

# SENATE BILL REPORT

## ESSB 5186

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As Amended by House, April 5, 2023

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

**Brief Description:** Requiring antidiscrimination clauses in public contracting.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Lias, Billig, Dhingra, Hunt, Keiser, Lovick, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C.).

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/16/23, 2/14/23 [DPS-WM, w/oRec].  
Ways & Means: 2/20/23, 2/22/23 [w/oRec].

**Floor Activity:** Passed Senate: 3/7/23, 47-0.  
Passed House: 4/5/23, 98-0.

**Brief Summary of Engrossed First Substitute Bill**

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

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5186 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson and Stanford.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Schoesler.

**Staff:** Jarrett Sacks (786-7448)

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*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.*

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Trevor Press (786-7446)

**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 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 Engrossed First Substitute Bill:** After January 1, 2024, any contractor or prospective contractor, including subcontractors, with the state for public works or for goods or services is subject to the non-discrimination provisions of the bill.

Every state contract and subcontract for public works or for goods or services must contain a nondiscrimination clause prohibiting discrimination. 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 anti-discrimination clauses required by the bill must prohibit any covered contractor or subcontractor from:

- refusing to hire any person because of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification (protected classes);
- discharging or barring any person from employment because of membership in a protected class;
- discriminating against any person in compensation or in other terms or conditions of employment because of membership in a protected class; and
- printing or circulating, or causing to be printed or circulated, any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to the protected classes.

DES, in collaboration with the Office of Minority and Women's Business Enterprises, Office of Equity, and the Commission must develop a standard template for public works and goods and services contracts to meet the requirements of the bill.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 on Original Bill (Labor & Commerce):** *The committee recommended a different version of the bill than what was heard.* 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 (Labor & Commerce):** PRO: Senator Marko Liias, Prime Sponsor.

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

**Persons Signed In To Testify But Not Testifying (Labor & Commerce):** No one.

**Staff Summary of Public Testimony (Ways & Means):** None.

**Persons Testifying (Ways & Means):** No one.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** PRO: Erin Frasier,  
WA State Building & Construction Trades Council.

**EFFECT OF HOUSE AMENDMENT(S):**

- Removes reference to prospective contractors from the list of entities subject to the nondiscrimination contract requirements under the bill.
- Requires the Department of Enterprise Services, in collaboration with other specified agencies, to develop standard template contract provisions, rather than template contracts, that meet the requirements under the bill.