in a lifetime for families that include an adult receiving TANF, unless the family is granted a hardship extension.

*WorkFirst Redesign.* The WorkFirst Subcabinet completed a re-examination of the WorkFirst program between July and November of 2010, and released its report to the Legislature on February 3, 2011. Some of the recommendations from the re-examination are:

- continue to provide a full child-only TANF grant for families with income up to 200 percent of the federal poverty level, and a reduced grant for those with higher incomes;
- revise rules regarding the amount of earned income that can be disregarded when determining participants' eligibility to receive TANF assistance;

- implement reasonable eligibility requirements and follow-up checks for child-only cases, for cases in which the child was not placed by the Children's Administration on a dependency order; and
- enhance participant accountability.

*Working Connections Child Care Program.* The Working Connections Child Care (WCCC) Program provides child care subsidies for families receiving TANF who are enrolled in approved activities, parents under age 22, not on TANF, who are enrolled in high school or a General Education Development program, and working families with incomes at or below 175 percent of the federal poverty level.

The Economic Services Administration within the DSHS has responsibility for verifying families' eligibility to receive WCCC subsidies. Under policies adopted by the Department of Early Learning (DEL), eligibility determinations for WCCC subsidies are effective for a period of up to six months, after which a reauthorization process is conducted to determine continued eligibility. Beginning in fiscal year 2011, families with children enrolled in the Early Childhood Education Assistance Program, Head Start, or Early Head Start, are authorized for 12 months of WCCC subsidies, unless a change in circumstances requires a reauthorization sooner.

Beginning March 1, 2011, families receiving TANF benefits and families of children with special needs receive priority access to the WCCC Program. The remaining families with incomes at 175 percent of the federal poverty guidelines or less can receive child care benefits on a "first come, first served" basis. The DSHS maintains a waiting list of potentially eligible families who apply for the WCCC Program.

*Cash Assistance.* The TANF benefits are provided to recipients through an electronic benefits transfer (EBT) card. The benefit amount is electronically added to the card each month. The EBT card can be used at ATMs and also at stores through a point-of-sale machine, similar to how debit cards are used. A TANF recipient is prohibited from using an EBT card or cash obtained with an EBT card to participate in a gambling activity, a parimutuel wagering activity, or to purchase lottery tickets. The DSHS must notify EBT cardholders that using an EBT card or cash obtained with an EBT card for any of the prohibited activities could result in legal proceedings and the forfeiture of all cash benefits.

*Fraud.* The Division of Fraud Investigations (DFI) within the DSHS is responsible for investigating allegations of fraud by applicants and recipients of public assistance programs and for investigating allegations of fraud by vendors with whom the DSHS has a contract to provide services to DSHS clients. The DFI partners with the Economic Services Administration Community Services Division to investigate current eligibility for TANF, Disability Lifeline, Basic Food, Medical, and Working Connections Child Care benefits. According to the DSHS material, during the 2009 fiscal year, the cost-avoidance associated with the Fraud Early Detection program was \$24.2 million. During the same period, the DFI Overpayment Unit recovered overpayments totaling \$1.8 million and the Criminal Investigations Program referred 98 cases to state and federal prosecutors.

## **Summary of Amended Bill:**

*WorkFirst Program.* During fiscal year 2012, the requirement that a TANF recipient participate in WorkFirst activities is suspended for families with a child under two years of age or two children under six years of age. In two-parent families, both parents cannot use the suspension during the same month. Beginning on July 1, 2012, the DSHS is to begin phasing in participation in WorkFirst activities, starting with recipients closest to reaching the 60-month time limit for receiving TANF. The DSHS is to accomplish the phase-in in such a way that a fairly equal number of required participants are returned to work activities each month until all those required to participate in work activities are participating by June 30, 2013. A recipient affected by the suspension may nevertheless volunteer to participate in the WorkFirst program during the suspension. If a participant volunteers, they must be provided the option to participate 16 or fewer hours per week.

A legislative task force (task force) overseeing the WorkFirst program is established. The President of the Senate appoints two members from each of the two largest caucuses in the Senate. The Speaker of the House of Representatives appoints two members from each of the two largest caucuses in the House. The Governor must appoint members representing the following state agencies:

- the Department of Social and Health Services;
- the Department of Early Learning;
- the Department of Commerce;
- the Employment Security Department;
- the Office of Financial Management; and
- the State Board for Community and Technical Colleges.

The task force is to oversee the redesign of the WorkFirst program; determine evidence-based outcome measures for the program; develop accountability measures for the WorkFirst recipients and the state agencies responsible for their progress towards self-sufficiency; oversee the implementation of a comprehensive family assessment, the use of an evaluation after completion of the assessment and the use of a predictive modeling tool; and improve the program's responsiveness to the needs of Washington businesses.

