

SENATE BILL REPORT

SB 5605

As Reported by Senate Committee On:
Early Learning & K-12 Education, February 14, 2017
Ways & Means, April 19, 2017

Title: An act relating to aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

Brief Description: Aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

Sponsors: Senators Walsh and Billig; by request of Superintendent of Public Instruction.

Brief History:

Committee Activity: Early Learning & K-12 Education: 2/07/17, 2/14/17 [DPS-WM].
Ways & Means: 2/20/17, 4/19/17 [DPS(EDU), w/oRec].

Brief Summary of First Substitute Bill

- Allows individuals who have completed background checks with the Office of Superintendent of Public Instruction (OSPI) to submit these results to the Department of Early Learning (DEL) to meet its background check requirements.
- Requires a record check for employees who will have regularly scheduled unsupervised access to developmentally disabled persons and allows school districts and other educational entities to request background checks for prospective volunteers.
- Provides OSPI authority to charge fees for background checks and establishes a criminal background check account.
- Allows OSPI to consider founded reports of child abuse or neglect when determining whether an individual lacks good moral character or personal fitness.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 5605 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Zeiger, Chair; Fain, Vice Chair; Rolfes, Ranking Minority Member; Billig, Mullet, Rivers and Warnick.

Staff: Ailey Kato (786-7434)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5605 as recommended by Committee on Early Learning & K-12 Education be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Pedersen, Schoesler, Warnick and Zeiger.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden.

Staff: Jeffrey Mitchell (786-7438)

Background: OSPI Record Check Requirements. School districts, educational service districts (ESDs), the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children must request a record check through the Washington State Patrol (WSP) and the Federal Bureau of Investigation (FBI).

OSPI must adopt rules to implement record checks. These rules must include written procedures for reviewing record check information and limiting access to the record check database to only those individuals processing record check information.

Certificate Revocation or Suspension. A K-12 employee's certificate may be revoked or suspended for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit.

DEL Record Check Requirements. DEL may consider past involvement of child protective services or law enforcement agencies when determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services. In making this determination, these individuals must be fingerprinted and have their criminal history record checked.

DSHS Reports. Upon receipt of a report concerning the possible occurrence of abuse or neglect, a law enforcement agency or DSHS must investigate and provide a report. Founded means it is more likely than not that child abuse or neglect did occur based on available information. Unfounded means that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for DSHS to determine whether the alleged child abuse did or did not occur. Screened-out report means a report of alleged child abuse or neglect that DSHS has determined does not rise to the level

of a credible report of abuse or neglect and is not referred for investigation. Inconclusive means the determination following an investigation by DSHS, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

Summary of Bill (First Substitute): OSPI Record Check Requirements. School districts, ESDs, the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to developmentally disabled persons must request a record check through WSP and FBI.

The requesting entity may, instead of must, provide a copy of the record report to the applicant at the applicant's request.

School districts, ESDs, the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, charter schools, tribal schools, and their contractors may perform record checks for any prospective volunteer who will have regularly scheduled unsupervised access to children under 18 years of age or developmentally disabled persons under circumstances where access will or may involve the following:

- groups of five or fewer children under 12 years of age;
- groups of three or fewer children between 12 and 18 years of age; or
- developmentally disabled persons.

For the purposes of performing record checks for prospective volunteers, unsupervised means not in the presence of:

- another employee or volunteer from the same school or organization; or
- any relative or guardian of any of the children or developmentally disabled persons to which the prospective employee or volunteer has access during the course of their involvement with the school or organization.

OSPI's record check rules must include written procedures that apply to charter schools and state tribal-compact schools.

Character and Fitness. An employee's certificate may be revoked or suspended for lack of good moral character or personal fitness, rather than immorality. In determining whether an individual lacks good moral character or personal fitness, OSPI may consider founded reports of child abuse or neglect made by DSHS.

DSHS must furnish OSPI with reports of founded findings of child abuse or neglect in a timely fashion, but must not disclose screened-out, inconclusive, or unfounded reports. If DSHS inadvertently furnishes OSPI with a screened-out, inconclusive, or unfounded report, OSPI must:

- not consider the information contained in the reports for any purpose;
- notify DSHS of the violation;
- notify the subject of the reports at his or her last known address of the DSHS violation; and
- destroy the improperly disclosed reports.

OSPI must use fingerprint criminal history record check information solely for the purposes of determining eligibility for a certificate.

K-12 Criminal Background Check Fees. The cost of record checks must include the fees established by WSP and the FBI for the criminal history background checks; a fee paid to OSPI for the cost of administering its record check duties; and other applicable fees for obtaining the fingerprints. PESB rules must specify that a criminal history record check is at the applicant's expense.

The K-12 Criminal Background Check Account is created in the custody of the State Treasurer. All record check fees collected by OSPI must be deposited in the account. Expenditures from the account may be made only for the purpose of administering OSPI record check duties. Only the Superintendent of Public Instruction or designee may authorize expenditures from the account. The account is subject to allotment procedures, but an appropriation is not required for expenditures.

Sharing Information with DEL. Individuals, who have completed a fingerprint background check as required by OSPI and have been continuously employed by the same school district or ESD, can meet DEL record check requirements by providing a true and accurate copy of their WSP and FBI background check report results to DEL. A school district or ESD may also provide an affidavit to DEL that the individual has completed a record check and has been authorized to work. DEL may require that additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (First Substitute):

- States that record check fees are paid to the Washington State Patrol, FBI, and OSPI but does not specify who must pay these fees.
- Specifies that OSPI may consider founded reports of child abuse or neglect furnished by DSHS.
- Provides that DSHS must not disclose screened-out, inconclusive, or unfounded reports to OSPI and if DSHS does, OSPI must:
 - not consider the information contained in the reports for any purpose;
 - notify DSHS of the violation;
 - notify the subject of the reports at his or her last known address of DSHS's violation; and
 - destroy the improperly disclosed reports.
- States that DEL may require that additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks.

Appropriation: None.

Fiscal Note: Available. OFM requested ten-year cost projection pursuant to I-960.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Early Learning & K-12 Education): *The committee recommended a different version of the bill than what was heard.* PRO: This bill clarifies and streamlines background check requirements and helps make sure children are in safe environments. The Early Start Act requires ECEAP employees to get fingerprint checks. Many ECEAP employees work at schools and have already gotten an OSPI fingerprint check. This bill allows OSPI and DEL to work together. The bill also aligns DEL's and OSPI's background check requirements as it relates to volunteers, child protective services findings, and fees. This bill gives school districts the option to conduct fingerprint checks on volunteers, which checks criminal convictions in this state and other states. It is not clear whether the cost of these checks would go to the school or volunteer.

OTHER: Current law allows school districts and employees to negotiate who pays for the record checks. This bill says that the employee must pay for the records check, and this should still be left up to collective bargaining. There is also a question of who pays the OSPI and DEL reciprocity administrative fee. Screened out records are ones that are not investigated because the accusations lack merit. Unfounded records are determined by a preponderance standard, which means that it is more likely than not that the accusation lacks merit. These records can be held up to 35 years and may result from false allegations. There is concern about using these records for determining whether a person has good moral character or personal fitness.

Persons Testifying (Early Learning & K-12 Education): PRO: Senator Maureen Walsh, Prime Sponsor; Dierk Meierbachtol, Office of Superintendent of Public Instruction; Bob Butts, Office of Superintendent of Public Instruction; Catherine Slagel, Office of Superintendent of Public Instruction.

OTHER: Michael Althauser, Columbia Legal Services; Doug Nelson, PSE/SEIU 1948.

Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education): 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): No one.