

SENATE BILL REPORT

SB 5295

As Reported by Senate Committee On:
Labor & Commerce, February 19, 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: Senators Keiser, Hasegawa and Saldaña.

Brief History:

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

Brief Summary of First Substitute Bill

- Requires Department of Social and Health Services (DSHS) contracts to contain an assurance of the contractor's commitment to ensuring harmonious labor relations among its employees and their current or potential representative.
- Requires DSHS contracts to contain a provision requiring the private contractor certify compliance with federal, state, and local laws.
- Provides that, for state goods and services contracts, the two or more violations of the National Labor Relations Act that are grounds for debarment must occur within one or more decisions.

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 Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Department of Social and Health Services Contracts. Any contract entered into by the Department of Social and Health Services (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 ensuring harmonious labor relations among its employees and their current or potential representative. The assurance may be in the form of a labor neutrality agreement between the employer and a labor organization representing the employees of the private contractor who perform work under the contract.

As a condition of receiving a contract from the state, the contractor may make one or more of the following:

- 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;
- a commitment the contractor will recognize a labor organization based on a majority card check process verified by a neutral third-party arbitrator or mediator. A labor organization availing itself of such a commitment must refrain from engaging in economic action that would be disruptive of the performance of the contract;
- inclusion of a no-strike, no-lockout, or arbitration clauses in a collective bargaining agreement and a commitment that the employer will resolve negotiation disputes through arbitration;
- a commitment not to strike on the part of the employee representatives; and
- any other commitments that provide equivalent assurances.

A contractor's labor peace assurances are 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.

State Goods and Services Contracts. A reference to the Federal Labor Relations Act is changed to National Labor Relations Act. The two or more violations of the National Labor Relations Act that are grounds for debarment must occur within one or more decisions.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute): A provision requiring DSHS contracts to contain a provision that requires a private contractor to certify compliance with federal, state, and local laws is added. Bidders are required to disclose past violations of the NLRA. A provision requiring DSHS to make a finding as to the adequacy of the labor peace assurance is removed. A severability clause is added.

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.