Beginning September 2011, the task force must meet quarterly to focus on the redesign of the program. It must issue its initial findings and recommendations no later than July 30, 2012. From July 1, 2012, to June 30, 2014, the task force will meet quarterly to provide ongoing review of the implementation of the redesign process; jointly decide how TANF state and federal dollars will be spent; make recommendations to the Governor and the Legislature regarding necessary changes to the program; receive regular reports from the partner agencies on the impact of program reductions; receive regular reports on the characteristics of families who have been unsuccessful on the WorkFirst program; review and make recommendations on the implementation of federal changes in TANF; and issue annual reports.

*Performance-Based Contracting.* On or before July 1, 2012, the DSHS must engage in competitive contracting using performance-based contracts to provide all WorkFirst work activities. The DSHS must use competitive performance-based contracting to select the vendors, including partner agencies, to provide services in the WorkFirst program. The

Washington State Institute for Public Policy is to evaluate the contracting practices and outcomes. The evaluation is to include annual progress reports to the Legislature and the Governor, and the first report is due June 30, 2012. The DSHS is to work with the task force to develop appropriate outcomes by which WorkFirst contractors' performance will be evaluated. The outcomes must be developed no later than November 30, 2011.

*Temporary Assistance for Needy Families.* Effective November 2011, the DSHS must establish income eligibility rules for those persons receiving TANF benefits for a child, other than a foster child, for whom the person is the caregiver. The DSHS is to establish a sliding scale benefit standard for a child when the caregiver's income is above 200 percent but below 300 percent of the federal poverty level based on family size.

The DSHS must implement a time limit of 60 months for families where a parent receives TANF benefits on behalf of their child, subject to existing hardship extensions policies. Unless otherwise exempt, no TANF recipient can receive benefits for more than 60 months. The DSHS may permanently disqualify families where the parent has been placed in noncompliance sanction three or more times.

The DSHS is to develop strategies to increase financial literacy opportunities for public assistance recipients to maintain bank accounts.

*Working Connections Child Care Program.* As a condition of receiving a WCCC subsidy, the applicant must seek child support enforcement services from the DSHS, unless there is good cause not to. The payment for the WCCC constitutes an authorization for the DSHS to provide the WCCC recipient with child support services. The DSHS is authorized to collect but not retain child support payments.

A WCCC recipient is eligible to receive the subsidy for six months before having to recertify his or her income eligibility. The six-month recertification period applies only if the WCCC Program entries are capped.

The DSHS and the DEL, in consultation with interested individuals and organizations, must explore different options to track subsidized child care attendance including methods using a landline or cellular telephone, a computer, a point-of-sale system, or some combination of these methods and report their recommendations to the Legislature by December 31, 2011. Each department's recommendations must address any implementation issues and timelines. The DEL and the DSHS are to assume a January 2013 implementation date. The Legislature must review the recommendations and authorize implementation of those recommendations. The method that is chosen must interface smoothly with the current and future payment systems for subsidized child care payments.

The DSHS and the DEL, in consultation with interested individuals and organizations, must conduct an assessment of the current child care eligibility system and develop recommendations to improve the accuracy, efficiency, and responsiveness of the system. The result of the assessment is to be reported to the Legislature by December 31, 2011.

*Fraud.*

A TANF recipient is prohibited from using an EBT card or cash obtained with an EBT card for the following:

- to participate in or purchase activities located in a tattoo, body piercing, or body art shop;
- to purchase any alcoholic beverage;
- to purchase cigarettes or tobacco products; or
- to purchase or participate in any activity in establishments where persons under the age of 18 are not permitted.

On or before January 1, 2012, the businesses listed below must disable the ability of the ATMs and point-of-sale machines located on their business premises to accept EBT cards:

- taverns;
- beer/wine specialty stores;
- nightclubs;
- contract liquor stores;
- bail bond agencies;
- gambling establishments;
- tattoo, body piercing, or body art shops;
- adult entertainment venues with performances that contain erotic material where minors under the age of 18 are prohibited; and
- any establishments where persons under the age of 18 are not permitted.

Only the recipient or the recipient's authorized representative may use an EBT card or EBT card benefits and the use may only be for the respective benefit purposes. The recipient may not sell, or attempt to sell, exchange, or donate an EBT card or any benefits to any other person or entity.

The use of an EBT card for prohibited purposes is a civil infraction. Any of the listed business establishments that do not comply with the requirement to disable ATM and point-of-sale machines on their business premises from accepting EBT cards will have its business license suspended until it complies with the requirements.

