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HOUSE BILL 2047

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Miloscia, Moeller, Kenney, Chase, Romero, Schual-Berke, Dickerson, O'Brien, Dunshee, Conway, Santos, Cody, Veloria and Pettigrew

Read first time 02/20/2003. Referred to Committee on State Government.

1 AN ACT Relating to providing living wages on public contracts;  
2 adding a new section to chapter 28B.10 RCW; adding a new section to  
3 chapter 43.19 RCW; adding a new section to chapter 47.28 RCW; adding a  
4 new chapter to Title 39 RCW; providing an effective date; and declaring  
5 an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the state  
8 annually awards service contracts to private contractors and vendors to  
9 provide services on behalf of the state, and that such expenditures  
10 should be spent in a manner that promotes the creation of jobs that  
11 allow residents to support themselves and their families with dignity.  
12 The legislature further finds that the present federal and state  
13 minimum wages generate income at a level below the amount required to  
14 support a family at a basic level and that jobs that do not pay living  
15 wages result in families who have greater need of social services  
16 provided by the state and paid for by state taxpayers. The payment of  
17 adequate wages to workers for those hours performing services on behalf  
18 of the state will promote stability and reduced turnover, resulting in  
19 a higher quality of service.

1        NEW SECTION.    **Sec. 2.** The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3        (1) "Contract" means public works contracts, personal services  
4 contracts, and purchasing contracts for goods and services.

5        (2) "Contractor" means any person, firm, or corporation that, in  
6 the pursuit of an independent business, undertakes a contract with the  
7 state.

8        (3) "Department" means the department of labor and industries.

9        (4) "Director" means the director of the department of labor and  
10 industries.

11       (5) "Subcontractor" means any person, firm, or corporation that, in  
12 the pursuit of an independent business, undertakes a contract with  
13 another person, firm, or corporation who holds a contract with the  
14 state.

15       (6) "Employee" includes any individual employed by an employer but  
16 does not include:

17       (a) An individual seventeen years old or younger;

18       (b) An individual in a position that is designated for a trainee,  
19 apprentice, or is otherwise part of a training program;

20       (c) An individual in a work study position, internship, or who is  
21 in a position that requires student status as a prerequisite to being  
22 employed in that position;

23       (d) An individual standing by or on-call according to the criteria  
24 established by the fair labor standards act, 29 U.S.C. Sec. 201, but  
25 only for those hours when the employee is actually standing by or on-  
26 call;

27       (e) An individual (i) employed as a hand harvest laborer and paid  
28 on a piece rate basis in an operation that has been, and is generally  
29 and customarily recognized as having been, paid on a piece rate basis  
30 in the region of employment; (ii) who commutes daily from his or her  
31 permanent residence to the farm on which he or she is employed; and  
32 (iii) who has been employed in agriculture less than thirteen weeks  
33 during the preceding calendar year;

34       (f) An individual employed in casual labor in or about a private  
35 home, unless performed in the course of the employer's trade, business,  
36 or profession;

37       (g) An individual employed in a bona fide executive,  
38 administrative, or professional capacity or in the capacity of outside

1 salesman as those terms are defined by rules of the director. However,  
2 those terms shall be defined by the Washington personnel resources  
3 board pursuant to chapter 41.06 RCW;

4 (h) An individual engaged in the activities of an educational,  
5 charitable, religious, state, or local governmental body or agency, or  
6 nonprofit organization where the employer-employee relationship does  
7 not in fact exist or where the services are rendered to such  
8 organizations gratuitously. If the individual receives reimbursement  
9 in lieu of compensation for normally incurred out-of-pocket expenses or  
10 receives a nominal amount of compensation per unit of voluntary service  
11 rendered, an employer-employee relationship is deemed not to exist for  
12 the purposes of this chapter or for purposes of membership or  
13 qualification in any state, local government, or publicly supported  
14 retirement system other than that provided under chapter 41.24 RCW;

15 (i) An individual employed full-time by any state or local  
16 governmental body or agency who provides voluntary services but only  
17 with regard to the provision of the voluntary services. The voluntary  
18 services and any compensation therefor does not affect or add to  
19 qualification, entitlement, or benefit rights under any state or local  
20 government, or publicly supported retirement system other than that  
21 provided under chapter 41.24 RCW;

22 (j) A newspaper vendor or carrier;

23 (k) A carrier subject to regulation by Part 1 of the interstate  
24 commerce act;

25 (l) An individual engaged in forest protection and fire prevention  
26 activities;

27 (m) An individual employed by any charitable institution charged  
28 with child care responsibilities engaged primarily in the development  
29 of character or citizenship or promoting health or physical fitness or  
30 providing or sponsoring recreational opportunities or facilities for  
31 young people or members of the armed forces of the United States;

32 (n) An individual whose duties require that he or she resides or  
33 sleeps at the place of his or her employment or who otherwise spends a  
34 substantial portion of his or her work time subject to call, and not  
35 engaged in the performance of active duties;

36 (o) A resident, inmate, or patient of a state, county, or municipal  
37 correctional, detention, treatment, or rehabilitative institution;

1 (p) An individual who holds a public elective or appointive office  
2 of the state, any county, city, town, municipal corporation, quasi-  
3 municipal corporation, political subdivision, or any instrumentality  
4 thereof, or any employee of the state legislature;

5 (q) All vessel operating crews of the Washington state ferries  
6 operated by the department of transportation;

7 (r) An individual employed as a seaman on a vessel other than an  
8 American vessel; or

9 (s) An individual subject to a bona fide collective bargaining  
10 agreement.

