

HOUSE BILL REPORT

SHB 2331

As Passed House:
February 13, 2014

Title: An act relating to certified payroll records on public works projects.

Brief Description: Concerning certified payroll records on public works projects.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Ormsby, Moscoso, Moeller, Ryu, Reykdal and Pollet).

Brief History:

Committee Activity:

Labor & Workforce Development: 1/21/14, 1/24/14 [DPS];

Appropriations Subcommittee on Health & Human Services: 2/6/14 [DPS(LWD)].

Floor Activity:

Passed House: 2/13/14, 54-44.

Brief Summary of Substitute Bill

- Requires contractors and subcontractors on public works projects to submit certified payroll records to the awarding agencies before any payments or final payments are made or retainage is released to the contractors.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Christian and G. Hunt.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

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Majority Report: The substitute bill by Committee on Labor & Workforce Development be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Morrell, Chair; Cody, Green, Kagi, Ormsby and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Harris, Ranking Minority Member; G. Hunt, Ross and Schmick.

Staff: Mary Mulholland (786-7391).

Background:

Prevailing Wages. Contractors and subcontractors on public works projects and public building service maintenance contracts are required to pay their workers prevailing wages when employed on those projects and contracts. The prevailing wage is the hourly wage, usual benefits, and overtime paid in the largest city in each county to the majority of workers in a particular trade or occupation. The Department of Labor and Industries (Department) establishes prevailing wage rates for each trade and occupation and is responsible for administering and enforcing the prevailing wage law.

Contract Retainage. Public agencies that award public improvement contracts must withhold an amount of up to 5 percent of the money due to the contractor. This retainage is used to help satisfy claims anyone, such as a laborer or supplier, may have under the contract. Once the contract work is completed, the contractor may request release of the retainage, and the public agency has 60 days to release the retainage, subject to the requirements of the prevailing wage law.

Intents and Affidavits. Contractors and subcontractors on public works projects must submit an "intent" to pay prevailing wages to the awarding agency before any payment by the agency is made. After the final acceptance of the project, contractors and subcontractors must submit an "affidavit" stating that prevailing wages have been paid.

Intents and affidavits must be approved by the industrial statistician at the Department before they are submitted to the awarding agency. An awarding agency may not release the contract retainage until all affidavits are submitted.

Certified Payroll Records. Contractors must keep accurate payroll records for three years from the date of acceptance of a public works project. Upon the written request of the Department or any interested party, the contractor must, within 10 days of the request, file a certified copy of the payroll records with the agency that awarded the public works contract and with the Department.

Summary of Substitute Bill:

Before any payment is made on a public works project, the awarding agency must require the contractor and each subcontractor to submit to the awarding agency current, complete and accurate certified payroll records. After final acceptance of the public works project, the awarding agency must require certified payroll records before final payment is made and the retainage is released. Certified payroll records must be submitted in a format acceptable to

the awarding agency. The awarding agency shall be held harmless and is not liable for the currency, completeness, or accuracy of the certified payroll records submitted.

Appropriation: None.

Fiscal Note: Preliminary 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 (Labor & Workforce Development):

(In support) When a worker is not paid his or her wages, that is fraud and wage theft. This bill will streamline reporting to assure complete and timely payment on public works. Having certified payroll records are a quick and proactive way to help workers. Fraud detection with the Department is a complaint-driven process and this bill would help that process by providing documentation. This package of bills is a comprehensive approach to address the underground economy, wage theft, and workplace fraud.

(With concerns) There is no provision addressing the extent to which a public owner will be liable for the accuracy of the payroll records it receives. If the public owner must verify payroll records, it will create an administrative burden and add to the cost of the project.

(Opposed) The requirements of the bill is an overlay on top of an existing system. The bill would require a new requirement, handled by the public agency, rather than the Department. The Department already gets affidavits at the end of the project. These types of bills do not work for small businesses. The complexity of these laws is overwhelming and the requirements are onerous and burdensome. Wage issues are complicated matters about which people can disagree.

Staff Summary of Public Testimony (Appropriations Subcommittee on Health & Human Services):

(In support) Requiring certified payroll records is a valuable tool to help identify those contractors who skirt the law to underbid competition. Timely access to these records means recovering more industrial insurance premiums and recovering wages that should have been paid to workers. These documents will help stop the underground economy, misclassification, and underreporting. It will require the construction industry to police itself more effectively. Increasing access to accurate and verifiable records will increase the number of complaints the Department of Labor and Industries will investigate. Having access to timely payroll records is an efficient and effective tool to identify noncompliance.

(Opposed) This is more complex than just providing certified payroll records. This bill overlays a requirement on top of the current system of intents and affidavits. It is duplicative. There will be an administrative burden on every public entity in the state. Contractors will have that same burden and will pass on the cost. The bill does not address the security issues with certified payroll records containing workers' Social Security

numbers and addresses. Those documents will be sent to public agencies and will become public records.

Persons Testifying (Labor & Workforce Development): (In support) Representative Sells, prime sponsor; Teresa Mosqueda, Washington State Labor Council; Diego Rondón Ichikawa, National Employment Law Project; Andrea Schmitt, Columbia Legal Services; Joel Coronado and Cariño Barragan, Casa Latina; Robert Bruner, Teamsters Local 117; Larry Boyd, Teamsters Local 174; Neil Hartman, Washington State Building and Construction Trades Council; Nicole Grant, Certified Electricians of Western Washington; Miguel Perez Gibson, Progreso Latino; Emily Murphy, One America; and Simon Gorbaty.

(With concerns) Ginger Eagle, Washington Public Ports Association.

(Opposed) Tim O'Connell, Association of Washington Business; Philip Talmadge, Washington Trucking Association; Van Collins, Associated General Contractors; Mark Johnson, Washington Retail Association; Jeff Hansrom, Direct Sellers Association; Susan Eerdmans, Avon; and Gary Smith, Independent Business Association.

Persons Testifying (Appropriations Subcommittee on Health & Human Services): (In support) Neil Hartman, Washington Building Construction Trades Council; and Don Demulling, Iron Workers Local 86.

(Opposed) Van Collins, Associated General Contractors.

Persons Signed In To Testify But Not Testifying (Labor & Workforce Development): Don DeMulling, Iron Workers Local 86.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on Health & Human Services): None.