

# SENATE BILL REPORT

## SB 6332

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As Reported By Senate Committee On:  
Higher Education, February 2, 2004

**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:** Senators Schmidt, Kohl-Welles, Carlson, Shin, Winsley and Berkey; by request of Governor Locke.

**Brief History:**

**Committee Activity:** Higher Education: 1/22/04, 1/26/04, 2/2/04 [DPS-WM, DNP].  
Ways & Means: 2/5/04.

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### SENATE COMMITTEE ON HIGHER EDUCATION

**Majority Report:** That Substitute Senate Bill No. 6332 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlson, Chair; Schmidt, Vice Chair; Horn, Kohl-Welles, Pflug and Shin.

**Minority Report:** Do not pass.

Signed by Senator B. Sheldon.

**Staff:** Jean Six (786-7423)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Richard Ramsey (786-7412)

**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 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 met throughout the 2003 interim to examine the experiences of other states in developing and implementing contracts; to consider the feasibility of implementing contracts in Washington; to identify whether amendments to current laws are needed; and to discuss the development of guidelines and possible models for contracts. The group discussed the types

of institutional performance indicators and benchmarks, as well as the types of state flexibility, exemptions, or commitments that could be in a contract.

On December 15, 2003, the group reported a summary of its findings to the legislative higher education and fiscal committees. In response to requests for additional information, the group met again on January 8, 2004, to review multiple outlines showing what topics a contract might address.

**Summary of Substitute Bill:** A performance contract is defined as an agreement between the Governor and the institutional governing board that has been approved by the Legislature. The contract addresses the statewide goals and priorities of the Legislature, as well as resident undergraduate enrollment levels; contains goals and commitments from both the postsecondary institution and the state; includes quantifiable performance measures and benchmarks; and reflects the institution's unique role and mission.

The performance contracts are initiated on a pilot basis and are entered into on behalf of four institutions: (1) the Governor's office with assistance from the Higher Education Coordinating Board (HECB) enters into negotiations with the governing board of one state research university, (2) with the governing board of one comprehensive university, and (3) with the State Board for Community and Technical Colleges to create performance contracts on a pilot basis with two state community and technical colleges. The term of the contracts is six years beginning with the 2005-06 academic year and ending with the 2010-11 academic year.

**Institutions:** The performance contracts will include indicators that measure among other things: outcomes concerning cost, price, quality, and timeliness of student progress toward degrees and certifications; the efficiency and effectiveness of institutional processes; and the linkages between the role, mission, and strategic plan of the institution. Also included are strategies, actions, and results committed to by the institution in order to achieve statewide goals.

**The state:** Performance contracts 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 and in 2005 the Governor will submit legislation necessary to implement a performance contract. Flexibility or waivers may not include requirements in a collective bargaining agreement or certain identified administrative rules or processes. The faculty codes at the four-year universities are protected.

**Legislature:** The Legislature rejects or approves each performance contract as a whole. When rejected, the contract is returned to the parties for renegotiation. All costs contained in a performance contract are subject to legislative appropriation.

**Reporting:** (1) Beginning in September 2005, the HECB provides semi-annual progress reports to the higher education committees of the Senate and House of Representatives, and (2) by January 15, 2008, the Washington State Institute for Public Policy makes recommendations to the Governor and the higher education committees of the House and the Senate regarding change, continuation, or expansion of the contract process.

**Substitute Bill Compared to Original Bill:** Language is clarified regarding the role of the State Board for Community and Technical Colleges in negotiating contracts and in receiving data. Contracts may be entered into by a partnership between a regional university and a

community college. The faculty codes at the four-year institutions are protected. The contracts must be submitted by December 1, 2004, to a legislative subcommittee for review prior to full legislative approval or disapproval.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Washington is falling behind its peers both economically and educationally while it must compete globally with a highly educated citizenry. The status quo is not an option and change will occur whether by design or default. Performance contracts will allow us to move forward and change the way universities do business – quickly moving forward with a pilot is necessary and will lead to a greater understanding of what a contract ought to be.

The performance contracts debate provides a structure for the conversation about what the state wants from its colleges and universities, what the citizens expect and need, how higher education contributes to Washington's economic vitality, and the adequacy of resources. Performance contracts will focus on, among other things, how much we should pay for higher education and who pays what share. An understanding between the state and the institutions about what each expects of themselves and each other will be a positive outcome of performance contracts. A performance contract is not an escape route for the legislature, freedom for the institutions, nor is it irreversible.

All institutions should be allowed to compete for the contracts not just the four included in the legislation. Why limit access to a good idea? All shared values should be on the table. Be careful with access for qualified students with limited means and include provisions for sufficient financial aid.

The Roundtable sees an impending collision between the knowledge-based economy and the constrained resources of the state. Higher education needs to do things differently to get different results. The performance contract notion allows a new approach to meeting state needs while honoring institutional missions. State investments must be targeted: who do we serve, and how best do we serve them? Strategic planning will link capital and operating budgets – a positive outcome.

The language in this Governor request bill is vague on purpose with regard to the specifics to be negotiated in a contract based on institutional missions. The Governor wants more predictable funding and the Governor's office is the appropriate one to negotiate the contracts – not the HECB.

Concerns: There are performance measures currently in place that are valuable and the colleges would like to build on them. Timing is critical and there is a question about whether or not the Strategic Master Plan ought to be in place before the negotiating of any performance contracts. Is there value-added to the institutions or the state with a contract over what we currently have? We need to gain alignment on what we expect higher education to provide and determine the role and mission of each part of the delivery system to achieve that alignment. The underlying tone that everything in higher education is broken, overstates the problem.

We don't have a management problem so much as we have a resource problem – and since higher education is a discretionary part of the budget, it suffers in an environment of resource scarcity.

The WSL is concerned about the effect of the contracts on students – what happens to students if the institution cannot meet the terms of a contract? Students must be on the negotiating teams. Statewide goals ought to be outlined before moving to the contract option. CFR sees excitement in new ways of doing business so long as the four-year faculty agreements are protected.

**Testimony Against:** The faculty unions testified that the bill is costly, potentially damaging, and promotes competition rather than collaboration. They are concerned about access, financial aid, and progression to degree. The only thing broken is the level of funding and charter colleges will not solve that problem.

**Testified:** PRO: Lee Huntsman, UW President; Senator Dave Schmidt, prime sponsor; Lane Rawlins, WSU President; Dave Fisher, WA Roundtable; Deb Merle, Governor's office; Karen Morse, WWU President; Ann Anderson, CWU; Susan Kostik, Edmonds CC; WITH CONCERNS: Sandy Wall, SBCTC; Bruce Botka, HECB; Jim Huckabay, CFR, CWU; Gail Stygall, CFR, UW; Nate Caminos, WSL, UW; Brady Horenstein, WSL, WSU; CON: Sandra Schroeder, WFT; Wendy Rader-Konafalski, WFT; Ruth Windover, WEA.