

SENATE BILL REPORT

SB 5497

As of February 28, 2019

Title: An act relating to establishing a statewide policy supporting Washington state's economy and immigrants' role in the workplace.

Brief Description: Establishing a statewide policy supporting Washington state's economy and immigrants' role in the workplace.

Sponsors: Senators Wellman, Nguyen, Hasegawa, Kuderer, Frockt, Das, Keiser, Saldaña, Mullet, McCoy, Randall, Cleveland, Hunt, Liias, Conway and Darneille.

Brief History:

Committee Activity: Law & Justice: 2/12/19, 2/21/19 [DPS-WM, DNP].
Ways & Means: 2/27/19.

Brief Summary of First Substitute Bill

- Creates the Keep Washington Working statewide work group within the Department of Commerce to develop strategies for expanding immigrants' career pathways and Washington's ability to provide new business and trade opportunities.
- Requires state agencies to provide services without regard to a person's citizenship or immigration status.
- Requires state agencies to develop and implement secure information systems when persons use state services and facilities.
- Limits information exchange and joint immigration enforcement activities with federal agencies to the maximum extent permitted by state and federal laws.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5497 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

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 Padden, Ranking Member; Holy and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Claire Goodwin (786-7736)

Background: Federal Immigration Agencies. Two main components of the federal Department of Homeland Security (DHS) implementing federal immigration policies are the U.S. Citizenship and Immigration Services (USCIS) and the U.S. Immigration and Customs Enforcement agency (ICE). In addition, DHS and the Social Security Administration (SSA) jointly operate the e-verify internet-based system allowing participating employers to verify the eligibility of newly hired employees.

USCIS accepts and processes immigration forms and petitions and otherwise governs the administration of the U.S. immigration process. USCIS adjudicates requests for immigration benefits.

In 2003, the investigative and interior enforcement elements of the former U.S. Customs Service merged with the Immigration and Naturalization Service to form ICE. ICE is responsible for border security and processing those who wish to enter the U.S. ICE enforces U.S. immigration laws. ICE arrests individuals based on their unlawful immigration status.

The Federal Immigration and Naturalization Act 287(g) Program. The 287(g) program enables state and local law enforcement agencies to receive delegated authority from ICE through a memorandum of agreement (MOA) to enforce immigration laws within their jurisdictions. Local and state law enforcement officers become deputized ICE officers and have authority to interview individuals to determine their immigration status, check DHS databases for information on individuals, enter data into ICE's database and case management systems, issue immigration detainers to hold individuals until ICE takes custody, and transfer individuals into ICE custody. Current 287(g) MOAs are due to expire on June 30, 2019. Once an MOA expires, DHS is not obligated to renew it. Either party may terminate an MOA at any time.

Federal Immigration Enforcement Laws. Under federal laws and regulations, ICE officers may interrogate, and arrest aliens or persons suspected of being an alien without a warrant if they are likely to escape before a warrant may be obtained. ICE officers may board and search vessels in U.S. territorial waters, search vehicles, aircraft, or railway cars within a reasonable distance from an external U.S. boundary, and patrol the border to prevent illegal entry into the U.S. ICE officers may arrest individuals for felony charges related to any law regulating the admission, exclusion, expulsion, or removal of aliens. ICE agents may also conduct a search without warrant of the person and their personal effects of any person seeking admission to the U.S. if they have reasonable cause to suspect grounds exist for denying the person admission into the U.S. and escape may occur before a warrant may be obtained.

The U.S. attorney general may enter into a written agreement with a state or its political subdivisions to delegate authority for state and local officers to perform the functions of an immigration enforcement officer. The state and local officers may investigate, apprehend, or detain aliens or transport them to detention centers across state lines if consistent with state and local law. An agreement is not required to communicate with the U.S. attorney general regarding an individual's immigration status or cooperate with the U.S. attorney general to identify, apprehend, detain, or remove aliens not lawfully in the U.S.

A separate federal law prohibits any state or local law from restricting any government entity or official from sending or receiving information to ICE regarding an individual's lawful or unlawful citizenship or immigration status. No person or agency may prohibit or restrict a federal, state, or local government entity from sending or requesting information from ICE about an individual's immigration status, or maintaining information exchanged with ICE, or exchanging information about an individual's immigration status with any other federal, state, or local entity. ICE must respond to inquiries from a federal, state, or local agency seeking information about citizenship or immigration status of an individual within the agency's jurisdiction.

