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## Commerce & Labor Committee

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### HB 1836

**Brief Description:** Regarding public works involving off-site prefabrication.

**Sponsors:** Representatives Ormsby, Wood, Dunshee, Campbell, Moeller, Van De Wege, Simpson, Driscoll, Chase and Conway.

#### Brief Summary of Bill

- Requires contractors on public works projects that are not required to pay prevailing wages to submit lists of specified information regarding certain off-site prefabricated items to the awarding agency and to the Department of Labor and Industries (Department).
- Requires all contractors on public works projects to submit certified payroll records regarding certain off-site prefabricated items to the awarding agency and to the Department upon request by an interested party.

**Hearing Date:** 2/10/09

**Staff:** Joan Elgee (786-7106)

#### Background:

Under Washington's prevailing wage law, wages paid to laborers, workers, or mechanics on all public works contracts of the state or political subdivisions must be not less than the prevailing rate of wage in the same trade or occupation in the locality within the state where the labor is performed. The Washington State Supreme Court has held that the prevailing wage law applies to the off-site manufacture of prefabricated items for use on a particular project. An Attorney General's Opinion states that the prevailing wage law does not apply to work performed outside Washington.

The specifications for every public work contract must contain the minimum wage rate, not less than the prevailing wage, and the contract must contain a stipulation that the laborers, workers, and mechanics shall not be paid less than the specified rate.

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*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.*

Before payment is made under a public works contract, the responsible officer must require the contractor and subcontractors to submit a "Statement of Intent to Pay Prevailing Wages." After final acceptance of the project, the responsible officer must require the contractor and subcontractors to submit an "Affidavit of Wages Paid" before the retainage is released. Each claim submitted by a contractor must state that the prevailing wages have been paid.

By rule, the Department of Labor and Industries (Department) requires contractors and subcontractors to keep accurate payroll records. Within 10 days after a contractor or subcontractor receives a written request from an interested party or the Department, the contractor or subcontractor must file a certified copy of the payroll records with the awarding agency and with the Department. The records must include the name, address, trade or occupation, hourly rate, actual rate of wages paid, and other specified items for each laborer, worker, and mechanic employed on a public works project.

Contractors or subcontractors who fail to file required statements or records are subject to civil penalty and may not bid on any public works contracts until the penalty is paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on public works contracts for one year.

A person engaged in construction in the state must register as a contractor with the Department.

#### **Summary of Bill:**

Requirements are put in place until December 31, 2011 requiring certain contractors, subcontractors, and employers on public works projects to submit specified lists and records regarding off-site, prefabricated, nonstandard, project-specific items. Some of the requirements apply only to contractors, subcontractors, and employers who are not required to submit a statement of intent to pay prevailing wages.

Public works contracts must contain a provision requiring public works contractors, subcontractors, and employers that are not required to submit a statement of intent to pay prevailing wages to submit a list to the awarding agency and to the Department of Labor and Industries (Department) of off-site, prefabricated, nonstandard, project-specific items produced under each contract. The list must identify: (1) the item; (2) the name and address of the contractor, subcontractor, or employer; (3) the name and address of the contractor, subcontractor, or employer producing the item; and (4) the Unified Business Identifier (UBI) number of the contractor, subcontractor, or employer producing the item. Employers required to register as contractors are not included.

Upon request of an interested party, contractors, subcontractors, and employers of off-site, prefabricated, nonstandard, project-specific items must file with the awarding agency and the Department certified copies of payroll records that contain the number of labor hours expended and the hourly rate of wages paid to the workers in each trade or occupation producing the items. Public works contracts must contain a provision requiring the production of the certified payroll records and noncompliance is a violation of the records filing provision.

Before final acceptance of a project, the awarding agency must receive from contractors, subcontractors, and employers not required to submit a statement of intent to pay prevailing wages copies of the certified payroll records that have been requested, as well as the lists regarding off-site, prefabricated, nonstandard, project-specific items. The awarding agency must report noncompliance with this requirement to the Department and the Department must issue a notice of violation to a contractor, subcontractor, or employer that has failed to comply. The failure to submit the lists and records does not affect the release of retained funds.

"Off-site, prefabricated, nonstandard, project-specific items" means products or items that are: (1) made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (2) produced specifically for the public work and not considered to be regularly available shelf items; (3) produced or manufactured by labor expended to assemble or modify standard items; and (4) produced at an off-site location.

The provisions do not apply to entities responsible for supplying the materials to the manufacturers, fabricators, or employers that will be used to complete, construct, or assemble the product, products, or items prior to their delivery to the public works site.

The lists, payroll records, and certifications must be on forms made available by the Department.

The provisions expire December 31, 2011.

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Requested on 2/3/09.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.