

# HOUSE BILL REPORT

## HB 2681

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**As Reported by House Committee On:**  
Higher Education

**Title:** An act relating to performance contracts with institutions of higher education.

**Brief Description:** Providing for performance contracts with institutions of higher education on a pilot basis.

**Sponsors:** Representatives Kenney, Cox, Fromhold, Priest, Morrell, Jarrett, Anderson, O'Brien, McIntire, Rockefeller, Edwards and Haigh; by request of Governor Locke.

**Brief History:**

**Committee Activity:**

Higher Education: 1/28/04, 2/6/04 [DPS].

**Brief Summary of Substitute Bill**

- Directs the Governor's Office, with the assistance of the Higher Education Coordinating Board, to negotiate six-year performance contracts on a pilot basis with one research university, one regional university, and the State Board for Community and Technical Colleges on behalf of one community or technical college.
- Contracts are submitted to the 2005 Legislature for approval.
- Requires the Higher Education Coordinating Board to submit annual progress reports and directs the Washington State Institute for Public Policy to evaluate the contracts by 2008.

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**HOUSE COMMITTEE ON HIGHER EDUCATION**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kenney, Chair; Fromhold, Vice Chair; Cox, Ranking Minority Member; Priest, Assistant Ranking Minority Member; Boldt, Chase, Condotta, Jarrett, McCoy, Morrell and Ormsby.

**Staff:** Barbara McLain (786-7383).

**Background:**

In 1993, the Legislature enacted a law declaring a "need to redefine the relationship between the state and its postsecondary institutions through a compact based on trust, evidence, and a new alignment of responsibilities." The law intended to create a state policy where institutions would have authority and flexibility to meet statewide goals through locally-based decisions. In return for evidence of achieving desired results, the state would reduce its micromanagement of institutions. According to a 2002 Washington State Institute for Public Policy (Institute) report, the idea of this compact relationship has faded from view, possibly because it lacked an explicit mechanism to put it into operation.

In 2003, the Legislature created a workgroup on higher education performance contracts. The group reviewed the experiences of other states in developing and implementing contracts; discussed the feasibility of implementing contracts in Washington; considered whether amendments to current laws are needed; and examined guidelines and possible models for contracts. The group also discussed examples of institutional performance indicators and benchmarks as well as the types of state flexibility, exemptions, or commitments that could be included in a contract.

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### **Summary of Substitute Bill:**

***Definition.*** A performance contract is defined as an agreement between the Governor and a governing board of a higher education institution that has been approved by the Legislature. In the case of a community or technical college, the contract is between the Governor and the State Board for Community and Technical Colleges (SBCTC). A contract addresses the statewide goals and priorities of the Legislature as well as resident undergraduate enrollment levels; contains goals and commitments from both the institution and the state; includes quantifiable performance measures and benchmarks; and reflects the institution's unique role and mission.

***Pilot Institutions.*** The Governor's Office, with assistance from the Higher Education Coordinating Board (HECB), enters into negotiations with the governing boards of one research university and one comprehensive university and the SBCTC on behalf of one community or technical college. A governing board may nominate its institution to participate in the pilot. If more than the permitted number of institutions are nominated, the Governor and the HECB select those that offer the best opportunity for a pilot test. The institutional negotiating team must involve student and faculty representatives. The term of the contracts is six years beginning with the 2005-06 academic year, and institutions must report all data necessary to implement and monitor the contract.

***Topics Addressed in Contracts.*** Performance contracts must include indicators that measure outcomes concerning cost, price, quality, improvements in faculty salaries and ratios, and timeliness of student progress toward degrees and certifications. Other topics include the efficiency and effectiveness of institutional processes and links between the role, mission, and strategic plan of the institution. Contracts also address strategies, actions, and results committed to by the institution in order to achieve statewide goals.

Possible performance indicators within a contract include student retention, graduation, and completion rates; post-employment outcomes; cost of degrees; student learning outcomes; and faculty and research productivity.

Performance contracts also include grants to the institutions of flexibility or waivers from state controls or regulations. The negotiating teams identify areas where statutory change may be necessary to provide flexibility, and the Governor submits any necessary legislation to the 2005 Legislature.

A number of topics may not be included in a performance contract: requirements within a collective bargaining agreement or rules or processes pertaining to collective bargaining; rules and processes contained in faculty codes of four-year institutions; requirements under the state's prevailing wage law; waivers of rules that pertain to health and safety, civil rights, and nondiscrimination; and laws covering terms and conditions of employment.

Unlimited tuition setting authority for institutions may not be negotiated in a contract. Institutions must assure the proportion of tuition revenue for aid to needy students is maintained or increased. In turn, the Legislature's intent is to maintain state support of higher education during the term of a contract. Under the contract with a research university, return from technology transfer will be maximized to generate increased investment in instruction.

