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**SENATE BILL 5295**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senator Keiser

1 AN ACT Relating to ensuring labor neutrality and contractor  
2 compliance for certain contracted service providers; amending RCW  
3 39.26.200; adding a new section 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 of certain state services that could harm vulnerable  
9 members of the community or compromise the efficient delivery of  
10 state services.

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

13 (1) Any contract entered into by the department with a private  
14 contractor for adult care, behavioral health, disability support, or  
15 youth services must contain a provision that requires the private  
16 contractor to have a labor neutrality agreement between it and any  
17 labor organization representing or seeking to represent the employees  
18 of the private contractor who perform or will perform work under the  
19 contract.

1 (2) The labor neutrality agreements required in subsection (1) of  
2 this section must, at a minimum, contain provisions that:

3 (a) Require the contractor remain neutral in its policies,  
4 practices, and activities with regard to its employees seeking to  
5 exercise rights guaranteed by the national labor relations act, 29  
6 U.S.C. Sec. 151 et seq.;

7 (b) Provide for an election by card check as a means to certify  
8 representation;

9 (c) Require the contractor to provide a list of current workers  
10 upon request of the labor organization; and

11 (d) Prohibit the contractor from expending income from state  
12 contracts or other sources to obstruct, delay, or in any way  
13 compromise the labor neutrality agreement.

14 (3) In awarding contracts listed in subsection (1) of this  
15 section, the department must require bidders to disclose past  
16 violations of the national labor relations act, 29 U.S.C. Sec. 151 et  
17 seq., as determined by the national labor relations board. The  
18 department must take into consideration such violations in awarding  
19 the contract.

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

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

26 (b) After reasonable notice to the contractor and reasonable  
27 opportunity for that contractor to be heard, the director has the  
28 authority to debar a contractor for cause from consideration for  
29 award of contracts. The debarment must be for a period of not more  
30 than three years.

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

33 (a) Conviction for commission of a criminal offense as an  
34 incident to obtaining or attempting to obtain a public or private  
35 contract or subcontract, or in the performance of such contract or  
36 subcontract;

37 (b) Conviction or a final determination in a civil action under  
38 state or federal statutes of fraud, embezzlement, theft, forgery,  
39 bribery, falsification or destruction of records, receiving stolen

1 property, violation of the federal false claims act, 31 U.S.C. Sec.  
2 3729 et seq., or the state medicaid fraud false claims act, chapter  
3 74.66 RCW, or any other offense indicating a lack of business  
4 integrity or business honesty that currently, seriously, and directly  
5 affects responsibility as a state contractor;

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

8 (d) Two or more violations within the previous five years of the  
9 (~~federal~~) national labor relations act as determined by the  
10 national labor relations board or court of competent jurisdiction.  
11 Significant findings by an administrative law judge of the national  
12 labor relations board of unfair labor practices by a contractor are  
13 grounds for termination of a contract with the contractor;

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

17 (i) Deliberate failure without good cause to perform in  
18 accordance with the specifications or within the time limit provided  
19 in the contract; or

20 (ii) A recent record of failure to perform or of unsatisfactory  
21 performance in accordance with the terms of one or more contracts,  
22 however the failure to perform or unsatisfactory performance caused  
23 by acts beyond the control of the contractor may not be considered to  
24 be a basis for debarment;

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

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

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

34 (3) The director must issue a written decision to debar. The  
35 decision must:

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

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

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