

**SENATE BILL REPORT**

**SB 6494**

**AS REPORTED BY COMMITTEE ON TRANSPORTATION, FEBRUARY 8, 1994**

**Brief Description:** Requiring the department of transportation to establish discrimination complaint procedures.

**SPONSORS:** Senators Haugen and Winsley

**SENATE COMMITTEE ON TRANSPORTATION**

**Majority Report:** That Substitute Senate Bill No. 6494 be substituted therefor, and the substitute bill do pass.

Signed by Senators Vognild, Chairman; Loveland, Vice Chairman; Skratek, Vice Chairman; Drew, Haugen, Morton, Nelson, Prentice, Prince, M. Rasmussen, Schow, Sheldon and Winsley.

**Staff:** Vicki Fabre (786-7313)

**Hearing Dates:** February 2, 1994; February 8, 1994

**BACKGROUND:**

Common law has established the need for state agencies, such as the Department of Transportation (DOT), to establish a discrimination complaint procedure. The DOT, Office of Equal Opportunity (OEO) has complied with this requirement through the development and implementation of directives and guidelines for filing and processing discrimination complaints. However, some individuals, who have been involved in the complaint process, maintain there are deficiencies in the department's current process particularly with respect to timelines for investigating and resolving complaints. Defects in the process could result in undue economic and social hardship on complainants and respondents and could have a significant negative fiscal impact on the state.

The Americans with Disabilities Act of 1990 (ADA) requires consideration of an individual's disability and mandates that reasonable accommodation be made to remove any barriers to employment, unless undue hardship to the employer would result. The potential difficulty of Washington State Ferries' being able to comply with ADA requirements, given the constraints of ferry labor union collective bargaining agreements, as well as the enormous fiscal impact associated with compliance, have spurred interested in the development of a state strategy for dealing with this issue.

**SUMMARY:**

Legislative intent is established.

The DOT is required to adopt rules, by September 1, 1994, establishing a discrimination complaint procedure that minimally addresses: (1) the early resolution of complaints (2) reasonable time limits for filing and investigating a complaint by the DOT, Office of Equal Opportunity; (3) development of a disciplinary action plan; (4) delays in the investigative process; (5) criteria for placing a respondent on administrative leave; and (6) criteria for imposing progressive discipline.

Established timelines must provide a maximum for the completion of all stages of an investigation, including final disposition of a complaint, and address emergency variations for specific cases.

Reports and correspondence generated by the complaint procedure that are legally disclosable must be disseminated simultaneously to all affected parties, their representatives and to any requesting party.

The DOT is required to identify multiple complaints by a singular complainant to ascertain the possibility of malicious or nuisance complaints.

A respondent who prevails in an arbitration proceeding or civil suit is entitled to recover all costs associated with defending the complaint, including reasonable attorneys' fees.

The DOT's failure to comply with the grievance procedure, defined in the collective bargaining agreements for state ferry labor unions, renders final the finding of the collective bargaining unit.

The DOT is required to report to the Legislative Transportation Committee each biennium on the activities of the Office of Equal Opportunity, and make recommendations regarding legislation needed to assist the office in the execution of its duties.

The Office of Financial Management, in conjunction with the Governor's Committee on Disability Issues and Employment, is required to examine the correlations and disparities between state ferry union collective bargaining agreements and the reasonable accommodation provisions of the ADA and develop a state strategy for use by the DOT and the Legislature. Recommendations are to be submitted to the Legislative Transportation Committee by September 1, 1994.

**EFFECT OF PROPOSED SUBSTITUTE:**

The Department is required, by December 1, 1994, to adopt rules governing the filing and investigation of civil rights complaints against its employees, contractors, vendors, and customers.

The rules must provide reasonable time limits for completing each stage of an investigation, including final disposition by the department. The rules shall permit extensions of time

limits for specified exceptions beyond the control of the department.

All reports and correspondence generated by a complaint, that by law can be disclosed, must be disseminated simultaneously to all affected parties and their representatives and to any requesting party.

The department, in consultation with the Legislative Transportation Committee (LTC), is required to review and recommend appropriate changes needed with respect to: (1) delays in the investigative process; (2) administrative leave policies; (3) the consistency and appropriateness of disciplinary action taken in similar cases; and (4) multiple complaints against the department, of the same or different nature, by a singular complainant. Recommendations are to be made to the House and Senate Transportation Committees by January 1, 1995.

The department is to report annually, beginning January 1, 1995, to the LTC on the activities of the Office of Equal Opportunity.

The Office of Financial Management, in conjunction with the Governor's Committee on Disability Issues and Employment, is required to examine the correlations and disparities between State Ferries' collective bargaining agreements and the reasonable accommodation provisions of the Americans with Disabilities Act of 1990. Recommendations on an implementation strategy are to be submitted to the LTC by December 1, 1994.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

Although the department has developed directives and guidelines for filing and investigating discrimination complaints, deficiencies remain in the current complaint procedure, particularly with respect to clearly defined and formalized timelines for disposing of a complaint. These defects have resulted in undue economic and social hardship on parties to a complaint and could have a significant negative fiscal impact on the state.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Gary Gabelein (pro); Brenda Richardson, Office of Equal Opportunity, DOT