

SENATE BILL REPORT

SB 5186

As of January 16, 2023

Title: An act relating to requiring antidiscrimination clauses in public contracting.

Brief Description: Requiring antidiscrimination clauses in public contracting.

Sponsors: Senators Liias, Billig, Dhingra, Hunt, Keiser, Lovick, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/16/23.

Brief Summary of Bill

- Requires state contracts for public works, and goods and services to contain nondiscrimination clauses.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: The Washington Law Against Discrimination. The Washington Law Against Discrimination (WLAD) establishes a right to be free from discrimination based on race, color, creed, national origin, sexual orientation, sex, veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. This right applies to employment; places of public resort, accommodation, or amusement; commerce; and real estate, credit, and insurance transactions. The Human Rights Commission (Commission) administers WLAD and investigates complaints made by persons alleging unfair practices in violation of the law.

State Goods and Services Contracts. The Department of Enterprise Services (DES) manages procurement of goods and services for state agencies. State agencies covered by DES's procurement policies include all executive and judicial branches of state government

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including offices, divisions, boards, commissions, higher education institutions, and correctional and other institutions. DES may enter into agreements with other state agencies that delegate certain authority to those agencies to purchase their own goods and services.

Public Works. Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest responsive bid. Alternative public works contracting procedures that award contracts on factors other than low bid exist on certain types of public works.

Summary of Bill: Every state contract and subcontract for public works, or for goods and services must contain a nondiscrimination clause prohibiting discrimination on the basis of race, sex, color, ethnicity, or national origin. The nondiscrimination clause must contain a provision requiring contractors and subcontractors to give written notice of their obligations under the clause to labor organizations with which they have a collective bargaining agreement.

The Commission must develop rules for the implementation of the bill, including:

- procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination clauses;
- the size of contracts or subcontracts below which any particular provision of the bill does not apply;
- the circumstances, if any, under which a contractor or subcontractor is not subject to the bill;
- criteria for determining the appropriate plant, region, division, or other unit of a contractor or subcontractor's operation for which a nondiscrimination program is required;
- procedures for coordinating the requirements of the bill with applicable state laws and comparable federal laws and regulations; and
- the basic principles and standards to guide the Commission in administering and implementing this section.

The Commission may recommend appropriate sanctions to the awarding agency for violations of the bill or when there is a determination that a contractor is engaging in unlawful practices, taking into account the severity of the violation and any other penalties, sanctions, or remedies previously imposed.

Appropriation: None.

Fiscal Note: Requested on January 9, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony: PRO: State law does not always translate to actions on the ground, so the bill uses state contracts to ensure state law is enforced. There is still discrimination in the workplace. The law exists, but there is a lack of full enforcement tools for it. The bill is following the model of other states and gives the law one more set of teeth.

OTHER: Much of the industry uses non-discrimination clauses, but some things in the bill are broad with no definitions or limitations. It is unclear why the part requiring disclosure to the labor union is necessary. There is no limit or detail on what sanctions are allowed and leaves a lot up to rulemaking.

Persons Testifying: PRO: Senator Marko Liias, Prime Sponsor.

OTHER: Jerry VanderWood, Associated General Contractors (AGC).

Persons Signed In To Testify But Not Testifying: No one.