Summary of Bill (First Substitute): The Keep Washington Working statewide work group is established within the Department of Commerce. The work group consists of 11 members serving staggered three-year terms. The work group is comprised of persons from geographically diverse immigrant advocacy groups, professional associations representing business, labor organizations, agriculture, immigrant legal interests, academia, and law enforcement. The work group must develop strategies and methods to strengthen immigrants' career pathways, support organizations to provide workforce stability for the agriculture industry, and recommend approaches to attract immigrant-owned business providing new business and trade opportunities.

The state attorney general, working with interested parties—including the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, must develop model policies limiting immigration enforcement in public schools, health facilities operated by the state or its political subdivisions, courthouses, and shelters to ensure safe access for Washington residents regardless of immigration or citizenship status. State agencies must review and update their policies and information systems to limit the personal information an agency requests and retains to only the information necessary to perform agency duties. All public employees must serve all Washington residents without regard to citizenship or immigration status or condition receipt of services based on citizenship or immigration status.

Except for aggregate or de-identified data, state agencies, are prohibited from using department funds, facilities, equipment or personnel to participate in any federal registration or enforcement programs targeting Washington residents solely based on their race, religion, ethnicity, immigration, or citizenship status. State agencies must oversee their databases, including those maintained for the state by vendors, to limit use of database information for immigration enforcement to the fullest extent permitted by state and federal law.

State and local law enforcement agencies, school resource officers and security departments may not provide information to federal immigration authorities for civil immigration

enforcement or provide nonpublic personal information about an individual to federal immigration authorities in noncriminal matters unless required by law. Any person in state or local custody, including those in community custody or Department of Corrections (DOC) physical custody, must be informed of their right to refuse an interview by federal immigration enforcement authorities. The state must not accept language services, even at no cost, from federal immigration authorities. A person in DOC custody must be informed of their right to refuse early release for the purpose of deportation. DOC may not take a person into custody, or hold someone in custody, solely for determining their immigration status, or based solely on a civil immigration warrant or immigration hold request.

In accordance with federal law, state or local agencies or officers may send and receive information from federal immigration authorities and exchange information with other federal, state, or local government agencies about immigration or citizen status of an individual.

A severability clause renders any conflicting part of the act inoperative to the extent it conflicts with federal requirements that are a condition to allocation of federal funds to the state.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Revises the definition of “immigration detention agreement” related to contracts permitting a state or local law enforcement agency to house individuals for civil immigration violations.
- Revises consular notification to avoid violating treaty rights.
- Requires the attorney general to consult with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The immigrants who came to our country fueled our nation and have made it the envy of the world. We rely on the drive and ambition of immigrants to support our economy. I was present at Sea Tac airport when executives were stopped and held based on their country of origin. We want to create a positive business environment, and keep Washington a great place to be an entrepreneur. One third of Microsoft employees are working here on a visa, but this measure is not just about tech workers. The medical sector, agriculture, and the hospitality industry all depend on immigrants to maintain a stable workforce. This bill does not prevent federal employees from doing their jobs. We have many immigrants attending our schools; many of them are multilingual. These students are part of our future work force, but they

must have a sense of trust and safety in the classroom. A local public college supporting this measure supports full engagement of immigrant students; public facilities must be safe for all. One of the reasons for this bill is the reality and perception that personal information is shared with ICE on civil immigration matters. For example, Department of Licensing personnel sent drivers' license information to ICE. Some domestic violence survivors who are undocumented are afraid to call law enforcement because of the fear they will be turned over to ICE. The stakeholders working on the bill have put in a significant amount of work to ensure that the bill meets constitutional requirements. Only certain sections apply to the Department of Corrections. In answer to a concern about language services, we have found that ICE personnel on the northern border offer interpreter services, but use the interpreter role as an opportunity to question individuals about their immigration status. The goal is for local law enforcement personnel to do public safety work on behalf of Washingtonians and for the federal immigration authorities do their immigration enforcement work. There have been collaborative discussions to ensure the bill is implementable. The bill is constitutional because federal law requirements are not affected. When lawsuits are brought on the issue of immigration enforcement, constitutionality is usually the major issue. I would like to share an experience I had when I observed an unknown man jumping over the fence into my yard one night. I notified the police, but when the police came, I was arrested for immigration offenses. I was trying to get help from the police, but instead I was taken to detention, and separated from my family for four months. I lost my faith in the police. I used to feel safer when I saw a police car driving through my neighborhood; now I do not feel safer. Spokane has drawn many immigrants for employment and educational opportunities. There are many mixed status families, and they have ties to the community. We are aware of ICE agents arresting elderly family members, and local police conducting a traffic stop, but then turning everyone in the car over to ICE. In the immigrant community, people fear calling the police, fear going to the hospital for treatment, and fear reporting crimes. This bill will help rebuild trust in local law enforcement. We need to get local government out of the immigration enforcement business. There is a growing fear of being targeted or profiled. My business serves customers who are mostly immigrants. I am an immigrant myself. I have been here for 25 years. ICE enforcement is aggressive. It is affecting my small business. The aggressive ICE enforcement is making it hard to thrive as a business and make a living. Washington State is known as a progressive and peace-loving place; it is the last place you would expect immigrants to have a hard time. With one million immigrants in the state, and many are scared to do business or move freely, it will have a negative effect on businesses. Twenty years ago immigration was more human than now. I was treated as an American. Now immigration enforcement is destroying people's lives; its like a death in the family. Children need to feel safe in schools. Local law enforcement should not enforce civil immigration laws. The bill sends a strong message that all children should feel safe at school. Success in school leads to success in life. We want the Attorney General to develop uniform policies for the Superintendent of Public Instruction and the schools. We represent 600 unions including the farmworker unions. We have a commitment to support our agricultural workforce because it is important to our agricultural economy. Over the last few years we have seen heightened fear, and caustic rhetoric driven by fear, not by facts. The tree fruit association and the hospitality association could not be here to testify today due to inclement weather but they will provide written testimony supporting the bill. Blurring the lines between state and federal law enforcement duties creates havoc in our communities.

