

SENATE BILL REPORT

SB 5169

As of February 15, 2019

Title: An act relating to ensuring the neutrality of public employers and state contractors with regard to employees exercising their rights to collectively bargain.

Brief Description: Ensuring the neutrality of public employers and state contractors with regard to employees exercising their rights to collectively bargain.

Sponsors: Senators Hasegawa, Saldaña and Keiser.

Brief History:

Committee Activity: Labor & Commerce: 2/21/19.

Brief Summary of Bill

- Makes it an unfair labor practice for an employer to not maintain neutrality with regard to employees seeking to exercise their collective bargaining rights.
- Requires bidders on public works contracts and state goods and services contracts to certify that they will not influence employees seeking to exercise their collective bargaining rights.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: Unfair Labor Practice. An unfair labor practice is an action taken by employers or labor organizations that is illegal under state collective bargaining law or the National Labor Relations Act. 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.

The Public Employment Relations Commission (PERC) administers and enforces most public sector collective bargaining laws in Washington. PERC issues decisions in

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representation, unfair labor practice, and unit clarification cases, and the commissioners hear appeals from these decisions.

Responsible Bidder Criteria. A contractor bidding on a public works project must meet certain criteria, known as responsible bidder criteria, to be awarded a public works contract. To be a responsible bidder, the bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;
- have applicable industrial insurance coverage, an Employment Security Department number, and a state excise tax registration number;
- not be disqualified from bidding due to previous non-compliance with registration or prevailing wage requirements; and
- not have been found out of compliance with certain apprenticeship requirements, if the project is subject to apprenticeship utilization requirements.

State agencies and municipalities are authorized to adopt relevant supplemental criteria for determining bidder responsibility for a particular project.

For state goods and services contracts, to determine if a bidder is responsible, the awarding agency must consider:

- the ability, capacity, and skill of the bidder to perform the contract;
- the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- whether the bidder can perform the contract within the timeframe required;
- the quality of performance from previous contracts;
- the bidder's past compliance with state law regarding contracts and with state wage payment laws; and
- other relevant information.

Summary of Bill: Employer Neutrality. Under state collective bargaining law, it is an unfair labor practice for an employer to not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise their collective bargaining rights. Examples of when an employer does not maintain neutrality are if it:

- distributes literature, letters, email or postings to employees regarding the exercise of their collective bargaining rights; or
- funds external organizations or external legal counsel to influence employees seeking to exercise their collective bargaining rights.

Communications mutually agreed to by the employer and a certified exclusive bargaining representative, and legally required communications are not prohibited. Hiring external legal counsel for the purposes of negotiating a collective bargaining agreement is permitted so long as the legal counsel also maintains neutrality.

Responsible Bidder Criteria. A bidder for a public works project must certify it will not influence its employees seeking to exercise their collective bargaining rights under the NLRA. A similar requirement is added to the responsible bidder criteria for goods and services contracts.

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.