

HOUSE BILL REPORT

HB 1815

As Reported by House Committee On:
Civil Rights & Judiciary
Appropriations

Title: An act relating to establishing a statewide policy supporting Washington state's economy and immigrants' role in the workplace.

Brief Description: Establishing a statewide policy supporting Washington state's economy and immigrants' role in the workplace.

Sponsors: Representatives Ortiz-Self, Chandler, Thai, Lekanoff, Ryu, Valdez, Pettigrew, Stonier, Gregerson, Wylie, Ormsby, Goodman, Pollet, Doglio, Peterson, Morris, Riccelli, Fey, Appleton, Frame, Jinkins, Davis, Walen, Orwall, Stanford, Dolan, Hudgins, Santos, Springer, Macri and Morgan.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/13/19, 2/20/19 [DPS];

Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub CRJ)].

Brief Summary of Second Substitute Bill

- Establishes the Keep Washington Working Act.
- Creates the Keep Washington Working statewide workgroup.
- Requires the Attorney General to publish model policies for limiting immigration enforcement to the fullest extent possible consistent with state and federal laws for certain entities.
- Prohibits certain actions by law enforcement agencies and the Department of Corrections.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

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.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

Interaction Between Immigration and Customs Enforcement and State and Local Agencies. United States Immigration and Customs Enforcement (ICE) enforces federal laws governing border control, customs, trade, and immigration. Immigration and Customs Enforcement was created in 2003 through a merger of the investigative and interior enforcement elements of the former United States Customs Service and the Immigration and Naturalization Service, and is under the jurisdiction of the United States Department of Homeland Security.

The federal 287(g) program allows ICE to enter into formal agreements with a state or local law enforcement entity to delegate immigration enforcement authority to those entities within their jurisdictions. State and local entities participating in the program are authorized to interview individuals to ascertain their immigration status; check ICE databases for information on individuals; issue immigration detainers to hold individuals until ICE takes custody; and enter data into ICE's database and case management system.

Summary of Substitute Bill:

Statewide Workgroup.

The Keep Washington Working statewide workgroup is created within the Department of Commerce. The workgroup must:

- consist of 11 statewide representatives from labor, immigrant rights advocacy groups, and business groups and government agencies;
- develop strategies, conduct research, and make recommendations on issues relating to Washington's economy and immigrants' role in the workplace; and
- provide status reports to the Department of Commerce.

The Department of Commerce is required to provide an annual report on the workgroup to the Legislature.

Attorney General Model Policies and Guidance.

The Attorney General (AG), in consultation with stakeholders, must publish model policies for limiting immigration enforcement at public schools, government-operated health facilities, courthouses, and shelters to ensure access to services for Washington residents, regardless of immigration or citizenship status. All public schools, government-operated health facilities, and courthouses must adopt the necessary changes consistent with the model policies or notify the AG that it will not adopt the changes and its reasons. Other organizations providing services related to physical or mental health and wellness, education, or access to justice are encouraged to adopt the model policy. Adoption and implementation of the model policies must be consistent with federal and state law.

The AG, in consultation with stakeholders, must publish guidance related to databases operated by law enforcement agencies. Databases are to be governed in a manner that limits the availability of information for the purpose of immigration enforcement. The law enforcement agencies must adopt the necessary changes to database governance policies consistent with that guidance or notify the AG that it will not adopt the changes and its reasons. Adoption and implementation of the model policies must be consistent with federal and state law.

Immigration Enforcement.

Except as provided by law, in noncriminal matters, law enforcement agencies may not disclose nonpublic personal information about an individual to immigration authorities or give immigration authorities access to interview individuals about a noncriminal matter while the person is in custody. These provisions are not applicable to individuals in the physical custody of the Department of Corrections (DOC).

Except as provided by law, individuals in state or local custody, or in the physical custody of the DOC must:

- not be denied services and other benefits on the basis of the presence of an immigration detainer, hold, notification request, or civil immigration warrant, unless it is necessary for placement or classification purposes;
- not be taken or held in custody solely for the purpose of determining immigration status or based solely on an immigration warrant or hold request; and
- be informed of their right to decline an interview by immigration authorities.

Law enforcement agencies and school resource officers must not accept language services from federal immigration authorities.

Law enforcement agencies and school resource officers may not:

- inquire into or collect information about an individual's immigration or citizenship status, or place of birth; or
- provide information pursuant to notification requests from federal immigration authorities for the purpose of civil immigration enforcement, except as required by law.

The DOC is exempt from these provisions.

Certain state agencies must review their confidentiality policies and make any necessary changes to ensure that information collected from individuals is limited to information necessary to perform agency duties and is not used or disclosed for other purposes. These policies must make clear that public employees may not condition services or request information or proof regarding a person's immigration or citizenship status, or place of birth, except as required by law. Final policies must be published.

Except for de-identified or aggregate data, no state agency or department, including law enforcement, may use funds or resources to investigate or assist in the enforcement of any registration or surveillance programs or any other laws that target Washington residents solely on the basis of a protected class, or immigration or citizenship status.

Restrictions placed on the collection, use, or disclosure of information by a state agency or department are not applicable if the collection, use, or disclosure of the information is required to comply with state and federal law; in response to a court order; is necessary to perform nonimmigration enforcement-related agency or department duties or functions; or is required to comply with any requirement necessary to maintain funding.

