

HOUSE BILL REPORT

EHB 2805

As Passed Legislature

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].

Floor Activity:

Passed House: 2/15/10, 54-43.
Senate Amended.
Passed Senate: 3/3/10, 28-18.
House Concurred.
Passed House: 3/6/10, 52-42.
Passed Legislature.

Brief Summary of Engrossed Bill

- Requires contractors and subcontractors on public works projects estimated to cost over \$1 million to submit information about certain off-site prefabricated items produced outside Washington to the Department of Labor and Industries as a part of the Affidavit of Wages Paid form.

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.

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).

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.

In 2005 the Legislature created the Capital Projects Advisory Review Board (CPARB) to review alternative public works contracting procedures and provide guidance to state policymakers on ways to further enhance the quality, efficiency and accountability of public works contracting methods.

Contractors bidding on public works contracts must meet responsibility criteria in order to be considered a responsible bidder and qualified to be awarded a public works project. Bidders must be registered as a contractor; have a current state unified business identifier number; have industrial insurance, unemployment insurance, and a state excise tax registration number; not be disqualified from bidding for prevailing wage or contractor registration violations; and must be in compliance with apprenticeship utilization requirements.

Summary of Engrossed Bill:

Information about certain items produced outside Washington under public works projects estimated to cost over \$1 million must be provided to the Department of Labor and Industries (Department) as a part of the Affidavit of Wages Paid form.

Public works contracts estimated to cost over \$1 million must contain a provision requiring contractors and subcontractors to submit information regarding any off-site, prefabricated, nonstandard, project-specific items produced under each contract and produced outside Washington. The information that must be provided is: (1) the estimated cost of the public works project; (2) the name of the awarding agency and the title of the public works project;

(3) the contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington; and (4) the name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

The information must only be submitted by the contractor or subcontractor who directly directed for the items. A failure to submit the information does not constitute a violation of the prevailing wage requirements.

"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 Department of General Administration must develop standard contract language regarding these requirements and post the language on the agency's website. The Department must transmit information collected and submit it on an annual basis to the CPARB for review.

In order to meet the responsible bidder criteria and qualify to be awarded a public works project, a bidder on a public works subject must not have violated these requirements more than once, as determined by the Department.

The provisions apply to contracts entered on or after September 1, 2010, and expire December 31, 2013. The Department of Transportation and local transportation public works are exempt from the requirements.

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 (Commerce & Labor):

(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.

Staff Summary of Public Testimony (Capital Budget):

(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 (Commerce & Labor): (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 Testifying (Capital Budget): (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 (Commerce & Labor): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.