

SENATE BILL NO. 254

INTRODUCED BY WANZENRIED, GALLUS, PARKER, JENT, GILLAN, HAMILTON, SCHMIDT, KEANE,
SMITH, HANDS, GRINDE, CORDIER, RYAN, COONEY, KAUFMANN, BERGREN, FUREY, JOPEK,
DRISCOLL, COHENOUR, SQUIRES, THOMAS, WILLIAMS, MOSS, LARSON, REINHART, J. TROPILA,
AUGARE, HARRINGTON, VILLA

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A CONTRACT FOR SERVICES ENTERED INTO BY THE STATE INCLUDE A PROVISION FOR A CARD CHECK NEUTRALITY AGREEMENT THAT ALLOWS FOR COLLECTIVE BARGAINING; REQUIRING SECRET BALLOTS; PROVIDING FOR PENALTIES FOR VIOLATING THE PROVISIONS OF A CARD CHECK NEUTRALITY AGREEMENT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ENFORCE CONTRACT PROVISIONS REQUIRING A CARD CHECK NEUTRALITY AGREEMENT; AMENDING SECTIONS 2-17-514 AND 18-4-224, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Neutrality agreement required -- penalty. (1) Whenever a ~~governmental body~~ STATE AGENCY, AS DEFINED IN 18-5-602, determines that contracting with the private sector to provide a service that is currently, normally, or traditionally provided directly by an employee of a ~~governmental body~~ STATE AGENCY, AS DEFINED IN 18-5-602, the department shall ensure that the contract for services includes a card check neutrality agreement.

(2) For the purposes of this section, "card check neutrality agreement" means a legally binding agreement that states that the contractor may not prohibit the contractor's employees who are employed to provide the services under the contract from exercising their rights to collectively bargain under the National Labor Relations Act and Title 39 and that the process by which employees are authorized to exercise their right to collectively bargain may be determined, at the discretion of the employees, in the same manner as authorization cards are used under the rules adopted pursuant to 39-31-104 by the board of personnel appeals of the department of labor and industry.

(3) THE PROCESS USED IN SUBSECTION (2) MUST PROVIDE FOR A SECRET BALLOTING BY EMPLOYEES.

(4) A THIRD PARTY MUTUALLY AGREED UPON BY THE UNION AND THE CONTRACTED EMPLOYER SHALL CHECK AUTHORIZATION CARDS AND SHALL KEEP INDIVIDUAL CARDS CONFIDENTIAL.

~~(3)~~(5) If a contractor is a party to a contract that contains a card check neutrality agreement and violates the provisions of the agreement, the department may cancel the contract or impose a civil penalty on the contractor not to exceed \$1,000 for each day that the contractor is in violation. The penalty provided for in this subsection is in addition to any other penalties imposed pursuant to the National Labor Relations Act or Title 39.

Section 2. Section 2-17-514, MCA, is amended to read:

"2-17-514. Department -- enforcement responsibilities. (1) If the department determines that an agency is not in compliance with the state strategic information technology plan provided for in 2-17-521, the agency information technology plan provided for in 2-17-523, or the statewide information technology policies and standards provided for in 2-17-512, the department may cancel or modify any contract, project, or activity that is not in compliance.

(2) Prior to taking action provided for in subsection (1), the department shall review with the board any activities that are not in compliance.

(3) Any contract entered into by an agency that includes information technology resources must include language developed by the department that references the department's enforcement responsibilities provided for in subsection (1) and, if applicable under the contract, the department's responsibility to require a card check neutrality agreement as provided for in [section 1]. A contract that does not contain the required language is considered to be in violation of state law and is voidable pursuant to subsection (1). The language developed by the department may not be varied pursuant to 18-4-224."

Section 3. Section 18-4-224, MCA, is amended to read:

"18-4-224. Contract clauses -- rules. (1) The department may, in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as

soon after commencement of performance as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under clauses established under subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; or

(d) in any other manner as the contracting parties may mutually agree.

(3) The department may, in its discretion, permit or require the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying the variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

(5) Whenever a governmental body STATE AGENCY, AS DEFINED IN 18-5-602, contracts for services that are currently, normally, or traditionally provided by an employee of a governmental body STATE AGENCY, AS DEFINED IN 18-5-602, the department shall require the inclusion of a clause providing for a card check neutrality agreement pursuant to [section 1].

~~(5)~~(6) Regardless of a provision in a contract, the department may accept a lower price or better value offered by a contractor."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 4, and the provisions of Title 18, chapter 4, apply to [section 1].

NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2007.

NEW SECTION. Section 7. Applicability. [This act] applies to contracts subject to the provisions of

[section 1] that are entered into after [the day before the effective date of this section].

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