11 NEW SECTION. **Sec. 3.** (1) All contractors and subcontractors  
12 covered under this act shall pay employees a living wage no less than  
13 ten dollars per hour if health benefits are paid for in whole or in  
14 substantial part by the employer, or eleven dollars and fifty cents per  
15 hour if health benefits are not so provided.

16 (2)(a) Beginning January 1, 2004, and each following January 1st as  
17 set forth under (b) of this subsection, every contractor and  
18 subcontractor shall pay to each of his or her qualifying employees at  
19 a rate of not less than the amount established under (b) of this  
20 subsection.

21 (b) Beginning September 30, 2003, and on each following September  
22 30th, the department shall calculate an adjusted living wage rate by  
23 increasing the current year's living wage rate by the rate of  
24 inflation. The adjusted living wage rate shall be calculated to the  
25 nearest cent using the consumer price index for urban wage earners and  
26 clerical workers, CPI-W, or a successor index, for the twelve months  
27 before each September 1st as calculated by the United States department  
28 of labor. Each adjusted living wage rate calculated under this  
29 subsection (2)(b) takes effect on the following January 1st.

30 NEW SECTION. **Sec. 4.** In circumstances where a contract also  
31 requires the contractor or subcontractor to pay its employees  
32 prevailing wages, the contractor or subcontractor shall pay its  
33 employees at the contractually prescribed prevailing wage rate or the  
34 minimum living wage payable under this chapter, whichever is higher.

1        NEW SECTION.    **Sec. 5.**    The office of financial management may grant  
2 an exemption to the requirements of this chapter upon making a written  
3 finding either that:

4        (1) Compliance with the living wage will cause economic hardship to  
5 the state or its citizens; or

6        (2) The exemption is in the best interests of the state due to  
7 unforeseen or special circumstances including but not limited to a  
8 declared natural disaster.

9        NEW SECTION.    **Sec. 6.**    No contractor or subcontractor shall  
10 retaliate or discriminate against an employee in his or her terms and  
11 conditions of employment for: (1) Reporting a possible violation of  
12 this chapter to the director; (2) participating in any legal or  
13 administrative proceeding in respect to this chapter; (3) seeking civil  
14 remedies to enforce his or her rights conferred by this chapter; or (4)  
15 otherwise asserting his or her rights under this chapter.

16        NEW SECTION.    **Sec. 7.**    (1) An employee claiming a violation of this  
17 chapter may report the violation to the director.

18        (2) The department shall have the same administrative and  
19 enforcement powers as identified in chapter 49.48 RCW.

20        NEW SECTION.    **Sec. 8.**    (1) Compliance with this chapter is required  
21 in all state contracts to which it applies. Upon award of a contract  
22 covered by this chapter, the contractor must certify that he or she  
23 will comply, and will require all subcontractors to comply, with the  
24 requirements of this chapter.

25        (2) Such contracts shall provide that upon a violation of this  
26 chapter, a contractor or subcontractor who is out of compliance for the  
27 first time has thirty days to come into compliance including the  
28 payment of any back wages required. If the contractor or subcontractor  
29 remains out of compliance after thirty days, the state may terminate  
30 the contract and otherwise pursue contractual remedies for breach of  
31 contract. The contractor or subcontractor may appeal the finding of  
32 the department made under this section in accordance with the  
33 administrative procedure act, chapter 34.05 RCW.

34        (3) Within ten days of a request by the state, the contractor or

1 subcontractor shall provide satisfactory proof of compliance with the  
2 living wage provisions of this chapter in the form of payroll records,  
3 benefit records, or other appropriate evidence.

4 (4) If the state finds that a contractor or subcontractor has  
5 violated this chapter a second time, the state may terminate all  
6 contracts with the contractor or subcontractor, and the contractor or  
7 subcontractor shall be prohibited from contracting with the state for  
8 a period of two years.

9 NEW SECTION. **Sec. 9.** Nothing contained in this chapter may be  
10 construed to limit in any way the remedies, legal or equitable, that  
11 are available for violations of this chapter.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 11.** (1) The living wage requirement imposed by  
17 this chapter applies to all contracts and related subcontracts entered  
18 into, renewed, or extended on or after July 1, 2003.

19 (2) This act does not apply to contracts entered into before July  
20 1, 2003.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 28B.10  
22 RCW to read as follows:

23 All contracts entered into under this chapter on or after July 1,  
24 2003, are subject to the requirements established under chapter 39.--  
25 RCW (sections 1 through 11 of this act).

26 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.19 RCW  
27 to read as follows:

28 All contracts entered into under this chapter on or after July 1,  
29 2003, are subject to the requirements established under chapter 39.--  
30 RCW (sections 1 through 11 of this act).

31 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.28 RCW  
32 to read as follows:

1 All contracts entered into under this chapter on or after July 1,  
2 2003, are subject to the requirements established under chapter 39.--  
3 RCW (sections 1 through 11 of this act).

4 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act  
5 constitute a new chapter in Title 39 RCW.

6 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 July 1, 2003.

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