The Office of Fraud and Accountability (OFA) is established in the DSHS to detect, investigate, and prosecute any act that constitutes fraud or abuse in the public assistance programs administered by the DSHS except for Medicaid and other medical programs. The OFA Director is to report directly to the DSHS Secretary (Secretary) and is to ensure that each citizen or employee complaint, law enforcement complaint, and agency referral is assessed and fully investigated and referred for prosecution when there is substantial evidence of wrongdoing.

The OFA is to conduct independent investigations into allegations of fraud and abuse, recommend policies, procedures, and best practices designed to detect and prevent fraud and abuse, analyze cost effective, best practice alternatives to the current cash benefit delivery system, and use best practices to determine the appropriate use and deployment of investigative resources.

By December 31, 2011, the OFA is to report to the Legislature on the development of the office, identification of any barriers to meeting the stated goals of the OFA, and

recommendations for improvement to the system and laws related to the prevention, detection, and prosecution of fraud and abuse in public assistance programs.

The Secretary, or the Secretary's designee, has authority to administer oaths, take testimony, and issue subpoenas. The OFA is to have prompt access to all individuals, records, data, reports, audits, reviews, and other material available to the departments of Revenue, Labor and Industries, Early Learning, Licensing, Employment Security, and any other government entity that can be used to help facilitate an investigation. Information gathered is to remain confidential as required by state or federal law.

The State Auditor is to appoint a fraud ombudsman to oversee and annually audit the work of the OFA. The ombudsman is to review the fraud investigative work done by the OFA including cases filed with local prosecuting authorities. The ombudsman has authority to investigate citizen complaints regarding investigations that the OFA conducted or declined to conduct. The ombudsman has access to the OFA frontline staff for purposes of interviews and evaluations. The ombudsman must submit a report summarizing its auditing activities to the appropriate committees of the Legislature by November 30, 2012, and biennially thereafter.

*Employee Incentive Pilot.* The DSHS is to establish an employee incentive program pilot for those employees who work directly with WorkFirst participants. The pilot is to provide for eight hours of annual leave, in addition to the amount the employee normally accrues, for those employees who assist participants in meeting certain outcomes as established by the DSHS. The outcomes established must be significant for the participant and can include achieving unsubsidized employment or the removal of a significant barrier to achieving unsubsidized employment. The DSHS is to report to the Legislature by January 1, 2013, on the implementation results of the pilot.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

In the amended bill the suspension of participation in WorkFirst activities for families is modified to apply to families with a child under age 2 or two children under age 6. In a two parent family, both parents cannot use the suspension during the same month. The legislative task force composition, the role of the task force, and the frequency of task force meetings was modified. The expiration date for the task force was removed. The directive to engage in competitive contracting for WorkFirst work activities is modified to delete an express declaration that all contracts under Chapter 74.08A are exempt from Chapter 41.06 regarding contracted services.

The DSHS is required, rather than authorized, to adopt rules for kinship child-only grants effective November 1, 2011. The DSHS is authorized to permanently disqualify parents who have been terminated due to WorkFirst noncompliance sanction three or more times since March 1, 2007. The amended bill specifies that effective September 1, 2011, a 60-month time limit applies to child-only cases in which a parent is receiving a grant on behalf of the child and that the DSHS is to apply the same hardship extensions to child-only cases as it does for WorkFirst cases.



The definition of work activities was amended to include volunteering and parent education. The definition of abuse was modified to mean any intentional use of public assistance benefits that constitute a violation of state statute or regulation.

The DEL and the DSHS, in consultation with interested individuals and organizations, are to conduct an assessment of the current subsidized child care eligibility determination system. The DSHS, in consultation with its electronic benefits contractor and interested persons and organizations, is to develop strategies to increase financial literacy and increase opportunities for public assistance recipients to maintain bank accounts.

The use of public assistance for a prohibited purpose is a class 4 civil infraction for the first violation and a class 3 civil infraction for the second violation, instead of a gross misdemeanor. The DSHS is to assign a protective payee after two violations, rather than one.

The ombudsman in the State Auditor's Office has the authority to investigate citizen complaints regarding fraud and abuse investigations conducted by or declined to be conducted by the Office of Fraud and Accountability.

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**Appropriation:** None.

**Fiscal Note:** Requested on April 29, 2011.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect on July 1, 2011, except for section 6, pertaining to time limits for TANF benefits, which takes effect September 1, 2011.

