

# HOUSE BILL REPORT

## HB 1987

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**As Reported by House Committee On:**  
State Government

**Title:** An act relating to debarment of contractors.

**Brief Description:** Ensuring the integrity of the state contracting process.

**Sponsors:** Representatives Miloscia, Haigh, Veloria, Conway, Flannigan, Blake, Ruderman, McCoy, Eickmeyer and Lovick.

**Brief History:**

**Committee Activity:**

State Government: 3/4/03 [DP].

**Brief Summary of Bill**

- Debars vendors from future consideration on contracts with the state for conviction of certain crimes, nonperformance, and failure to follow procedures for a period of up to eight years.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Hunt, McDermott and Wallace.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Nixon and Tom.

**Staff:** Marsha Reilly (786-7135).

**Background:**

The Department of General Administration (Department) may reject the bid of any bidder who has failed to perform satisfactorily on a previous contract with the state. In the "Guide to Personal Service Contracting" agencies are advised on managing and monitoring contracts. The level of monitoring is based on a risk assessment of the contractor's role in delivering the services under the terms of the contract. Contract

managers are advised to evaluate consultant performance.

Contractors wishing to bid for the construction, improvement, or repair of a ferry, ferry terminal, or other facility operated by the Washington state ferries must first be pre-qualified. The Department may refuse to pre-qualify a contractor which it determines has an unsatisfactory record of integrity in the performance of previous contracts or in connection with pre-qualification or bidding. In making such a determination, the Department may consider any of the following as evidence of lack of integrity:

1. Conviction of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders, or conviction of violating any other bid- or contract-related federal or state law. Conviction of a contractor's principal officers and agents of any such offenses will be imputed to the contractor;
2. Willful concealment of any deficiency in the performance of a prior contract;
3. Falsification of information or submission of deceptive or fraudulent statements in connection with pre-qualification, bidding, or performance of a contract;
4. Debarment of the contractor by a federal or state agency or by a municipal corporation, unless the period of the debarment has terminated; and
5. Default on a previous contract.

Under the prevailing wage law, contractors or subcontractors who violate the law more than once in a five-year period may be debarred from bidding on projects for a period of one year. There are currently no other provisions in statute for debarment of contractors.

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### **Summary of Bill:**

A vendor or potential vendor may be debarred from consideration of an award for contract for the provisions of goods or services if, within the past three years, the vendor has:

- been convicted of a criminal offense to the application for or performance of a state contract or subcontract;
- been convicted of an offense including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violating state or federal antitrust statutes;
- been convicted of any other offense, or violated any other state or federal law that would indicate the vendor is unable to perform responsibly;
- failed to substantially perform a state contract or subcontract;
- violated bid solicitation procedures;
- refused to provide, or failed to respond to requests, for information necessary for monitoring contract performance; or
- failed to perform in a manner consistent with any applicable state or federal law, rule or regulation.

If grounds for debarment are found to exist, the Department will notify the vendor of the procedure for requesting a hearing. If the vendor does not respond within 20 calendar days, the Department may issue the decision to debar without a hearing. Debarment may be for up to a period of eight years. After the period of debarment expires, the vendor may reapply for inclusion on bidder lists through the normal application process.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill ensures integrity in public contracting and goes hand-in-hand with other accountability bills introduced this year. Too much money is spent on those who violate our laws, and the state should not do business with those who break our laws. The efficiency of all state agencies is under scrutiny. It is time to hold businesses to the high standards expected by taxpayers.

**Testimony Against:** The bill is too subjective. There is no due process, clear sanctions, or criteria for guiding the process. While the intent is laudable, the bill is too vague and lacks specificity.

**Testified:** (In support) Roger Boatwright, Building Trades; Jim Fitzgerald, Amalgamated Transit Council; Miriam Israel Moses, REBOUND; and Randy Loomans, Washington State Labor Council.

(Opposed) Rick Slunaker, Associated General Contractors; and Dave Ducharme, Utility Contractors Association of Washington.