

HOUSE BILL REPORT

HB 3121

As Reported by House Committee On:
Early Learning & Children's Services

Title: An act relating to the implementation of delivery of child welfare services through performance-based contracts.

Brief Description: Concerning child welfare services.

Sponsors: Representative Kagi; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

Early Learning & Children's Services: 1/28/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Adds a representative of foster youth to the Child Welfare Transformation Design Committee (TDC).
- Expands the role of the TDC.
- Extends the deadline by which the Department of Social and Health Services (DSHS) must convert existing contracts for child welfare services to performance-based contracts from January 1, 2011, to July 1, 2011.
- Extends the deadline by which the DSHS must complete implementation of two demonstration sites.
- Extends various reporting and evaluation dates linked to the implementation of performance-based contracts and the two demonstration sites.
- Specifies that contracting for child welfare services must be accomplished in a manner that does not jeopardize receipt of federal funding.
- Makes certain technical and clarifying changes.
- Specifies preferences for contract bidding if the demonstration sites are expanded or continued by the Governor.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Assistant Ranking Minority Member; Goodman and Seaquist.

Minority Report: Do not pass. Signed by 2 members: Representatives Haler, Ranking Minority Member; Angel.

Staff: Sydney Forrester (786-7120).

Background:

In 2009 the Legislature enacted Second Substitute House Bill 2106 (SSHB 2106), which, among other things, established a Child Welfare Transformation Design Committee (TDC) to select two demonstration sites and develop performance measures and criteria for contracting of child welfare case management services. The TDC includes representation from the following entities:

- the Office of the Governor;
- the Office of the Attorney General;
- the Children's Administration within the Department of Social and Health Services (DSHS) ;
- the Office of the Family and Children's Ombudsman;
- the Indian Policy Advisory Committee convened by DSHS;
- the Racial Disproportionality Advisory Committee convened by the DSHS;
- the bargaining representative for the largest number of Children's Administration's employees;
- nationally recognized experts in performance-based contracting;
- private agencies providing child welfare services in Washington;
- parents with experience in the dependency process;
- Partners for Our Children (POC);
- superior court judges; and
- foster parents.

Since its initial meeting, the TDC has included a former foster youth in its deliberations. Because the representation of foster youth is not listed in statute, however, the representative of foster youth has not had formal voting rights in the TDC's decision making. In its most recent and second quarterly report to the Legislative Children's Oversight Committee and the Governor, the TDC recommended the Legislature amend the statute to include a representative of foster youth on the TDC, and that the representative have full voting rights.

The TDC is charged with selecting two demonstration sites and developing the transition plan under which the DSHS will contract for all child welfare in the demonstration sites, including case management functions.

Based upon an evaluation by the Washington State Institute for Public Policy (WSIPP), the Governor must, by June 1, 2015, determine whether to expand or terminate the demonstration sites. The Governor must inform the Legislature of the decision within seven days of making the determination. Regardless of the Governor's decision regarding

expansion or termination of the demonstration sites, the DSHS must continue use of performance-based contracts to the extent that it contracts for child welfare services.

Performance-Based Contracting.

The DSHS contracts with multiple private providers for the purchase of various child welfare services, including individual and group counseling or therapy; group care and behavioral health services; assessment and treatment for chemical dependence, domestic violence, or mental health needs; reunification services; and adoption services. These contracts are fee-for-service contracts with both nonprofit and for-profit entities. The SSHB 2106 required the DSHS to consolidate and convert existing contracts to performance-based contracts by January 1, 2011. The TDC has recommended this date be extended to July 1, 2011, to allow sufficient time for the DSHS and contracted providers to consolidate and convert contracts.

All child welfare case management services are provided by the DSHS only. Federal law requires that states maintain care and placement authority of youth for whom child welfare funding is being received and spent. Implementation of the demonstration sites will require the DSHS to contract with supervising agencies for case management services.

Summary of Substitute Bill:

The date by which the DSHS must convert all contracts for the purchase of child welfare services to performance-based contracts is extended from January 1, 2011, to July 1, 2011. The date by which the DSHS will complete implementation of the demonstration sites is extended from July 1, 2012, to July 1, 2013. The corresponding dates for the TDC's reports and the WSIPP's reports and its evaluation of the demonstration sites are extended. The date by which the Governor must determine whether to expand or terminate the demonstration sites is extended from July 1, 2015, to July 1, 2016.

The membership of the TDC is expanded to include a representative of foster youth who will be selected by the co-chairs of the TDC. The representative may be a youth currently in foster care, or a recent alumnus.

