

HOUSE BILL REPORT

HB 1447

As Reported by House Committee On: State Government

Title: An act relating to the debarment authority of the director of enterprise services.

Brief Description: Granting the director of the department of enterprise services the authority to fine contractors as a penalty for certain behaviors.

Sponsors: Representatives Holy, S. Hunt and Appleton; by request of Department of Enterprise Services.

Brief History:

Committee Activity:

State Government: 2/4/15, 2/5/15 [DPS].

Brief Summary of Substitute Bill

- Allows the Department of Enterprise Services to fine or debar a contractor.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Appleton, Gregory and Hawkins.

Staff: Marsha Reilly (786-7135).

Background:

The Director (Director) of the Department of Enterprise Services (DES) has the authority to debar a contractor based on a finding of one or more of the following causes:

- conviction of a criminal offense as an incident to obtaining a public or private contract or subcontract, or in the performance of such contract;
- conviction under state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;

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- conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- violation of contract provisions of a character regarded by the Director to justify debarment action, including deliberate failure without good cause to perform the contract, or a recent record of failure to perform, or unsatisfactory performance with the terms of one or more contracts;
- violation of ethical standards; or
- any other serious or compelling cause to affect responsibility as a state contractor, including debarment by another governmental entity.

A decision to debar must be issued by the Director in writing, must state the reasons for the action taken, and must inform the debarred contractor of his or her rights to judicial or administrative review.

Summary of Substitute Bill:

Under the same procedures used to debar a contractor, the Director is authorized to impose a fine on a contractor for cause as an alternative to debarment. The DES must establish the fining process by rule.

Substitute Bill Compared to Original Bill:

The substitute bill stipulates that the DES may fine or debar a contractor, but may not do both. The requirement that the fine may not exceed the cost of the debarment proceedings and the administrative and processing costs incurred by the agency is removed.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Currently the DES has one tool in its toolbox to penalize contractors, and that is to debar them from future contracts. This bill gives them another tool to use as a disciplinary process. There should be a progression of discipline beginning with a fine and ending with debarment.

The DES supports the bill and would like to make clear that debarment under the bill only pertains to procurement and not to public works. Procurement reform went into effect in January 2013. While working on those reforms, the vendor community wanted debarment included in the law for a limited number of causes. The existing process includes due

process, which can be expensive. Debarment should be a rare event. To date, two contractors have been debarred since the law went into effect. This bill offers an alternative to debarment.

(Opposed) None.

Persons Testifying: Representative Holy, prime sponsor; and Arlen Harris and Farrell Presnell, Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.