

SENATE BILL REPORT

SHB 1447

As of March 20, 2015

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: House Committee on State Government (originally sponsored by Representatives Holy, S. Hunt and Appleton; by request of Department of Enterprise Services).

Brief History: Passed House: 3/03/15, 96-1.

Committee Activity: Government Operations & Security: 3/19/15.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Staff: Sam Thompson (786-7413)

Background: Debarment. Washington agencies may prohibit (debar) contractors who have violated certain laws or contract provisions from participating in public contracts.

Public Works. The Washington Department of Labor and Industries may debar public works contractors who have violated prevailing wage, contractor registration, industrial insurance, or apprenticeship laws. Debarment lasts until the contractor pays penalties and unpaid wages, or up to two years for multiple violations.

Goods and Services. The Washington Department of Enterprise Services (DES) may debar goods and services contractors for up to three years for certain violations. Grounds include conviction or final determination of civil liability for the following:

- crimes incident to obtaining or performing a contract;
- fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, submitting false claims for government funds, or certain other offenses relating to business integrity;
- violation of antitrust laws arising from submission of bids or proposals; and
- violation of federal labor law.

DES may also debar a contractor for the following:

- violation of contract provisions;

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.

- violation of ethical standards relating to state employees, including prohibitions on gifts; and
- any other compelling cause affecting contractor responsibility, including debarment by another government entity.

DES must provide a contractor with notice of intent to debar and the specific reason for debarment. A DES decision to debar must be in writing, state the reasons, and inform the contractor of judicial or administrative review rights. Pursuant to statutory direction, DES has adopted administrative rules regarding the debarment process. The rules include provision for a hearing that may be conducted by an administrative law judge, with potential judicial review.

Summary of Bill: DES may fine a goods and services contractor instead of debarring the contractor, based on existing grounds for debarment. DES must provide a contractor with notice of intent to fine and the specific reason for the fine. DES must establish the fining process by administrative rule.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 18, 2015.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This legislation, which does not apply to public works contracting, appropriately gives DES the option to fine, rather than debar, a contractor. A fine may be warranted for lesser offenses, including violations involving subjective standards. A progressive discipline model, providing an opportunity for rehabilitation, is appropriate.

Persons Testifying: PRO: Representative Holy, prime sponsor; Arlen Harris, Greg Tolbert, DES.

Persons Signed in to Testify But Not Testifying: No one.