

SSB 5048 - S AMD 150

By Senator Cleveland

ADOPTED 03/23/2017

1 On page 25, after line 36, insert the following:

2 "(44)(a) During the 2017-2019 fiscal biennium, the department must
3 revise its agreements and contracts with vendors to include a provision
4 to require that each vendor agrees to equality among its workers by
5 ensuring similarly employed individuals are compensated as equals as
6 follows:

7 (i) Employees are similarly employed if the individuals work for
8 the same employer, the performance of the job requires comparable skill,
9 effort, and responsibility, and the jobs are performed under similar
10 working conditions. Job titles alone are not determinative of whether
11 employees are similarly employed;

12 (ii) Vendors may allow differentials in compensation for its workers
13 based in good faith on any of the following:

14 (A) A seniority system; a merit system; a system that measures
15 earnings by quantity or quality of production; a bona fide job-related
16 factor or factors; or a bona fide regional difference in compensation
17 levels.

18 (B) A bona fide job-related factor or factors may include, but not
19 be limited to, education, training, or experience, that is: consistent
20 with business necessity; not based on or derived from a gender-based
21 differential; and accounts for the entire differential.

22 (C) A bona fide regional difference in compensation level must be:
23 consistent with business necessity; not based on or derived from a
24 gender-based differential; and account for the entire differential.

25 (b) The provision must allow for the termination of the contract if
26 the department or department of enterprise services determines that the
27 vendor is not in compliance with this agreement or contract term.

1 (c) The department must implement this provision with any new
2 contract and at the time of renewal of any existing contract."

3 Renumber the subsections consecutively and correct internal
4 references accordingly.

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6 On page 35, after line 36, insert the following:

7 "(6)(a) During the 2017-2019 fiscal biennium, the department must
8 revise its master contracts with vendors, including cooperative
9 purchasing agreements under RCW 39.26.060, to include a provision
10 require that each vendor agrees to equality among its workers by ensuring
11 similarly employed individuals are compensated as equals as follows:

12 (i) Employees are similarly employed if the individuals work for
13 the same employer, the performance of the job requires comparable skill,
14 effort, and responsibility, and the jobs are performed under similar
15 working conditions. Job titles alone are not determinative of whether
16 employees are similarly employed;

17 (ii) Vendors may allow differentials in compensation for its workers
18 based in good faith on any of the following:

19 (A) A seniority system; a merit system; a system that measures
20 earnings by quantity or quality of production; a bona fide job-related
21 factor or factors; or a bona fide regional difference in compensation
22 levels.

23 (B) A bona fide job-related factor or factors may include, but not
24 be limited to, education, training, or experience, that is: consistent
25 with business necessity; not based on or derived from a gender-based
26 differential; and accounts for the entire differential.

27 (C) A bona fide regional difference in compensation level must be:
28 consistent with business necessity; not based on or derived from a
29 gender-based differential; and account for the entire differential.

30 (b) The provision must allow for the termination of the contract if
31 the public entity using the contract or agreement of the department of
32 enterprise services determines that the vendor is not in compliance with
33 this agreement or contract term.

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1 (c) The department must implement this provision with any new
2 contract and at the time of renewal of any existing contract.

3 (d) Any cost for the implementation of this section must be recouped
4 from the fees charged to master contract vendors."

5 Renumber the subsections consecutively and correct internal
6 references accordingly.

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9 On page 40, after line 33, insert the following:

10 "(7)(a) During the 2017-2019 fiscal biennium, the department must
11 revise its agreements and contracts with vendors to include a provision
12 to require that each vendor agrees to equality among its workers by
13 ensuring similarly employed individuals are compensated as equals as
14 follows:

15 (i) Employees are similarly employed if the individuals work for
16 the same employer, the performance of the job requires comparable skill,
17 effort, and responsibility, and the jobs are performed under similar
18 working conditions. Job titles alone are not determinative of whether
19 employees are similarly employed;

20 (ii) Vendors may allow differentials in compensation for its workers
21 based in good faith on any of the following:

22 (A) A seniority system; a merit system; a system that measures
23 earnings by quantity or quality of production; a bona fide job-related
24 factor or factors; or a bona fide regional difference in compensation
25 levels.

26 (B) A bona fide job-related factor or factors may include, but not
27 be limited to, education, training, or experience, that is: consistent
28 with business necessity; not based on or derived from a gender-based
29 differential; and accounts for the entire differential.

30 (C) A bona fide regional difference in compensation level must be:
31 consistent with business necessity; not based on or derived from a
32 gender-based differential; and account for the entire differential.

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1 (b) The provision must allow for the termination of the contract if
2 the department or department of enterprise services determines that the
3 vendor is not in compliance with this agreement or contract term.

4 (c) The department must implement this provision with any new
5 contract and at the time of renewal of any existing contract."

6 Renumber the subsections consecutively and correct internal
7 references accordingly.

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10 On page 90, after line 21, insert the following:

11 "(qq) During the 2017-2019 fiscal biennium, the authority must
12 revise its agreements and contracts with vendors to include a provision
13 to require that each vendor agrees to equality among its workers by
14 ensuring similarly employed individuals are compensated as equals as
15 follows:

16 (A) Employees are similarly employed if the individuals work for
17 the same employer, the performance of the job requires comparable skill,
18 effort, and responsibility, and the jobs are performed under similar
19 working conditions. Job titles alone are not determinative of whether
20 employees are similarly employed;

21 (B) Vendors may allow differentials in compensation for its workers
22 based in good faith on any of the following:

23 (I) A seniority system; a merit system; a system that measures
24 earnings by quantity or quality of production; a bona fide job-related
25 factor or factors; or a bona fide regional difference in compensation
26 levels.

