

HOUSE BILL REPORT

HB 2136

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to prevailing wage sanctions, penalties, and debarment.

Brief Description: Concerning prevailing wage sanctions, penalties, and debarment.

Sponsors: Representatives Ormsby, Schmidt, Doglio, Farivar, Berry, Simmons, Reed, Ramel, Mena, Goodman, Berg, Fosse, Reeves, Pollet and Kloba; by request of Attorney General.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/16/24, 1/26/24 [DPS].

Brief Summary of Substitute Bill

- Provides that a contractor is subject to the same sanctions or debarment from bidding on public works projects if it has substantially identical operations, corporate, or management structure to another entity that has been sanctioned or debarred under state prevailing wage laws.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Schmidt, Ranking Minority Member; Bronoske, Doglio, Ormsby, Ortiz-Self, Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

Background:

The Washington State Prevailing Wages on Public Works Act requires laborers, mechanics, and others workers to be paid prevailing wages when employed on public works projects

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and public building service maintenance contracts. Public works include all work, construction, alteration, repair, or improvement, other than ordinary maintenance, that is done at the cost of the state or any municipality.

The parties involved in a public works contract must include prevailing wage requirements in the applicable bid documents and contract. The prevailing wage, which is set by the industrial statistician of the Department of Labor and Industries (L&I), is based on the hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers, laborers, and mechanics performing the same work. The rate is established separately for each county. For any particular project, a contractor must use the prevailing wage rate for workers in place at the time of the prime contractor's bid due date, or the date the contract is awarded if the contract is not awarded within six months of the bid due date. The prevailing wage rate determined at that time remains the same for the life of the project.

In order to bid a public works contract, a prime contractor and its subcontractors must qualify as "responsible bidders" under state law. This includes maintaining proper contractor registration and licenses and maintaining industrial insurance coverage for employees. A contractor or subcontractor is not considered a responsible bidder if it is debarred from bidding on public works projects based on certain state laws pertaining to prevailing wage, contractor registration, industrial insurance, or apprentices, as follows:

Violation	Number of Violations/Time Period	Length of Debarment
Failure to file or making a false filing of prevailing wage forms.	Two or more times in a five-year period.	One year.
Failure to pay workers the correct prevailing wage rate.	Two or more times in a five-year period.	Two years.
Misreporting of hours worked or misreporting of premiums paid to industrial insurance. Failure to obtain a certificate of coverage for industrial insurance. Failure to comply with contractor registration requirements. Determined to be out of compliance by the Washington State Apprenticeship and Training Council for working apprentices out of ratio, without	Two or more times in a five-year period.	One year.

appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship.		
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L&I maintains a list of all contractors who are forbidden either to bid on a public works project or to have a bid accepted. The industrial statistician must refuse to certify any statement of intent to pay the prevailing wage or affidavit of wages paid that he or she determines was submitted by a contractor on the list.

Summary of Substitute Bill:

A definition of "contractor" is added to the state law governing prevailing wages on public works. A "contractor" refers to any prime contractor, subcontractor, or other employer as defined by rules adopted by L&I. A contractor also includes an entity, however organized, with substantially identical operations, corporate, or management structure to an entity that has been found to be in violation of state laws on prevailing wage, contractor registration, industrial insurance, or apprentices. The nonexclusive factors used to determine substantial identity include an assessment of whether there is: (1) substantial continuity of the same business operation; (2) use of the same machinery, equipment, or both tangible and intangible real or personal property; (3) similarity of jobs and types of working conditions; (4) continuity of supervisors; and (5) similarity of product or services.

If a contractor has substantially identical operations, corporate, or management structure to another entity that has been debarred or sanctioned by L&I, then the debarment or sanctions apply to the contractor. L&I may take enforcement action against these contractors. L&I may issue a notice of violation, and a hearing must be held following a timely appeal of the notice of violation. L&I must issue a determination with written findings. If a timely appeal is not filed, a notice of violation is final and binding and is not subject to further appeal.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the definition of "contractor" in the underlying bill by providing that an entity with operational, corporate, and management structure distinct from an entity that has been found in violation of certain prevailing wage laws shall not be deemed a substantial identical identity.

The substitute bill establishes requirements for notice, hearings, and appeals when L&I finds that a contractor is substantially similar to another entity that has been sanctioned or debarred under state prevailing wage laws, including:

- requiring L&I to issue a notice of violation;

- requiring a hearing to be held following a timely appeal of the notice;
- requiring L&I to issue a written determination with findings after the hearing, if an appeal is filed; and
- specifying that a notice of violation is final and binding, if not timely appealed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 26, 2024.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) It is very difficult to get debarred from bidding on public works. It requires repeat violations of prevailing wage laws. Yet some bad actors evade accountability by changing their name and getting a new license. This is the definition of scofflaw. Sanctions and debarment should follow the bad actors, regardless if they change their names. The bill is narrowly tailored to address a loophole in the current code, and it will capture repeat violators who take advantage of workers on state funded projects. The bill deters contractors from repeatedly violating the law, and it also ensures that workers are paid the wages owed to them. The prevailing wage laws are designed to ensure fairness in the public contracting process. This bill furthers the intent of the underlying law.

(Opposed) None.

(Other) The bill is addressing an important problem. It should be amended by using a definition of contractor in the current code, rather than leaving it to rulemaking. There also needs to be some due process for contractors identified as illegitimate successors. There should be an appeal process in order to ensure that good actors do not get unfairly debarred. If it walks like a duck, and talks like a duck, then it is probably a duck. But in some cases, the contractor may be able to explain that it is not a duck. Further, there should be some way to address legitimate mergers where a business was purchased without the buyer knowing of the sanctions.

Persons Testifying: (In support) Representative Timm Ormsby, prime sponsor; Rory Paine-Donovan and Amanda Goss, Washington State Office of the Attorney General; Mark Riker, Washington State Building and Construction Trades Council; and Ray Dumas, Cement Masons and Plasterers Local 528.

(Other) Robert Battles, Association of Washington Business; and Jerry VanderWood, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.