If the demonstration sites are expanded or continued beyond July 1, 2016, state employees, along with private nonprofit organizations and Indian tribes, are to be preferred contractors over private, for-profit entities.

The TDC is directed, when selecting the demonstration sites and developing the transition plan for the demonstration sites, to maintain the care and placement authority of the DSHS at a level that does not jeopardize federal funding eligibility and that also provides flexibility and will maximize federal funding opportunities. The DSHS also is directed to take similar steps when implementing performance-based contracts.

The definition of *supervising agency* is clarified to be consistent with the intent of the demonstration sites. The authority of Indian tribes to provide their own child welfare programs is expressly recognized.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

1. Removes the requirement for the TDC to develop recommendations for a competitive bid process for state employees.
2. Establishes a due date of January 1, 2011, for delivery of the TDC's transition plan to the Governor and the Legislature.
3. Corrects alumni (plural) to alumnus (singular).
4. Expressly authorizes the use of a random case assignment model in the demonstration sites.
5. Clarifies the phase two contracting process with supervising agencies if a random assignment process is used.
6. Shifts the following dates relating to the statewide implementation of performance-based contracts in phase one and implementation of the two demonstration sites in phase two:
 - a. the date by which the TDC must deliver to the Legislative Children's Oversight Committee its recommendation for achieving full implementation of phase one and phase two, from June 1, 2010, to October 15, 2010;
 - b. the deadline for final implementation of the demonstration sites in phase two, from July 1, 2012, to July 1, 2013;
 - c. the dates for semi-annual reporting by the TDC to coincide with the shift of the final implementation date for the phase two demonstration sites;
 - d. the section expiration date from July 1, 2015, to July 1, 2016, to reflect the shift in the implementation date for the two demonstration sites;
 - e. the date for the WSIPP reports, to reflect the extension of the final implementation dates for performance-based contracts and demonstration sites; and
 - f. the date by which the Governor must decide whether to expand or terminate the demonstration sites from July 1, 2015, to July 1, 2016, to reflect the extended final implementation date for the demonstration sites and the later date for the WSIPP report.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 2, 2010.

Effective Date of Substitute 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) The DSHS Children's Administration supports this bill because it recognizes those elements of SSHB 2106 that the Governor identified last spring as needing further work. It also includes some of the changes that were recommended by the TDC. The work of the TDC and the DSHS's implementation of performance-based contracts is a big

undertaking. The processes that the DSHS has implemented, both in concert with the TDC as well as internally and externally, have been very collaborative and are moving along well. With respect to additional recommendations of the TDC, it is expected that these recommendations could be included in this bill from the Governor's office. There have been a lot of excellent recommendations coming forward and the work of the TDC is not standing in the way of these ideas. The DSHS is meeting with providers around the state and with the TDC on a regular basis so that the performance-based contracting is done collaboratively. The addition of the foster youth to the TDC is an excellent idea.

(In support with amendment) When SSHB 2106 was enacted last year, representation from the Office of Public Defense (OPD) was not included in the TDC and we believe this was a mistake and an oversight. The OPD has participated as much as possible with the TDC process, but we would like the opportunity to participate officially.

(Opposed) The Washington Federation of State Employees (WFSE) opposes House Bill 3121. Last year we testified in this committee about how the privatization of child welfare services is offensive to our members because it provides a specific exemption to the competitive contract bidding process in statute. This bill is an outright offensive attempt to circumvent the current collective bargaining law by tasking the TDC with creating the process for state employees to compete for contracts if the demonstration sites are expanded. This is not language that we take lightly. The WFSE has grave concerns about putting our members' jobs in the hands of the TDC that has already been seriously undermined.

This bill addresses a number of concerns raised by other entities, in particular around the Tribes and the need to preserve Title IV-E funding eligibility. There are glaring omissions, however, by leaving out elements recommended by the TDC for legislative change, including a rotating case assignment process and extending the timeline for phase two and the implementation of the demonstration sites. For an agency request bill to not contain a recommendation that the TDC put forth is a little concerning to us. It is not appropriate to direct the TDC to completely reinvent a plan for a competitive bid process for state employees. There is no deadline for completion and no indication of what entity would have authority to approve that plan. What the Legislature is not being told, is that the DSHS is already moving ahead with the contracting out of case management functions in two learning labs. This was done without notice and without bargaining with us. We do not have a high confidence level about implementing any new process that would be developed.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Denise Revels Robinson, Department of Social and Health Services, Children's Administration; and Laurie Lippold, Children's Home Society.

(In support with amendment) Sophia Byrd McSherry, Office of Public Defense.

(Opposed) Alia Griffing and Jeanine Livingston, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.