27 (II) A bona fide job-related factor or factors may include, but not
28 be limited to, education, training, or experience, that is: consistent
29 with business necessity; not based on or derived from a gender-based
30 differential; and accounts for the entire differential.

31 (III) A bona fide regional difference in compensation level must
32 be: consistent with business necessity; not based on or derived from a
33 gender-based differential; and account for the entire differential.

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1 (B) The provision must allow for the termination of the contract if
2 the authority or department of enterprise services determines that the
3 vendor is not in compliance with this agreement or contract term.

4 (C) The authority must implement this provision with any new
5 contract and at the time of renewal of any existing contract."

6 Renumber the subsections consecutively and correct internal
7 references accordingly.

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10 On page 102, on line 25, after "limitations:" insert "(1)".

11 On page 102, after line 36, insert the following:

12 "(2)(a) During the 2017-2019 fiscal biennium, the department must
13 revise its agreements and contracts with vendors to include a provision
14 to require that each vendor agrees to equality among its workers by
15 ensuring similarly employed individuals are compensated as equals as
16 follows:

17 (i) Employees are similarly employed if the individuals work for
18 the same employer, the performance of the job requires comparable skill,
19 effort, and responsibility, and the jobs are performed under similar
20 working conditions. Job titles alone are not determinative of whether
21 employees are similarly employed;

22 (ii) Vendors may allow differentials in compensation for its workers
23 based in good faith on any of the following:

24 (A) A seniority system; a merit system; a system that measures
25 earnings by quantity or quality of production; a bona fide job-related
26 factor or factors; or a bona fide regional difference in compensation
27 levels.

28 (B) A bona fide job-related factor or factors may include, but not
29 be limited to, education, training, or experience, that is: consistent
30 with business necessity; not based on or derived from a gender-based
31 differential; and accounts for the entire differential.

32 (C) A bona fide regional difference in compensation level must be:
33 consistent with business necessity; not based on or derived from a
34 gender-based differential; and account for the entire differential.

1 (b) The provision must allow for the termination of the contract if
2 the department or department of enterprise services determines that the
3 vendor is not in compliance with this agreement or contract term.

4 (c) The department must implement this provision with any new
5 contract and at the time of renewal of any existing contract."

6 Renumber the subsections consecutively and correct internal
7 references accordingly.

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10 On page 210, after line 16, insert the following:

11 "(18)(a) During the 2017-2019 fiscal biennium, the department must
12 revise its agreements and contracts with vendors to include a provision
13 to require that each vendor agrees to equality among its workers by
14 ensuring similarly employed individuals are compensated as equals as
15 follows:

16 (i) Employees are similarly employed if the individuals work for
17 the same employer, the performance of the job requires comparable skill,
18 effort, and responsibility, and the jobs are performed under similar
19 working conditions. Job titles alone are not determinative of whether
20 employees are similarly employed;

21 (ii) Vendors may allow differentials in compensation for its workers
22 based in good faith on any of the following:

23 (A) A seniority system; a merit system; a system that measures
24 earnings by quantity or quality of production; a bona fide job-related
25 factor or factors; or a bona fide regional difference in compensation
26 levels.

27 (B) A bona fide job-related factor or factors may include, but not
28 be limited to, education, training, or experience, that is: consistent
29 with business necessity; not based on or derived from a gender-based
30 differential; and accounts for the entire differential.

31 (C) A bona fide regional difference in compensation level must be:
32 consistent with business necessity; not based on or derived from a
33 gender-based differential; and account for the entire differential.

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1 (b) The provision must allow for the termination of the contract if
2 the department or department of enterprise services determines that the
3 vendor is not in compliance with this agreement or contract term.

4 (c) The department must implement this provision with any new
5 contract and at the time of renewal of any existing contract."

6 Renumber the subsections consecutively and correct internal
7 references accordingly.

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9 On page 317, after line 33, insert the following:

10 "NEW SECTION. Sec. 976. RCW 39.26.200 and 2015 c 44 s 1 are each
11 amended to read as follows:

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

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

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

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

27 (b) Conviction or a final determination in a civil action under
28 state or federal statutes of fraud, embezzlement, theft, forgery,
29 bribery, falsification or destruction of records, receiving stolen
30 property, violation of the federal false claims act, 31 U.S.C. Sec.
31 3729 et seq., or the state medicaid fraud false claims act, chapter
32 74.66 RCW, or any other offense indicating a lack of business
33 integrity or business honesty that currently, seriously, and
34 directly affects responsibility as a state contractor;

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

3 (d) Two or more violations within the previous five years of the
4 federal labor relations act as determined by the national labor
5 relations board or court of competent jurisdiction;

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

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

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

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

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

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

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

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

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

EFFECT: Requires Commerce, Corrections, Early learning,
Enterprise Services (DES), Social and Health Services and Health
Care Authority to include a provision in contract or other agreement

that requires equality among its workers by ensuring similarly employed individuals are compensated as equals.

Agencies must implement this provision with any new contract and at the time of renewal of any existing contract. DES must include this provision in any master contracts for state agency purchasing. Violation of this provision is cause for termination of the contract, and for the 2017-19 biennium, disbarment by DES from state contracting. DES costs must be recouped through its fees charged to master contract vendors.

FISCAL EFFECT (2017-19): None

FOUR-YEAR OUTLOOK: None.

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