

SENATE BILL REPORT

SB 5186

As of February 20, 2023

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

Brief Description: Requiring antidiscrimination clauses in public contracting.

Sponsors: Senators Liias, Billig, Dhingra, Hunt, Keiser, Lovick, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/16/23, 2/14/23 [DPS-WM, w/oRec].
Ways & Means: 2/20/23.

Brief Summary of First Substitute Bill

- Requires state contracts for public works, and goods or services to contain nondiscrimination clauses.
- Applies the Washington Law Against Discrimination to state contractors and subcontractors for public works and goods and services.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5186 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Schoesler.

Staff: Jarrett Sacks (786-7448)

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.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Trevor Press (786-7446)

Background: The Washington Law Against Discrimination. The Washington Law Against Discrimination (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 employment; places of public resort, accommodation, or amusement; commerce; and real estate, credit, and insurance transactions. The Human Rights Commission (Commission) administers WLAD and investigates complaints made by persons alleging unfair practices in violation of the law.

State Goods and Services Contracts. The Department of Enterprise Services (DES) manages procurement of goods and services for state agencies. State agencies covered by DES's procurement policies include all executive and judicial branches of state government including offices, divisions, boards, commissions, higher education institutions, and correctional and other institutions. DES may enter into agreements with other state agencies that delegate certain authority to those agencies to purchase their own goods and services.

Public Works. Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest responsive bid. Alternative public works contracting procedures that award contracts on factors other than low bid exist on certain types of public works.

Summary of Bill (First Substitute): After January 1, 2024, any contractor or prospective contractor, including subcontractors, with the state for public works or for goods or services is subject to WLAD. Contractors that were previously excluded from WLAD that are subject to WLAD under the bill are not liable for actions occurring prior to January 1, 2024. However, they are liable for actions commencing prior to January 1, 2024 that continue on or after January 1, 2024.

Every state contract and subcontract for public works or for goods or services must contain a nondiscrimination clause prohibiting discrimination on the basis of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. The nondiscrimination clause must contain a provision requiring contractors and subcontractors to give written notice of their obligations under the clause to labor organizations with which they have a collective bargaining agreement.

DES, in collaboration with the Office of Minority and Women's Business Enterprises, Office of Equity, and the Commission must develop a standard template for public works

and goods and services contracts to meet the requirements of the bill.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Applies, beginning January 1, 2024, WLAD to state contractors and prospective contractors.
- Limits the liability for contractors previously excluded under WLAD to actions occurring after January 1, 2024.
- Requires DES, in collaboration with the Office of Minority and Women’s Business Enterprises, the Office of Equity, and the Commission to develop a standard template for contracts.
- Removes provisions requiring the Commission to develop rules and regulations to implement the bill.
- Changes a cross-reference regarding the bases the non-discrimination clauses must use.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: State law does not always translate to actions on the ground, so the bill uses state contracts to ensure state law is enforced. There is still discrimination in the workplace. The law exists, but there is a lack of full enforcement tools for it. The bill is following the model of other states and gives the law one more set of teeth.

OTHER: Much of the industry uses non-discrimination clauses, but some things in the bill are broad with no definitions or limitations. It is unclear why the part requiring disclosure to the labor union is necessary. There is no limit or detail on what sanctions are allowed and leaves a lot up to rulemaking.

Persons Testifying (Labor & Commerce): PRO: Senator Marko Lias, Prime Sponsor.

OTHER: Jerry VanderWood, Associated General Contractors (AGC).

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): None.

Persons Testifying (Ways & Means): No one.

Persons Signed In To Testify But Not Testifying (Ways & Means): PRO: Erin Frasier,
WA State Building & Construction Trades Council.