

HOUSE BILL REPORT

ESSB 5186

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to requiring antidiscrimination clauses in public contracting.

Brief Description: Requiring antidiscrimination clauses in public contracting.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Liias, Billig, Dhingra, Hunt, Keiser, Lovick, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C.).

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/22/23, 3/29/23 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Requires that every state contract and subcontract for public works or for goods or services entered into on or after January 1, 2024, include a nondiscrimination clause.
- Requires the Department of Enterprise Services in collaboration with the Office of Minority and Women's Business Enterprises, the Office of Equity, and the Human Rights Commission to develop standard template contract provisions for public works and goods and services contracts that meet the requirements under the act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

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

Staff: Desiree Omli (786-7105).

Background:

State Goods and Services Contracts.

The Department of Enterprise Services (DES) establishes state policies, standards, and procedures regarding the procurement of goods and services by all state agencies and the judicial branch. The DES also has authority to enter into master contracts which is a statewide program to help governments and certain nonprofits buy goods and services through statewide contracts and cooperative purchasing agreements. All contracts subject to the statute regulating the procurement of goods and services must be entered into pursuant to competitive solicitation, with several enumerated exceptions. Any award of a contract must be to the lowest responsive and responsible bidder that meets specified criteria under procurement laws. Civil service laws require that when contracting out for services, agencies and institutions of higher education ensure firms adhere to the Washington Laws Against Discrimination (WLAD).

Public Works.

Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Public works does not include ordinary maintenance or contracts relating to a stadium and exhibition center site that is under the jurisdiction of a public stadium authority. With some exceptions, public agencies are required to award public works contracts to the lowest responsive and responsible bidder. Alternative public works contracting procedures are available for design-build contracts, general contractor or construction manager contracts, and job order contracts where contracts are awarded primarily on qualifications, with some price consideration.

The Washington Law Against Discrimination.

The WLAD establishes a right to be free from discrimination based on race; color; creed; national origin; sexual orientation; sex; veteran or military status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal. This right applies to the following areas but is not limited to these areas: employment; places of public resort, accommodation, or amusement; commerce; real estate, credit, and insurance transactions; and engagement in commerce. The WLAD also prohibits the state from discriminating against, or granting preferential treatment to, any individual group on the basis of race, sex, color, ethnicity, or national origin in the operation of public contracting.

Summary of Amended Bill:

Every state contract and subcontract for public works or for goods or services entered into on or after January 1, 2024, must include a nondiscrimination clause which prohibits a

contractor or subcontractor from discriminating on the basis of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, disability, or the use of a service animal, in:

- hiring, unless based upon a bona fide occupational qualification;
- discharging or barring a person from employment;
- compensation;
- other terms or conditions of employment, except that employers may segregate washrooms or locker facilities on the basis of sex and in situations where the Human Rights Commission (Commission) finds that the employment practice is appropriate; and
- printing or circulating any statement, advertisement, or publication, using any form of application for employment, or making any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination unless based upon a bona fide occupational qualification. Advertising in a foreign language is authorized.

Under the nondiscrimination clause, contractors and subcontractors must provide a written notice of their obligations under the clause to labor organizations with which they have a collective bargaining or other agreement. The DES in collaboration with the Office of Minority and Women's Business Enterprise's, the Office of Equity, and the Commission must develop standard template contract provisions for public works and goods and services contracts that meets the requirements under the act.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill removes reference to prospective contractors from the list of entities subject to the nondiscrimination clause requirement. The amended bill also requires the DES, in collaboration with the other specified entities, to develop standard template nondiscrimination provisions, rather than a template contract, for public works contracts and goods and services contracts that meet the requirements under the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Since 2006 we have had comprehensive law against discrimination. However, the ability to enforce that law is more complicated. A person must first file a complaint

with the Commission and there is often a backlog in getting through the filed complaints. This policy provides another avenue to enforce the state's antidiscrimination laws by requiring that state contractors also comply with the state's comprehensive nondiscrimination laws.

Washingtonians still face discrimination at work based on legally protected classes. For example, data from the University of California Los Angeles shows that in the last year, one in 10 LGBTQ workers experienced discrimination at work and about one in 10 LGBTQ employees of color have reported being fired or not hired because of their sexual orientation or gender identity. In addition, 46 percent of LGBTQ workers have experienced unfair treatment over the course of the year.

(Opposed) None.

Persons Testifying: Senator Marko Liias, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.