CON: WASPC opposes this bill. There is a very real need for immigration reform, but it should be addressed at the federal level. It is a fight between powerful factions on a national level. That said, we do not agree on everything in this bill but we have a great willingness to listen. All Washington residents should feel safe reporting crimes to the police. The approach taken in the bill separates civil matters from criminal matters. If an immigration issue becomes a criminal matter, law enforcement needs to have all of its resources available. There are issues about access during incarceration, and the prohibition about language services. We encourage our officers to become proficient in a language other than English and we do not see what additional training in other languages would be a problem. We need to ensure that this bill does not put law enforcement in a corner where they have to choose between violating one state law or another or choose between violating a state law or a federal law.

OTHER: The revisions to the bill alleviate the bulk of the Department of Correction's concerns, but we are still evaluating the changes. The persons who are in Department of Correction's custody have been convicted of serious, and often violent crimes. We believe that the exemptions provided to the Department are important, including the ability to consider immigration status in placement, and allowing the early deportation program to continue. Persons in Department custody are not incarcerated because of traffic tickets; they have been convicted of serious crimes and felonies.

Persons Testifying (Law & Justice): PRO: Senator Lisa Wellman, Prime Sponsor; Lucinda Young, Washington Education Association; Tim Warden-Hertz, NW Immigrant Rights Project; Wilson Rodriguez, Laborer; Jennyfer Mesa, Latinos in Spokane, Spokane Immigrant Rights Coalition; Tawfik Maudah, One America; Bernal Baca, Washington Labor Council.

CON: James McMahan, Washington Association Sheriffs and Police Chiefs.

OTHER: Alex MacBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: Addressing fiscal concerns, there is little chance that this measure will impact federal funding for Medicaid or Medicare. The federal action to impose restrictions on federal funding to states has been struck down by the courts and a permanent injunction imposed on the federal government prohibiting withdrawal of federal funding. To date, no jurisdictions have been stripped of federal funding. This measure is clearly written to comply with state and federal laws. There is a provision to invalidate any part of the bill that creates a loss of federal funding for state programs that utilize funding from federal sources. Our state relies on a substantial agricultural workforce, both for seasonal work and for year-round work. Many of these workers are undocumented. We support this bill, but we do not like the status quo. Federal immigration reform is needed that includes a pathway to earned legal status for our agricultural workforce. Aggressive implementation of a flawed federal immigration law will just make a bad situation worse. The aggressive immigration enforcement, including collaboration between the federal immigration authorities, ICE, and state and local law enforcement is having a noticeable effect on small businesses. Customers who used to buy cars and other goods and services are afraid to do so. The effect is multiplied across a

number of industries in the state, for example the seafood industry on the peninsula. This measure will free up local law enforcement resources to do the work the residents of the state expect; that is reducing crime, investigating criminal activity, and prosecuting those who violate state and local laws.

CON: The Washington Association of Sheriffs and Police Chiefs wants everyone who lives in Washington to feel comfortable calling on law enforcement agencies for help when they need it. It is important for our law enforcement agencies to enforce the law and conduct criminal investigations. The enforcement of criminal laws, which may be involve persons who are immigrants should not be impeded. But, we do support not using our criminal justice resources for civil matters that do not involve us.

Persons Testifying (Ways & Means): PRO: Enoka Herat, American Civil Liberties Union of Washington; Alex Hur, OneAmerica, Washington Defender Association; Dave Ducharme, Washington State Tree Fruit Association.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.