**Staff Summary of Public Testimony:**

(In support) The WorkFirst program is an important program that impacts many families. We have seen successes in this program. There have been many tough choices made to date. We are proposing a different way of operating. This includes a suspension from participating. It also includes provisions to make sure that assistance is not inappropriately used.

Since welfare reform was enacted, welfare checks and food stamps have changed form. The benefits are now provided on EBT cards. There have been EBT cards offered for sale online. We have seen news stories that showed about \$2 million of the cash portions of the cards were used at gambling casinos and adult entertainment establishments. These places have nothing to do with children or maintaining a household. When we are struggling to keep a program going, we cannot condone theft. We want to focus on helping the people who are in need. This bill will give some additional teeth to the prosecution of fraud and increase of the number of prosecutions.

We support the fraud elements of this bill. We would recommend language specifying WCCC eligibility be maintained at 175 percent of federal poverty level (FPL) as a part of the bill. We have a highly motivated WorkFirst population with about 40 percent of recipients

participating in WorkFirst activities. We expect that with participation and excess maintenance of effort funds, Washington will continue to meet the federal requirements.

We strongly support the child care provisions of this bill. Child care is necessary to maintain a stable workforce. The provision extending eligibility from three months to six months is fantastic. We hope that in the future the year-long eligibility period may be extended to all of the WCCC. We support a more efficient child care tracking system. We hope that the Legislature demands a thorough investigation by the Department of Early Learning and the DSHS regarding tracking systems.

We need to have a program that does a good job up front in the process, to ensure that the families are receiving the appropriate services to remove barriers and put them on a path to employment. While we do not like the means testing for child-only kinship cases, it is something that we understand likely needs to happen. We do appreciate the sliding scale provision for families with incomes between 200 percent of the FPL to 300 percent of the FPL.

This is a bipartisan effort and there is something to love and something to hate for just about everyone. Clients are appreciative of many provisions including, suspension in participation and the provisions regarding Supplemental Security Income. There should be legislative oversight of the WorkFirst program. The balance of the bill is in the fraud provisions. There is an important distinction between misuse of TANF funds and actual fraud, which is a prosecutable offense. Fraud should be addressed.

The suspension of the WorkFirst requirements allows parents to put the important job of parenting first. Increasing funding for fraud at a time when we are cutting 11,500 children off of TANF due to the time limits is hard to stomach. We have members who are struggling in ways that few can imagine. There is one group missing from the task force, that group is TANF recipients themselves.

The State Auditor supports this legislation and commends the Senators for their joint work on this measure. The State Auditor finds it is critical to ensure tax dollars are spent effectively and efficiently. This bill clarifies legislative intent and performance expectations. On establishing the Office of Fraud and Accountability (OFA), the State Auditor feels strongly that it is wrong to fund this with Initiative 900 funding for performance audit funds. The State Auditor feels that dollars recovered by the OFA should more than pay for that office.

(In support with concerns) We generally support many provisions in this legislation; however, we are opposed to provisions that would make misuse of public benefits a gross misdemeanor. While we may not condone those activities, we do not think it should be a prosecutable crime, subject to a gross misdemeanor. It is legal and lawful to the rest of the population to purchase items listed in the bill. The DSHS already has civil penalties. Without the criminal provisions, we would support this bill. We are concerned about fraud and the inappropriate use of electronic benefit transfer cards.

(With concerns) The Washington Federation of State Employees is concerned with section 3, subsection 1 of this legislation. It is our understanding that the direction is to convert all current contracts to performance-based contracts. If this section is about converting all

existing contracts, the language pertaining to collective bargaining is not necessary. The inclusion of this language would mean that in the future, the agency would not have shown it is cheaper or more competitive when it contracts out for services. This language should be removed.

(Other) There are many areas of agreement in this legislation; however, there are some provisions with which the DSHS has concerns. The legislation creates a legislative task force. We have demonstrated our desire to work together and do not believe a task force is necessary. As an alternative to a fraud ombudsman in the State Auditor's Office, the report provision could be included in the DSHS's Office of Fraud and Accountability section. The State Auditor's Office could be asked to include fraud elements in their annual audits.

**Persons Testifying:** (In support) Senator Regala, prime sponsor; Senator Carrell; Lonnie Johns Brown, National Organization for Women; Lani Todd, Service Employees International Union Local 925; Laurie Lippold, Children's Home Society; Robin Zukoski, Columbia Legal Services; Linda Long, Office of the State Auditor; and Monica Peabody, Parents Organizing for Welfare and Economic Rights.

(In support with concerns) Tony Lee, Solid Ground.

(With concerns) Alia Griffing, Washington Federation of State Employees.

(Other) Tracy Guerin, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying:** None.