The state or local agency or agent may send and receive information from immigration authorities and exchange information about a person's citizenship or immigration status with any other government agency in accordance with federal law.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- changes consular notification provisions to be in compliance with international treaty laws;
- exempts the Department of Corrections (DOC) from certain provisions, namely:
 - the DOC may inquire into or collect information about an individual's immigration or citizenship status, or place of birth;
 - the DOC may provide information to federal immigration authorities for the purposes of civil immigration enforcement; and
 - the DOC may give federal immigration authorities access to interview an individual about a noncriminal matter while the individual is in the DOC custody;
- removes a provision requiring the DOC to obtain written consent to early release for the purpose of deportation from an individual in the DOC custody; and
- makes technical changes.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) Businesses have been expressing concerns about the impact of the national conversation around immigration on the labor workforce in Washington. Employers want to ensure a stable workforce in an effort to keep the state economy strong.

The bill delineates state and federal responsibility as it relates to immigration enforcement. The Tenth Amendment gives states and local governments the right to refuse to help enforce federal programs against its own residents. This bill recognizes that local law enforcement cannot effectively do its job of keeping the peace if it is also trying to enforce federal immigration law. Immigrant communities are impacted by the reality and perception that

local law enforcement does the work of federal civil immigration authorities. This bill allows local law enforcement to do their job by keeping communities safe.

Domestic violence and sexual assault survivors who are immigrants have an increased fear of reporting crime and seeking services and help from law enforcement. The choice is coming forward and contacting law enforcement, while risking the chance that contact with law enforcement may trigger an immigration response.

The Department of Corrections (DOC) is exempt from several parts of the bill so that it continues to have the tools it needs to protect the public.

Translation services for law enforcement is not in the scope of federal immigration enforcement's responsibility. Law enforcement needs to be fully funded to have its own translators. Using immigration authorities as a translation service is inappropriate and a misuse of taxpayer dollars.

The Attorney General is required to come up with a model policy for schools, hospitals, and religious organizations to clarify what appropriate actions may be taken to make sure that every resident in Washington feels safe and respected.

It is important that students feel safe. All educators, including school resource officers, are there to teach and help students be successful, not to enforce civil federal immigration laws. Successful involvement in school is a first step towards success in engagement for all students. Students living in fear cannot learn. This bill sends a message to students and families that there will not be enforcement of civil immigration laws in schools.

(Opposed) There is a strong need for changes in laws related to immigration. These changes should be taken up by our members of Congress, where the issue of immigration is regulated. It is important to differentiate civil versus criminal behavior. A person's civil immigration status is not as relevant to a local law enforcement agency as whether there is information related to a criminal investigation. There is a concern that complying with the bill would cause the state to violate other state and federal laws and international treaties.

(Other) This bill has significant impact on the daily operations of local law enforcement officers.

The individuals under the jurisdiction of the DOC have been sentenced by a court for serious and violent felonies. There need to be some exemptions for the DOC to address public safety concerns. These exemptions would allow the DOC to communicate with federal immigration authorities regarding individuals in the DOC custody and allow the DOC to make classification decisions that impact minimum security, camp, and work release placements.

Persons Testifying: (In support) Representative Ortiz-Self, prime sponsor; Tim Warden-Hertz, Northwest Immigrant Rights Project; Alex Hur, OneAmerica; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Enoka Herat, American Civil Liberties Union of Washington; Bernal Baca, Washington State Labor Council and American Federation of Labor and Congress of Industrial Organizations; Lucinda Young, Washington Education Association; and Julia Gorton, Washington Hospitality Association.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Michael Transue, Washington Fraternal Order of Police; and Alex MacBain, Washington Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele, Sutherland and Ybarra.

Staff: Meghan Morris (786-7119).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

The state and local law enforcement restriction on inquiries into an individual's immigration or citizenship status, or place of birth, is modified to allow for inquiries if there is a connection between the information and a criminal investigation.

The Attorney General, in consultation with stakeholders, must publish model policies, guidance, and training recommendations aimed at ensuring that state and local law enforcement duties are carried out in a manner that limits engagement with federal immigration authorities for the purpose of immigration enforcement, within the bounds of federal and state laws.

The Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs are removed as required stakeholders for the Attorney General's model policy development work.

Limits for school resource officers apply when the resource officers are acting in their official capacity as school resource officers.

The bill is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Section 3 of House Bill 1815 creates the Keep Washington Working statewide workgroup, which would have a positive impact on the state because those entering the workforce in Washington could become business owners and generate sales and business and occupation taxes. Nine out of 10 owners of industries and businesses start out as entry-level workers in these types of positions.

There was a concern that the bill might threaten federal funding, but it will not. An early presidential executive order that threatened all federal funds, including Medicaid and Medicare, was found unconstitutional and has been permanently enjoined. Similarly, the federal government has tethered two main federal grants to immigration conditions, but those conditions have also been struck down by the courts and enjoined. The bill does not violate federal law 1373, another immigration condition, but four federal courts have found that that law violates the Tenth Amendment and is unconstitutional. As a sovereign state, Washington has the right to opt out of enforcing federal programs against its own residents. Ultimately, every immigration-related provision has been struck down by the courts, and no jurisdiction has been stripped of federal funds related to immigration enforcement. This bill will improve public safety, strengthen the state's economy, and help protect the rights and dignity of all Washington residents.

(Opposed) The Washington Association of Sheriffs and Police Chiefs (Association) was opposed to the substitute bill that passed out of the policy committee, but this bill is now in its second substitute format and the Association supports the bill. The association had concerns about the bill's impacts on public safety and the Association's ability to enforce the provisions of criminal law. It is important that all Washington residents feel comfortable reaching out to law enforcement, especially when they are victims of crime, but the association must also preserve its ability to enforce criminal law and partner with criminal law enforcement agencies.

Persons Testifying: (In support) Julia Gorton, Washington Hospitality Association; and Enoka Herat, American Civil Liberties Union of Washington.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.