

SENATE BILL REPORT

ESSB 5284

As Passed Senate, February 18, 2021

Title: An act relating to eliminating subminimum wage certificates for persons with disabilities.

Brief Description: Eliminating subminimum wage certificates for persons with disabilities.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Randall, Billig, Carlyle, Das, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Robinson, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 2/01/21, 2/08/21 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 2/18/21, 42-7.

Brief Summary of Engrossed First Substitute Bill

- Prohibits the Washington Department of Labor and Industries (L&I) from issuing subminimum wage special certificates after July 31, 2023.
- Requires L&I to notify the employer, employee, and other individuals of specific information related to special certificates prior to expiration.
- Provides a process by which special certificates may be extended under certain conditions.
- Mandates the Washington Department of Social and Health Services (DSHS) to continue providing services and technical assistance to individuals with disabilities while prioritizing certificate expirations.
- Requires L&I and DSHS to submit an annual report containing specific information related to individuals employed under special certificates until all remaining certificates have expired.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

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.

Majority Report: That Substitute Senate Bill No. 5284 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Honeyford.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Minimum Wage. Employers covered under the Washington Minimum Wage Act are required to pay employees age 18 or older at least the minimum hourly wage. The Washington Department of Labor and Industries (L&I) calculates the state minimum wage. The minimum wage is calculated by using a formula tied to the federal Consumer Price Index for urban wage earners and clerical workers. L&I must calculate the minimum wage annually. The current state minimum wage is \$13.69 per hour. Some local jurisdictions have higher minimum wage rates, such as the cities of Seattle and SeaTac.

Special Certificates. L&I has authority to issue special certificates to employers allowing them to pay wages lower than the minimum wage for a fixed period of time. Employers with special certificates can pay sub-minimum wages to learners, student workers, apprentices, and individuals with a disability. If an employer wishes to pay employees less than the federal minimum wage, they must also apply for permission through the U.S. Department of Labor. Washington State agencies may no longer pay a subminimum wage to workers with a disability and previous subminimum wage certificates issued to state agencies expired on June 30, 2020.

State Services. The Washington Department of Social and Health Services (DSHS) provides certain services to individuals with a disability, such as employment services, family counseling and support, health services and equipment, legal services, residential services and support, and transportation services.

Summary of Engrossed First Substitute Bill: Special Certificates. After July 31, 2023, the director of L&I (director) may not issue any new special certificates to employers. The director may extend the duration of a special certificate once and for one year, if:

- the employee is eligible for services provided to individuals with a disability; and
- the employer requests the extension.

Provisions authorizing the director to issue special certificates for employment of individuals with a disability are amended to align with the special certificate process.

Notice. The director must provide written notice to the employer, the employee, and the

employee's legal guardian of the following information:

- the special certificate expiration date;
- the special certificate extension option; and
- DSHS contact information relating to services offered.

State Services. Subject to federal law and federal funding requirements, DSHS must prioritize and provide technical assistance to individuals transitioning out of subminimum wage employment. Subject to appropriation, DSHS must work with contracted providers to expand employment and day services to individuals leaving subminimum wage employment. DSHS must provide individuals leaving subminimum wage employment and their legal representatives with written and verbal notification informing them of all available waiver services and processes for the individual to identify, transition to, and request any of the available waiver services.

Reporting. By October 1, 2021, and annually until all special certificates have expired, L&I and DSHS' Developmental Disabilities Administration and Division of Vocational Rehabilitation must report the following information to the Legislature:

- the number of special certificates remaining;
- the number of individuals with a special certificate who contacted DSHS for technical assistance or services;
- the number of individuals still employed after special certificate expiration; and
- any reduction in waiver service hours for individuals who leave special certificate employment on or after the act's effective date.

Appropriation: None.

Fiscal Note: Available.

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: *The committee recommended a different version of the bill than what was heard.* PRO: This is a historical issue and it is time to fix it. People with disabilities are not less than or sub, but equals. It is time to end pay discrimination based on a diagnosis and not the bottom line. Every individual in the community deserves to make minimum wage and live their life to the fullest. Issues of minimum wage can be related to compliance under the Americans with Disabilities Act and Medicaid. Under this bill, disabled individuals can contribute to society, purchase items for themselves, and retain autonomy. Our subminimum wage law dates back to 1959 and this is a civil rights issue. It is unjust to pay individuals with disabilities less than the minimum wage and it marginalizes our neighbors. Washington has a strong legacy of leading and this is another way to continue to show how much we value each and every one of our residents. It is best to end the practice now and transition the individuals to minimum wage

or better. Many positive values come with gainful employment. The minimum wage should be just that, a minimum. Workers with disabilities should get more than the minimum wage and this bill supports the equity of workers with disabilities.

CON: There is no consensus here and the people without voices are not being heard. We need to ensure all services are accessible to all people. There are concerns with the collateral damage of this bill. There has been negative impact on individuals transitioning to minimum wage employment. There are no tools to measure this or how the changes affect workers with disabilities and their quality of life.

OTHER: This bill eliminates a carefully thought-out program from L&I to give workers experience. A stakeholder group should be developed and report back to the Legislature.

Persons Testifying: PRO: Senator Emily Randall, Prime Sponsor; Anthony Nash Self-Advocate, Board Member of The Arc of Washington, DDC, DRW, SAIL, NCSA, Staff at People First; Kyle Matheson; Ivanova Smith, Self Advocates in Leadership; Robert Wardell; Luke Tolley, The Arc of Spokane; Adrienne Stuart, Washington State Developmental Disabilities Council; Carrie Morehouse, Work Opportunities; Sandy Alciati; Joe Kenda, Washington State Labor Council; Demas Nesterenko, SEIU775; John Lemus, Advocacy Coordinator, AtWork!; Kenneth Minkler; Becky Bisbee; Christina Baldwin; Ellafair Keyes; Lance Morehouse, Sherwood Community Services.

CON: Kelley Nesbitt; Cheryl Felak.

OTHER: Bruce Beckett, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: No one.