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**SUBSTITUTE SENATE BILL 5295**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Keiser, Hasegawa, and Saldaña)

AN ACT Relating to ensuring labor neutrality and contractor compliance for certain contracted service providers; amending RCW 39.26.200; adding new sections to chapter 43.20A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature intends to prevent or mitigate service disruptions caused by labor unrest within private sector providers contracted to provide certain essential state services that, if disrupted, could harm vulnerable members of the community, compromise the efficient delivery of essential state services, and burden taxpayers with additional costs.

The legislature further intends to spend scarce taxpayer resources for the efficient delivery of certain essential state services by law-abiding private sector providers. Contracting with providers with multiple legal violations represents wasteful government spending on remedying legal wrongs. Private sector providers of certain state services must certify their legal compliance with state, federal, and local laws before earning a contract involving government funds.

NEW SECTION. **Sec.**  A new section is added to chapter 43.20A RCW to read as follows:

Any contract entered into by the department with a private contractor for adult care, behavioral health, disability support, or youth services must contain a provision that requires the private contractor to certify its compliance with federal, state, and local laws.

NEW SECTION. **Sec.**  A new section is added to chapter 43.20A RCW to read as follows:

(1) Any contract entered into by the department with a private contractor for adult care, behavioral health, disability support, or youth services must contain an assurance of the contractor's commitment to ensuring harmonious labor relations among its employees and their current or potential representative. Such assurance may be provided through the execution of a labor neutrality agreement between the contractor and any labor organization representing the employees of the private contractor who perform or will perform work under the contract, or with any representative in the event such employees express an interest in being represented by a labor organization.

(2) The labor peace assurance required under subsection (1) of this section is a condition of contracting with the state for the provision of such services. As a condition of receiving a contract from the state, the contracting employer may make one or more of the following commitments:

(a) A commitment that, upon receiving an award of the contract, the contractor will remain neutral in its policies, practices, and activities with regard to its employees performing the services required under the contract in the event such employees seek to exercise rights guaranteed by the national labor relations act, 29 U.S.C. Sec. 151 et seq.

(b) A commitment that, in lieu of insisting on the certification of representation procedures established under the national labor relations act, the contractor shall afford recognition upon a representative labor organization based on a majority card check process verified by a neutral third-party arbitrator or mediator. Any interested labor organization availing itself of such commitment must commit to refraining from engaging in economic action or other activities that would be disruptive to the performance of the contract. The arbitration commitment will cover any disagreements as to the appropriate terms and conditions of employment contained in a collective bargaining agreement covering such employees.

(c) Inclusion of no-strike, no-lockout, or arbitration clauses in a collective bargaining agreement with a labor organization representing the contractor's employees covered by this section. In the event such collective bargaining agreement is due to expire during the term of the contract, the contracting employer must commit that the parties will resolve negotiation disputes as to the terms of a successor collective bargaining agreement through arbitration.

(d) A commitment not to strike or engage in workplace or service disruptions on the part of the representative of the employees performing the services contracted by the state through the term of the contract with the state.

(e) Any other assurances or commitments that provide equivalent assurances that labor peace will be maintained through the life of the contract with the state.

(3) A contractor's labor peace assurances made to the state are a binding provision of any contract awarded by the state, and constitute a warranty to the state on the part of the contractor.

(4) In the event the contractor's assurances fail to ensure labor peace, such that the services contracted by the state are interrupted, the department may revoke the contract and make arrangements for the provision of services by other means.

(5) In awarding any contract subject to this section, the department must require bidders to disclose past violations of the national labor relations act, 29 U.S.C. Sec. 151 et seq.

**Sec.**  RCW 39.26.200 and 2017 3rd sp.s. c 1 s 996 are each amended to read as follows:

(1)(a) The director shall provide notice to the contractor of the director's intent to either fine or debar with the specific reason for either the fine or debarment. The department must establish the debarment and fining processes by rule.

(b) After reasonable notice to the contractor and reasonable opportunity for that contractor to be heard, the director has the authority to debar a contractor for cause from consideration for award of contracts. The debarment must be for a period of not more than three years.

(2) The director may either fine or debar a contractor based on a finding of one or more of the following causes:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state medicaid fraud false claims act, chapter 74.66 RCW, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Two or more violations, within one or more decisions, within the previous five years of the ((~~federal~~)) national labor relations act as determined by the national labor relations board or court of competent jurisdiction;

(e) Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(f) Violation of ethical standards set forth in RCW 39.26.020;

(g) Any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations; and

(h) During the 2017-2019 fiscal biennium, the failure to comply with a provision in a state master contract or other agreement with a state agency that requires equality among its workers by ensuring similarly employed individuals are compensated as equals.

(3) The director must issue a written decision to debar. The decision must:

(a) State the reasons for the action taken; and

(b) Inform the debarred contractor of the contractor's rights to judicial or administrative review.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**