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**SUBSTITUTE SENATE BILL 5295**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Keiser, Hasegawa, and Saldaña)

READ FIRST TIME 02/20/19.

1 AN ACT Relating to ensuring labor neutrality and contractor  
2 compliance for certain contracted service providers; amending RCW  
3 39.26.200; adding new sections to chapter 43.20A RCW; and creating a  
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature intends to prevent or  
7 mitigate service disruptions caused by labor unrest within private  
8 sector providers contracted to provide certain essential state  
9 services that, if disrupted, could harm vulnerable members of the  
10 community, compromise the efficient delivery of essential state  
11 services, and burden taxpayers with additional costs.

12 The legislature further intends to spend scarce taxpayer  
13 resources for the efficient delivery of certain essential state  
14 services by law-abiding private sector providers. Contracting with  
15 providers with multiple legal violations represents wasteful  
16 government spending on remedying legal wrongs. Private sector  
17 providers of certain state services must certify their legal  
18 compliance with state, federal, and local laws before earning a  
19 contract involving government funds.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 43.20A  
2 RCW to read as follows:

3        Any contract entered into by the department with a private  
4 contractor for adult care, behavioral health, disability support, or  
5 youth services must contain a provision that requires the private  
6 contractor to certify its compliance with federal, state, and local  
7 laws.

8        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 43.20A  
9 RCW to read as follows:

10        (1) Any contract entered into by the department with a private  
11 contractor for adult care, behavioral health, disability support, or  
12 youth services must contain an assurance of the contractor's  
13 commitment to ensuring harmonious labor relations among its employees  
14 and their current or potential representative. Such assurance may be  
15 provided through the execution of a labor neutrality agreement  
16 between the contractor and any labor organization representing the  
17 employees of the private contractor who perform or will perform work  
18 under the contract, or with any representative in the event such  
19 employees express an interest in being represented by a labor  
20 organization.

21        (2) The labor peace assurance required under subsection (1) of  
22 this section is a condition of contracting with the state for the  
23 provision of such services. As a condition of receiving a contract  
24 from the state, the contracting employer may make one or more of the  
25 following commitments:

26        (a) A commitment that, upon receiving an award of the contract,  
27 the contractor will remain neutral in its policies, practices, and  
28 activities with regard to its employees performing the services  
29 required under the contract in the event such employees seek to  
30 exercise rights guaranteed by the national labor relations act, 29  
31 U.S.C. Sec. 151 et seq.

32        (b) A commitment that, in lieu of insisting on the certification  
33 of representation procedures established under the national labor  
34 relations act, the contractor shall afford recognition upon a  
35 representative labor organization based on a majority card check  
36 process verified by a neutral third-party arbitrator or mediator. Any  
37 interested labor organization availing itself of such commitment must  
38 commit to refraining from engaging in economic action or other  
39 activities that would be disruptive to the performance of the

1 contract. The arbitration commitment will cover any disagreements as  
2 to the appropriate terms and conditions of employment contained in a  
3 collective bargaining agreement covering such employees.

4 (c) Inclusion of no-strike, no-lockout, or arbitration clauses in  
5 a collective bargaining agreement with a labor organization  
6 representing the contractor's employees covered by this section. In  
7 the event such collective bargaining agreement is due to expire  
8 during the term of the contract, the contracting employer must commit  
9 that the parties will resolve negotiation disputes as to the terms of  
10 a successor collective bargaining agreement through arbitration.

11 (d) A commitment not to strike or engage in workplace or service  
12 disruptions on the part of the representative of the employees  
13 performing the services contracted by the state through the term of  
14 the contract with the state.

15 (e) Any other assurances or commitments that provide equivalent  
16 assurances that labor peace will be maintained through the life of  
17 the contract with the state.

18 (3) A contractor's labor peace assurances made to the state are a  
19 binding provision of any contract awarded by the state, and  
20 constitute a warranty to the state on the part of the contractor.

21 (4) In the event the contractor's assurances fail to ensure labor  
22 peace, such that the services contracted by the state are  
23 interrupted, the department may revoke the contract and make  
24 arrangements for the provision of services by other means.

25 (5) In awarding any contract subject to this section, the  
26 department must require bidders to disclose past violations of the  
27 national labor relations act, 29 U.S.C. Sec. 151 et seq.

28 **Sec. 4.** RCW 39.26.200 and 2017 3rd sp.s. c 1 s 996 are each  
29 amended to read as follows:

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

34 (b) After reasonable notice to the contractor and reasonable  
35 opportunity for that contractor to be heard, the director has the  
36 authority to debar a contractor for cause from consideration for  
37 award of contracts. The debarment must be for a period of not more  
38 than three years.

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

3 (a) Conviction for commission of a criminal offense as an  
4 incident to obtaining or attempting to obtain a public or private  
5 contract or subcontract, or in the performance of such contract or  
6 subcontract;

7 (b) Conviction or a final determination in a civil action under  
8 state or federal statutes of fraud, embezzlement, theft, forgery,  
9 bribery, falsification or destruction of records, receiving stolen  
10 property, violation of the federal false claims act, 31 U.S.C. Sec.  
11 3729 et seq., or the state medicaid fraud false claims act, chapter  
12 74.66 RCW, or any other offense indicating a lack of business  
13 integrity or business honesty that currently, seriously, and directly  
14 affects responsibility as a state contractor;

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

17 (d) Two or more violations, within one or more decisions, within  
18 the previous five years of the (~~federal~~) national labor relations  
19 act as determined by the national labor relations board or court of  
20 competent jurisdiction;

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

24 (i) Deliberate failure without good cause to perform in  
25 accordance with the specifications or within the time limit provided  
26 in the contract; or

27 (ii) A recent record of failure to perform or of unsatisfactory  
28 performance in accordance with the terms of one or more contracts,  
29 however the failure to perform or unsatisfactory performance caused  
30 by acts beyond the control of the contractor may not be considered to  
31 be a basis for debarment;

32 (f) Violation of ethical standards set forth in RCW 39.26.020;

33 (g) Any other cause the director determines to be so serious and  
34 compelling as to affect responsibility as a state contractor,  
35 including debarment by another governmental entity for any cause  
36 listed in regulations; and

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

1           (3) The director must issue a written decision to debar. The  
2 decision must:

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

4           (b) Inform the debarred contractor of the contractor's rights to  
5 judicial or administrative review.

6           NEW SECTION.   **Sec. 5.**   If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

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