

HOUSE BILL REPORT

HB 2805

As Reported by House Committee On:
Commerce & Labor
Capital Budget

Title: An act relating to public works involving off-site prefabrication.

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

Sponsors: Representatives Ormsby, Campbell, Williams, Van De Wege, Simpson, White, Chase, Hasegawa, Rolfes and Conway.

Brief History:

Committee Activity:

Commerce & Labor: 1/26/10, 1/27/10 [DP];
Capital Budget: 2/3/10, 2/8/10 [DP].

Brief Summary of Bill

- Requires contractors on public works projects estimated to cost over \$1 million to submit lists of specified information regarding certain prefabricated items produced outside Washington to the awarding agency and to the Department of Labor and Industries (Department).
- Requires contractors who produce certain prefabricated items outside Washington for public works projects estimated to cost over \$1 million to submit certified payroll records to the awarding agency and to the Department upon request of an interested party.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Alison Hellberg (786-7152).

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:

Under Washington's prevailing wage law, wages paid to laborers, workers, and mechanics on public works projects 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. The prevailing wage law, however, does not apply to work performed outside Washington.

Contractors and subcontractors on public works projects must submit to the awarding agency an "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid before certain payments are made. By rule, the Department of Labor and Industries (Department) requires contractors and subcontractors on public works projects 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.

Contractors or subcontractors who fail to file required statements or records under prevailing wage laws are subject to a civil penalty of \$500 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.

Summary of Bill:

Until December 31, 2012, information about certain items produced outside Washington under public works projects estimated to cost over \$1 million must be provided to the awarding agency and to the Department.

List.

Public works contracts estimated to cost over \$1 million must contain a provision requiring contractors and subcontractors to submit a certified list to the awarding agency and to the Department regarding any off-site, prefabricated, nonstandard, project-specific items produced under each contract and produced outside Washington. The list must provide: (1) a general description of the item; (2) the name and address of the contractor or subcontractor; and (3) the name, address, and federal employer identification number of the contractor or subcontractor that produced the item.

The list must be submitted within 10 days of delivery of the item. The failure to file a list is a failure to file a record under prevailing wage penalty provisions. However, no penalty may be imposed for a first violation if the list is filed within a reasonable time as determined by the Department.

Certified Payroll.

Public works contracts estimated to cost over \$1 million must contain a provision requiring all contractors and subcontractors producing off-site, prefabricated, nonstandard, project-specific items outside Washington to file certified copies of payroll records with the awarding agency and the Department within 10 days of request of an interested party. The contract must state that the contractor producing the items consents to Washington jurisdiction for purposes of enforcement of the requirement. A contractor who fails to include the payroll records requirement in a contract is subject to a civil penalty of \$1,000 for each second or subsequent failure to comply.

The failure to file certified payroll records is a failure to file a record under prevailing wage provisions.

General.

"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 Department of General Administration must develop standard contract language regarding the list and certified payroll requirements and post the language on the agency's website. The lists, payroll records, and certifications must be on forms made available by the Department.

An awarding agency aware of incidences of noncompliance with the requirements to submit the list and payroll records must report the incidences to the Department.

Upon request, the Department must submit any data collected under these provisions to the appropriate committees of the Legislature for review.

The provisions apply to contracts entered on or after September 1, 2010, and expire December 31, 2012.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) In order to make informed judgments on the state's procurement and contracting policies, it is important to collect data about what is happening with public works contracts in terms of off-site prefabrication of items being produced outside of Washington. It is important to know whether the differences are all due to lower wages. This bill has been considerably narrowed in terms of the information that needs to be provided and only applies to specific types of items. It also looks at only a brief period of time. The penalties have also been lowered.

This is a good made-in-Washington bill. This issue has been raised at the Prevailing Wage Advisory Committee because Washington contractors are having trouble competing with out-of-state contractors on public works projects. This is an effort in looking for ways to help Washington contractors to be competitive.

(With concerns) It is not desirable for public works projects to go out of state, but this bill is still too onerous for contractors. The lists are cumbersome and the penalties are stiff. The only information that will be learned from this is what is already known, which is that wages in other states are lower.

(Opposed) The technical defects in this bill make it unworkable. These defects include ambiguities, conflicts with existing statutes, and substantial questions of constitutionality. For example, the definition for "off-site, prefabricated, nonstandard, project-specific items" is unclear to contractors or awarding agencies. Another issue is that state will not receive anything of value from the bill.

This bill could also ultimately harm Washington. It could raise costs for public works projects. It could also trigger retaliation under reciprocal preference statutes. If this happened, Washington companies could be harmed if they are trying to do business in other states. The other issue is the fiscal impact of the bill. The money would come out of the fees that contractors pay and would cost more than \$600,000 over the life of the bill. This money is meant to be used for improving the accuracy and administration of the prevailing wage laws.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; David Johnson, Washington State Building and Construction Trades Council; Bob Abbott, Washington and North Idaho District Council of Laborers; and Cody Arledge, Sheet Metal Workers International Association Local Union 66.

(With concerns) Larry Stevens, Mechanical Contractors Association.

(Opposed) Van Collins, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 9 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Blake, Chase, Jacks, Maxwell, Morrell, Orwall and White.

Minority Report: Do not pass. Signed by 6 members: Representatives Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Hope, McCune and Smith.

Staff: Steve Masse (786-7115).

Summary of Recommendation of Committee On Capital Budget Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The majority of projects done in Washington should be done with prevailing wage if public funds are used. The construction element of economic development is often overlooked. The economic development starts as soon as construction begins and construction workers are being paid. These workers account for 20 percent of the workforce and help develop the economy.

(Opposed) The language in the bill is not specific enough and has broad definitions. The definition of fair market value has administrative difficulties determining what is fair market value. Fair market value is subjective and time sensitive. Some long-term leases have tenant improvements built into the lease agreements. When the appraisal was done will affect the value as well. Some property may be valued less now than five years ago. Another administrative difficulty could be having private contractors that have never dealt with prevailing wage requirements.

This bill would be bad policy. The prevailing wage requirements would make the state not friendly for economic development. The bill states it would be for construction projects, not public construction projects.

Administration and enforcement will be difficult. The Department of Labor and Industries has difficulty now enforcing prevailing wage requirements. There needs to be a clear list of what tax incentives are considered and how to implement the process. The definition of economic benefit is not clear. This bill will cost taxpayers money and drive up costs.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; Miguel Perry, Pacific Northwest Regional Council of Carpenters; David Johnson, Washington State Building and Construction Trades Council; and Cody Arledge, Sheet Metal Workers Local 66.

(Opposed) Van Collins, Associated General Contractors of Washington and Washington Construction Industry Council.

Persons Signed In To Testify But Not Testifying: None.