

SENATE BILL REPORT

SB 5295

As of February 7, 2019

Title: An act relating to ensuring labor neutrality and contractor compliance for certain contracted service providers.

Brief Description: Concerning labor neutrality and contractor compliance for certain contracted service providers.

Sponsors: Senators Keiser, Hasegawa and Saldaña.

Brief History:

Committee Activity: Labor & Commerce: 1/28/19, 2/07/19.

Brief Summary of Bill

- Requires Department of Social and Health Services contracts to contain an assurance of the contractor's commitment to ensuring harmonious labor relations among its employees and their current or potential representative.
- Adds significant findings of unfair labor practices to the grounds in which a contractor may be debarred or fined by Department of Enterprise Services.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: The National Labor Relations Act (NLRA) guarantees the rights of private sector employees to organize into trade unions, engage in collective bargaining for better terms and conditions at work, and take collective action if necessary.

Unfair Labor Practices. An unfair labor practice is an action taken by employers or labor organizations that is illegal under state collective bargaining law or the NLRA. Examples of unfair labor practices include:

- interfering, restraining, or coercing employees in the exercise of rights guaranteed by collective bargaining laws;
- discriminating against an employee who has filed an unfair labor practice charge; or

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- refusing to engage in collective bargaining.

State Goods and Services Contracts. The Department of Enterprise Services (DES) is responsible for the oversight of the state's procurement of goods and services, and adopts uniform policies and procedures for the effective and efficient management of contracts by all state agencies, and provides training on best practices for state procurement.

The director of DES has the authority to debar or fine 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;
- conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- two or more violations within the previous five years of the federal labor relations act;
- violation of contract provisions of a character regarded by the director of DES to justify debarment action;
- violation of ethical standards; or
- any other serious or compelling cause to affect responsibility as a state contractor, including debarment by another governmental entity.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Department of Social and Health Services Contracts. Any contract entered into by the Department of Social and Health Services (DSHS) 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. The assurance may be in the form of a labor neutrality agreement between the employer and a labor organization representing the employees of the private contractor who perform work under the contract.

As a condition of receiving a contract from the state, the contractor may make one or more of the following:

- a commitment the contractor will remain neutral in its policies, practices, and activities with regard to its employees seeking to exercise rights guaranteed under the NLRA;
- a commitment the contractor will recognize a labor organization based on a majority card check process verified by a neutral third-party arbitrator or mediator. A labor organization availing itself of such a commitment must refrain from engaging in economic action that would be disruptive of the performance of the contract;
- inclusion of a no-strike, no-lockout, or arbitration clauses in a collective bargaining agreement and a commitment that the employer will resolve negotiation disputes through arbitration;
- a commitment not to strike on the part of the employee representatives; and
- any other commitments that provide equivalent assurances.

A contractor's labor peace assurances are a binding provision of the contract and DSHS may revoke a contract if the assurances are not met.

State Goods and Services Contracts. Significant findings of unfair labor practices by an administrative law judge of the National Labor Relations Board is added to the grounds in which a contractor may be debarred or fined by DES.

The two or more violations of the National Labor Relations Act that are grounds for debarment must occur within one or more decisions.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: The protections provided in the bill are necessary because some contractors have hired union-busting law firms to prevent doctors, nurses, and other providers from unionizing. These contractors are funded by public money, and public money should not be used for these types of union-busting activity. The only option for some employee groups is to strike, but that would put many patients at risk and threaten lives.

CON: The bill is preempted by federal law because state law cannot conflict with the NLRA and cannot enforce greater penalties than the NLRA provides. The bill is in conflict with Supreme Court precedent. Federal law protects the right of employers to communicate with employees, but the bill hinders that communication.

OTHER: One section seems to inadvertently apply to the construction industry and is vague about the penalties. The bill encourages cross-check, which is an undemocratic process and should not be encouraged by the state. The bill may be broad enough to include individual providers who do not have employees.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Dennis Eagle, Washington Federation of State Employees; Lindsey Grad, SEIU 1199.

CON: Tim O'Connell, Stoel Rives, LLP.

OTHER: Maxford Nelsen, Freedom Foundation; Jerry VanderWood, Associated General Contractors.

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