

# SENATE BILL REPORT

## ESSB 5921

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As Amended by House, May 13, 2011

**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: 4/13/11, 4/14/11 [DPS].

**First Special Session:** Passed Senate: 4/27/11, 44-0.

Passed House: 5/13/11, 70-10.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5921 be substituted therefor, and the substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller, Schoesler and Tom.

**Staff:** Jennifer Strus (786-7316) and Michael Bezanson (786-7449)

**Background:** Temporary Assistance for Needy Families (TANF). TANF is a federal block grant established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 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;
- end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- 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

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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.*

- encourage the formation and maintenance of two-parent families.

The basic 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 (or MOE) requirement.

WorkFirst. Washington's WorkFirst program was created by the state Legislature in 1997 following the passage of the federal Personal Responsibility and Work Act of 1996 and is administered by the Department of Social and Health Services (DSHS). Parents with children who receive TANF are required to participate in activities designed to lead to employment in return for the cash assistance they receive. 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.

In addition to WorkFirst clients, TANF grants are also provided to qualified non-relative and relative caregivers who are providing personal care to children not residing with their parents.

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.

WorkFirst Redesign. The WorkFirst Subcabinet (Subcabinet) chartered a re-examination of the WorkFirst program between July and November of 2010, and released its report to the Legislature on February 3, 2011. The Subcabinet found that WorkFirst, as currently designed, is not financially sustainable within available funding. The report includes a comprehensive set of time-series recommendations to redesign the program so it can be sustained for needy families in the future. Some recommendations include:

- continue to provide a full 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.

Cash Assistance. 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. 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 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 DSHS has a contract to provide services to DSHS clients. 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 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 Engrossed Substitute Bill: WorkFirst Program.** During fiscal year 2012, the requirement that WorkFirst activity requirements be fulfilled by TANF recipients is suspended for one and two parent families or relatives personally providing care for a child under the age of six years. Beginning on July 1, 2012, DSHS is to begin phasing in recipients required to participate in WorkFirst back into work activity starting with those recipients closest to reaching the 60 month time limit for receiving TANF. 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 is reached by June 30, 2013. A recipient affected by the suspension may nevertheless volunteer to participate in the WorkFirst program during the suspension.

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

- DSHS;
- Department of Early Learning (DEL);
- 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; establish strategies most likely to result in the achievement of outcome measures and the recipient's progress towards self-sufficiency; develop accountability measures for the WorkFirst recipients and the state agencies responsible for their progress towards self-sufficiency; develop and oversee the use of a comprehensive family assessment, the use of an evaluation after completion of the assessment and the use of a predictive modeling tool; improve the program's responsiveness to the needs of Washington businesses; and support families in developing skills that lead to a stable family environment and reduce intergenerational poverty.

Between July 1, 2011, and June 30, 2012, the task force must meet monthly to focus on the redesign of the program. It is to 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. The task force expires on June 30, 2014.

Performance-Based Contracting. On or before July 1, 2012, DSHS must engage in competitive contracting using performance-based contracts to provide all WorkFirst work activities. 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.

DSHS is to work with the Subcabinet to develop appropriate outcomes by which WorkFirst contractors' performance will be evaluated. The outcomes must be developed no later than November 30, 2011.

TANF. DSHS may institute income eligibility rules for those persons receiving TANF benefits for a child, other than a foster child, for whom the person is the caregiver. 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.

Undocumented parents who receive TANF on behalf of their biological children who are U.S. citizens are ineligible to receive benefits for more than 60 months.

Unless otherwise exempt, no TANF recipient can receive benefits for more than 60 months.

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

A WCCC recipient is eligible to receive the subsidy for up to 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.

DSHS and DEL 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 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.

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 certain locations.

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, but only for the point-of-sale machines used for liquor purchases;
- 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 a prohibited use is a gross misdemeanor. 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 DSHS to detect, investigate, and prosecute any act that constitutes fraud or abuse in the public assistance programs administered by DSHS except for Medicaid and other medical programs. The OFA Director is to report directly to the DSHS 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.

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, OFA is to report to the Legislature on the development of the office, identification of any barriers to meeting the stated goals of 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.

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 OFA. The ombudsman is to review the fraud investigative work done by OFA including cases filed with local prosecuting authorities. The ombudsman has authority to investigate citizen complaints alleging fraud or abuse in any public assistance program. The ombudsman has access to 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. 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 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. DSHS is to report to the Legislature by January 1, 2013, on the implementation results of the pilot.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill:** PRO: We are supportive of many elements in the bill especially the temporary suspension of WorkFirst and the redesign of the WorkFirst program. Even with the suspension, 30-40 percent of TANF recipients will keep looking for work. The provision requiring that the eligibility limit for WCCC should be 175 percent of the federal poverty level should be included in the bill. This is a balanced bill, and the redesign portion is a critical piece of it. Having TANF recipients participating in activities that count rather than counting activities is really what WorkFirst should be about. We disagree with the portion of the bill that would impose criminal sanctions on recipients for using their EBT card to buy legal items like cigarettes. It is a good idea to have upfront

family assessments for TANF recipients so that the department can better match services for the families with their actual needs. The focus on bringing the executive and legislative branches together to work on the redesign of WorkFirst is a very good idea.

CON: The concern with the WorkFirst suspension is that this move is swinging us back to the old Aid to Families with Dependent Children (AFDC) days - WorkFirst was the big difference between AFDC and TANF. Regardless of the federal work participation requirements; the state must maintain the WorkFirst work participation for recipients. The suspension of WorkFirst for two parent families makes no sense. There is no need to suspend WorkFirst to make improvements to the program. The provisions regarding the work of the WorkFirst subcommittee are too prescriptive. There is no need to have a fraud ombudsman in addition to OFA.

OTHER: Contract liquor stores have debit/credit machines that they use just for the purchase of alcohol and those that they use for the purchase of other items that they sell. We would like the bill to be amended to reflect that only the debit/credit machines that are used for liquor purchases need to be disabled from accepting EBT cards. TANF recipients should be included in the group that will work on the redesign process. The previous cuts to TANF should be restored. The cuts have been very devastating on recipients, particularly on those who no longer receive the \$100 child support pass through.

**Persons Testifying:** PRO: Lonnie Johns-Brown, Welfare Advocates Group; Laurie Lippold, Children's Home Society; Robin Zukoski, Columbia Legal Services.

CON: Susan Dreyfus, DSHS.

OTHER: Alia Griffing, WFSE; Monica Peabody, Parents organizing for Welfare and Economic Rights; Michael Transue, Contract Liquor Store Managers; Jen Estroff, Children's Alliance; Kat Ford, former TANF recipient.

**House Amendment(s):** Establishes a legislative executive WorkFirst oversight task force to oversee a variety of activities, including the WorkFirst redesign, developing outcome, and accountability measures. Allows DSHS to permanently disqualify families who have been terminated due to noncompliance three or more times. Directs DSHS to develop strategies to increase financial literacy and opportunities for public assistance recipients to maintain bank accounts to require, in contracting for benefit card services, that surcharges and transaction fees be disclosed. Temporarily suspends work activity requirements for recipients with one child under the age of 2 or two or more children under the age of 6. Both parents in a two parent family cannot use the suspension during the same month.