

# SENATE BILL REPORT

## SB 5107

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As Passed Senate, March 11, 2013

**Title:** An act relating to prevailing wages for workers employed in residential construction.

**Brief Description:** Concerning prevailing wages for workers employed in residential construction.

**Sponsors:** Senators Padden and Holmquist Newbry.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/13/13, 2/18/13 [DP, DNP].

Passed Senate: 3/11/13, 26-23.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

**Minority Report:** Do not pass.

Signed by Senators Conway, Ranking Member; Hasegawa and Keiser.

**Staff:** Mac Nicholson (786-7445)

**Background:** Employers on public works projects must pay prevailing wages. The prevailing wage is the hourly wage, usual benefits, and overtime paid to the majority of workers in the same trade or occupation in the largest city of the county where the work is being performed. The prevailing wage is determined by the industrial statistician at the Department of Labor and Industries. Residential prevailing wage rates exist for a number of trades and occupations, and are generally lower than the corresponding commercial rate. Residential prevailing wage rates only apply on residential construction. To be considered residential, the building must not exceed four stories including the basement, and must be used solely as a permanent residence. The definition of residential construction does not include utilities construction, work on streets, or work on other structures. A building that houses any commercial activity will not be considered residential, and all work performed must be paid at the commercial prevailing wage rate.

The Davis-Bacon Act (DBA) is the federal law applying prevailing wage requirements to projects using federal funds. DBA recognizes different prevailing wage rates for building

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construction and residential construction. Residential construction is defined to include all incidental items, such as site work, parking areas, utilities, streets, and sidewalks. The U.S. Department of Labor (U.S. DOL) has issued an agency memorandum providing advice on projects that include different categories of construction. According to the memo, only one schedule of rates is used if construction items are incidental in function to the overall character of a project and if there is not a substantial amount of construction in a second category. The memo further advises that due to the complexities in application of multiple schedules, contracting agencies should consult with U.S. DOL whenever it appears more than one schedule of rates is appropriate.

**Summary of Bill:** Distinct prevailing wage rates must be calculated and paid to workers employed in residential construction.

The definition of residential construction is changed to include incidental items such as site work, parking areas, utilities, and streets and sidewalks, pursuant to the U.S. DOL memorandum on application of DBA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: A constituent was working on a low-income housing project where only 11 percent of the space of the building is commercial. They were told originally that they could pay the residential prevailing wage on the residential part of the building and the commercial rate on the commercial part, but found out they had to pay the commercial rate on the whole project. This bill is a clarification and not an attack on prevailing wage. The bill will help keep costs down for low-income housing projects. As a general principle, free market solutions are the most sustainable way to meet societal needs. The goal is to bring certainty and consistency to prevailing wage jobs. There is a conflict between federal and state regulations on prevailing wage applicability for mixed-use buildings, and this bill resolves that conflict.

CON: There are some flaws in the legislation. The general reduction of wages on public works jobs is harmful to workers. There may be situations where the residential rate is the same as the commercial rate, so there might not be any savings.

**Persons Testifying:** PRO: Senator Padden, prime sponsor; Ken Morse, Alliance for Good Government; Patrick Connor, National Federation of Independent Business.

CON: David Meyers, WA State Building Trades Council; Josh Swanson, International Union of Operating Engineers.