

SENATE BILL REPORT

ESSB 5295

As Passed Senate, March 12, 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: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Hasegawa and Saldaña).

Brief History:

Committee Activity: Labor & Commerce: 1/28/19, 2/07/19, 2/19/19 [DPS, DNP].

Floor Activity:

Passed Senate: 3/12/19, 27-20.

Brief Summary of Engrossed First Substitute Bill

- Requires certain Department of Social and Health Services (DSHS) contracts to contain an assurance of the contractor's commitment to ensuring the uninterrupted delivery of services subject to the contract.
- Requires certain DSHS contracts to also contain a provision requiring the private contractor certify compliance with federal, state, and local laws.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5295 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and Walsh.

Staff: Jarrett Sacks (786-7448)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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
- 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 Engrossed First Substitute Bill: Any contract entered into by DSHS 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.

Additionally, such contracts must contain an assurance of the contractor's commitment to the uninterrupted delivery of services subject to the contract.

As part of its assurance, the contractor may make one or more of the following commitments:

- 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;
- inclusion of a no-strike, no-lockout, or arbitration clauses in a collective bargaining;
- a commitment not to strike on the part of the employee representatives; and
- any other similar assurances or commitments.

A contractor's assurance is a binding provision of the contract and DSHS may revoke a contract if the assurances are not met. In awarding any contract subject to the bill, DSHS must require a private contractor to disclose any past violations of the NLRA.

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: *The committee recommended a different version of the bill than what was heard.* 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.