

HOUSE BILL REPORT

EHB 1744

As Passed House:

February 14, 2022

Title: An act relating to collaborative arrangements between institutions of higher education and nonprofit private entities that provide comprehensive cancer care.

Brief Description: Concerning collaborative arrangements between institutions of higher education and nonprofit private entities that provide comprehensive cancer care.

Sponsors: Representatives Dolan, Harris, Leavitt, Senn, Ryu, Johnson, J., Chambers, Davis, Macri, Corry, Tharinger, Valdez and Frame.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/17/22, 1/20/22 [DP].

Floor Activity:

Passed House: 2/14/22, 97-0.

Brief Summary of Engrossed Bill

- States that a comprehensive cancer center that enters into a collaborative arrangement with an institution of higher education is not a state agency or state employer, and the employees of such comprehensive cancer center are not state employees nor have any right or entitlement to any benefits conferred upon state employees, if certain criteria are met.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 4 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Dolan and Gregerson.

Minority Report: Do not pass. Signed by 3 members: Representatives Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Graham.

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.

Staff: Desiree Omli (786-7105).

Background:

Comprehensive Cancer Centers.

A comprehensive cancer center is a cancer center that is officially recognized by the National Cancer Institute (NCI) as a comprehensive cancer center that qualifies as an exempt charitable organization under the federal Internal Revenue Code.

There are 71 NCI-designated cancer centers nationwide. In Washington, the Fred Hutchinson/University of Washington Cancer Consortium is designated as a NCI comprehensive cancer center. This comprehensive cancer center is a collaboration among four partner institutions: the Fred Hutchinson Cancer Research Center, the University of Washington, Seattle Children's Hospital, and the Seattle Cancer Care Alliance.

Designation as a Public Agency.

In 1999 a Washington Court of Appeals adopted the following four-factor balancing test to determine whether an entity is the functional equivalent of a public agency for a given purpose: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.

Establishment of an Employer-Employee Relationship.

Employment standards and benefits generally apply only if an employer-employee relationship exists. For purposes of various benefits and tax purposes, there are a variety of multipart tests used to determine whether an employer-employee relationship is established; the test used generally depends on the type of benefit at issue. Some factors that courts have consistently considered across most of the tests are the nature and degree of control over the worker, the power to hire or fire the worker, the power to determine wages, and the degree of control over the working environment.

Summary of Engrossed Bill:

Designation as a Public Agency.

A comprehensive cancer center that enters a collaborative arrangement with an institution of higher education is not a state agency, state employer, quasi-government entity, functional equivalent of a state agency, subject to any obligation or duty of a state agency or state employer, or subject to state or local laws specifically applicable to state agencies solely as a result of that entity's status as a state agency if the comprehensive cancer center:

- does not perform an exclusively governmental function;
- does not receive a majority of its operations funding from the state;
- is not subject to day-to-day management by any state entity; and
- is not created solely by a state entity.

Establishment of an Employer-Employee Relationship.

Employees of a comprehensive cancer center that enter into a collaborative arrangement with an institution of higher education are not state employees nor have any right or entitlement to any benefits conferred upon state employees if the institution of higher education does not:

- directly exercise employer management over a comprehensive cancer center;
- solely determine the compensation, benefits, and working conditions of the comprehensive cancer center employees; or
- engage in collective bargaining or other discussions with the exclusive bargaining representatives of the employees of a comprehensive cancer center.

A "collaborative arrangement" is as a written arrangement between a comprehensive cancer center and an institution of higher education, through which the cancer care programs of the comprehensive cancer center and institution of higher education will be aligned and managed.

For the purpose of the Public Records Act, Open Public Meetings Act, Fair Campaign Practices Act, State Civil Service Law, audit of state agencies, Washington public employees' retirement system, public employees' collective bargaining, procurement of goods and services by the state, and ethics in public service statutes, the definitions of "agency" and "employer" do not include a comprehensive cancer center that enters into a collaborative arrangement with an institution of higher education and that is operated in conformance with the criteria above.

However, the Legislature declared its intent that state institutions of higher education maintain its existing responsibilities under state auditing laws and the Public Records Act, and to preserve assets in the interest of the state including addressing intellectual property rights in the collaborative arrangements with comprehensive cancer centers.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The Fred Hutchinson Cancer Research Center (Fred Hutchinson), University of Washington (UW), Seattle's Children's Hospital, and Seattle Cancer Care Alliance recently announced a restructuring to further support cancer treatment. Fred Hutchinson and the UW partnership would merge and be renamed the Fred Hutchinson Cancer Center. Seattle Children's Hospital will still be providing cancer care for children. This restructured collaborative relationship is essential to providing the level of care, research, and education

that the UW and Fred Hutchinson provides. Alignment across business planning functions and care teams will improve early diagnosis, treatment, and patient surveillance. Better integration between clinical care and research allows for increased and efficient accessibility to clinical trials for patients. This new structure will have better outcomes for patients.

It is important that these programs continue to work collaboratively and be integrated, but it is also crucial for these entities to maintain their current status as a nonprofit entity or state entity. Fred Hutchinson receives \$100 million per year in federal funding which could be jeopardized if Fred Hutchinson is not considered to be a nonprofit entity separate from its state partner. In addition, laws differ between private and public entities in terms of labor practices. This policy would help each entity maintain their current status but increase the quality of seamlessly integrated and coordinated care for patients and providers regardless of whether treatment occurs at the UW or at Fred Hutchinson.

(Opposed) None.

(Other) The UW is one of the largest government entities in the state with a massive budget and the medical center is a big component of that. If there are employees who are working in state buildings, they should be treated as employees of those institutions. Further, the State Auditor should be able to follow public funds that are invested in this and ensure proper safeguards of taxpayer money. The policy should also speak to what happens to intellectual property developed during the collaboration. If treatments are developed with large financial returns, then the people of Washington should be able to benefit from that.

Persons Testifying: (In support) Representative Laurie Dolan, prime sponsor; Bruce Clurman, Fred Hutchinson Cancer Research Center; Tom Dellit, University of Washington Medicine; and Nancy Davidson, Seattle Cancer Care Alliance.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.