***Approval Process.*** The Governor presents a preliminary draft of the contracts to a joint meeting of the House and Senate Higher Education Committees in December 2004, and then submits the completed contracts to the Legislature by January 15, 2005. The Legislature must approve or reject each performance contract as a whole. If rejected, the contract is returned to the parties for renegotiation. If the Legislature fails to act, the contract and pilot process for that institution are ended. All costs contained in a performance contract are subject to legislative appropriation.

***Evaluation.*** Beginning in September 2005, the HECB will provide annual progress reports to the House and Senate Higher Education Committees. The Institute will evaluate the contracts and make recommendations regarding change, continuation, or expansion of the contract process by January 15, 2008.

### **Substitute Bill Compared to Original Bill:**

Performance contracts are negotiated with the SBCTC on behalf of one, not two, community or technical colleges. A competitive application process is established if more than the permitted number of institutions wish to participate. The institutional negotiating team must involve student and faculty representatives. Institutions must report data necessary to implement the contract. Performance contracts must measure improvements in faculty salaries and ratios, and a list of possible performance indicators is provided.

The topics that may not be included in a contract are expanded to include rules and processes contained in faculty codes of four-year institutions; requirements under the state's prevailing wage law; waivers of rules that pertain to health and safety, civil rights, and nondiscrimination; and laws covering terms and conditions of employment.

Unlimited tuition setting authority for institutions may not be negotiated in a contract. Institutions must assure the proportion of tuition revenue for aid to needy students is maintained or increased. In turn, the Legislature's intent is to maintain state support of higher education during the term of a contract. Under the contract with a research university, return from technology transfer will be maximized to generate increased investment in instruction.

The Governor presents a draft of the contracts to a joint meeting of legislative committees in December 2004. If the Legislature fails to act on a submitted contract, the contract and pilot process for that institution end.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 7, 2004.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support for original bill) Washington has a very strong higher education system, but there is always room for improvement. Performance contracts represent an innovative proposal. The goal is to improve management flexibility while holding institutions more accountable. The Competitiveness Council believes it is important to join these two concepts to enable institutions to carry out their missions. It is also important for the state to make commitments to the institutions to provide stable, predictable, and long-term funding. As a state, we don't have our act together on decision-making about higher education. We say we recognize the importance of a vibrant system, but there needs to be a more structured process of making decisions and understanding trade-offs about enrollment, funding, and outcomes. Change is always going to occur; we must decide if we change by decision and design or by default. The contract process defines clear expectations for both the state and the institutions. The opportunity is now for universities to respond to student demands. With proper funding and accountability, contracts could help institutions address the clearly documented need to expand baccalaureate degree production. At this point, the discussion needs to move into the pilot project phase. There would be less uncertainty about what a contract might do if we actually tried it on a limited basis.

(Concerns to original bill) Only one research university is permitted as a pilot. That could mean six or more years until an expansion. An important component is missing: the list of state goals from the Legislature to serve as a reference point and guide. Institutional strategic plans do not always move in the direction of statewide interests as expressed by the Legislature. Students and faculty should be involved in the negotiations.

**Testimony Against:** (Opposed to original bill) If performance contracts are intended to solve the question of adequate access and resources, these goals could be achieved in a much simpler fashion. Ongoing development of performance measures, reporting, and negotiations are costly activities. The big picture is lost in negotiations with a single institution. There will be a tendency to focus on efficiency and quantity, which are somewhat easier to measure,

at the expense of quality. If there are laws and regulations that are truly burdensome, they should be repealed for all, not some. It would be less expensive and less bureaucratic to ask for a review of the essential questions at stake: What does it take to have students graduate efficiently and how do we increase access?

**Persons Testifying:** (In support for original bill) Representative Kenney, prime sponsor; Debora Merle, Office of the Governor; David Thorud and Randy Hodgins, University of Washington; Judy McNickle, Western Washington University; Larry Ganders, Washington State University; Sandy Wall, State Board for Community and Technical Colleges; Bruce Botka, Higher Education Coordinating Board; and Alton McDonald, National Action Network.

(With concerns to original bill) Nate Caminos and Brady Horenstein, Washington Student Lobby.

(Opposed to original bill) Wendy Rader-Konafalski, Washington Federation of Teachers; and Ruth Windhover and Gary King, Washington Education Association.

**Persons Signed In To Testify But Not Testifying:** (In support of original bill) Ann Anderson, Central Washington University; and Steve Mullin, Washington Roundtable.

(With concerns to original bill) Jim Huckabay and Gail Stygall, Council of Faculty.