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**ENGROSSED SUBSTITUTE SENATE BILL 5726**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senator King)

AN ACT Relating to the prevailing wages on public works; amending RCW 39.12.015 and 39.12.030; and providing an effective date.

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

**Sec.**  RCW 39.12.015 and 2019 c 29 s 2 are each amended to read as follows:

(1) All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

(2) The time period for recovery of any wages owed to a worker affected by the determination is tolled until the prevailing wage determination is final.

(3)((~~(a) Except~~)) Until May 31, 2027, except as provided in RCW 39.12.017, and notwithstanding RCW 39.12.010(1), the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For trades and occupations with more than one collective bargaining agreement in the county, the higher rate will prevail.

((~~(b)~~)) (4) For contracts bid or awarded on or after June 1, 2027, except as provided in RCW 39.12.017, and notwithstanding RCW 39.12.010(1), the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For trades and occupations with more than one collective bargaining agreement in the county other than ship building and ship repair rates:

(a) The industrial statistician shall determine and prevail the rate that represents the majority of workers, laborers, or mechanics in the same trade or occupation under the collective bargaining agreements. In the event there is not a majority of workers, laborers, or mechanics in the same trade or occupation paid at the same rate, then the rate representing the most workers, laborers, or mechanics in the same trade or occupation shall prevail. The industrial statistician shall consider the applicable collective bargaining agreements and may seek input from the labor and management signatory parties and their multiemployer bargaining unit representatives, if applicable, regarding which rate is the majority rate, or the rate representing the most workers, laborers, or mechanics in the same trade or occupation in the event there is no majority. In no case where there is a collective bargaining agreement within a county, shall the industrial statistician conduct wage surveys or otherwise apply hours worked data to set the prevailing rate of wage, except that it may apply hours worked data to resolve an appeal under (b) of this subsection.

(b) An interested party may appeal a determination by the industrial statistician under this subsection. The interested party must allege and prove by competent evidence that the actual rate used in the determination is not the rate representing the majority number or plurality of workers, laborers, or mechanics in the same trade or occupation under the collective bargaining agreements. Until final determination thereof, the work in question shall proceed under the rate established by the industrial statistician.

(5) Notwithstanding RCW 39.12.010(1), for contracts bid or awarded on or after June 1, 2027, for ship building and ship repair the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For the ship building and ship repair trades and occupations with more than one collective bargaining agreement in the county, the higher rate will prevail.

(6) For trades and occupations in which there are no collective bargaining agreements in the county, the industrial statistician shall establish the prevailing rate of wage as defined in RCW 39.12.010 by conducting wage and hour surveys. In instances when there are no applicable collective bargaining agreements and conducting wage and hour surveys is not feasible, the industrial statistician may employ other appropriate methods to establish the prevailing rate of wage.

**Sec.**  RCW 39.12.030 and 2009 c 62 s 1 are each amended to read as follows:

(1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall ((~~contain a stipulation~~)) stipulate that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) The contract shall stipulate that the hourly minimum rate of wage for laborers, workers, or mechanics must be adjusted as necessary to provide that such wage is not less than the latest prevailing rate of wage in effect at the time the work is performed.

(3) Until December 31, 2029, cost increases directly resulting from wage adjustments of the prevailing rate of wage pursuant to subsection (2) of this section shall be good cause justification for the contractor of any level affected by said increase to require a financial adjustment to the contractor's contract for the following scopes of work established pursuant to this chapter:

(a) Carpenters;

(b) Cement masons;

(c) Laborers;

(d) Power equipment operators; and

(e) Teamsters.

(4) Nothing in subsection (2) of this section shall supersede the wage adjustment provisions provided for in RCW 39.04.155, 35.22.620(11)(e), 53.08.120(3)(e), 39.10.380(1), 35.23.352(13), 36.32.235(9), 39.04.235, 54.04.070(7), 39.10.420, 39.10.340, 39.10.300, and 57.08.050(6).

(5) Subsection (2) of this section does not apply to work for housing projects where at least 50 percent of the residential units are made available for low-income households, or to residential construction as defined in RCW 39.12.017.

(6) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

NEW SECTION. **Sec.**  This act takes effect January 1, 2025.

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