

**EHB 1836** - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12  
5 RCW to read as follows:

6 (1)(a) On public works projects estimated to cost over one million  
7 dollars, all contracts for the production of off-site, prefabricated,  
8 nonstandard, project-specific items entered into by the contractor or  
9 any subcontractor with any contractor or employer who is located out  
10 of state and is not required to register under chapter 18.27 RCW must  
11 contain a provision requiring the out-of-state contractor or employer  
12 to submit a certified list of any off-site, prefabricated,  
13 nonstandard, project-specific items produced under the terms of each  
14 respective contract outside Washington. The list must be submitted to  
15 the awarding agency and to the department of labor and industries  
16 within ten days of delivery under the respective contract. The list  
17 must provide:

- 18 (i) A general description of the item;  
19 (ii) The name and address of the in-state contractor,  
20 subcontractor, or employer;  
21 (iii) The name, address, and federal employer identification  
22 number of the out-of-state contractor, subcontractor, or employer that  
23 produced the item.

24 (b) If the awarding agency is aware of incidences of noncompliance  
25 with the requirement to submit a list under (a) of this subsection,  
26 the awarding agency must report such incidences to the department of  
27 labor and industries. The failure to file a certified list required

1 under (a) of this subsection constitutes the failure to file a record  
2 required to be filed under this chapter and subjects the out-of-state  
3 contractor or employer to the penalties in RCW 39.12.050. However, no  
4 penalty may be imposed for a first violation if the contractor or  
5 employer files the certified list within a reasonable time as  
6 determined by the department of labor and industries.

7 (c) The in-state contractor or subcontractor that contracted for  
8 the off-site, prefabricated, nonstandard, project-specific item  
9 produced outside Washington must notify the awarding agency when  
10 reasonably possible upon receipt of the item.

11 (2)(a) On public works projects estimated to cost over one million  
12 dollars, all contracts for the production of off-site, prefabricated,  
13 nonstandard, project-specific items entered into by the contractor or  
14 any subcontractor with any contractor or employer who is located out  
15 of state and is not required to register under chapter 18.27 RCW must  
16 contain a provision requiring the out-of-state contractor or employer  
17 to produce certified copies of payroll records as provided in  
18 subsection (3) of this section. The contract must also state that the  
19 contractor or employer producing the item consents to the jurisdiction  
20 of Washington for the enforcement of subsection (3) of this section.

21 (b) If the director of the department of labor and industries  
22 determines after a hearing under chapter 34.05 RCW that an in-state  
23 contractor or subcontractor has failed to comply with this subsection,  
24 the contractor or subcontractor is subject to a civil penalty of one  
25 thousand dollars for each second or subsequent failure to comply.  
26 Civil penalties shall be deposited into the public works  
27 administration account. The civil penalty does not apply to a  
28 violation determined by the director to be an inadvertent error.

29 (3) Within ten days of receipt of a request by an interested  
30 party, contractors and employers producing the items identified in  
31 subsection (2)(a) of this section outside Washington must file with  
32 the awarding agency and the department of labor and industries  
33 certified copies of payroll records. The payroll records must contain  
34 the number of labor hours expended producing the items and the hourly

1 rate of wages paid to the workers in each trade or occupation used in  
2 producing the items. If the awarding agency is aware of incidences of  
3 noncompliance with the requirement to submit payroll records under  
4 this subsection, the awarding agency must report such incidences to  
5 the department of labor and industries. The failure to produce the  
6 certified copies constitutes the failure to file a record required to  
7 be filed under this chapter and subjects the contractor or employer to  
8 the penalties in RCW 39.12.050.

9 (4) This section does not apply to entities responsible for  
10 supplying the materials to the manufacturers, fabricators, or  
11 employers that will be used to complete, construct, or assemble the  
12 items prior to their delivery to the public works site.

13 (5)(a) The required lists, payroll records, and certifications  
14 under this section must be submitted on forms made available by the  
15 department of labor and industries.

16 (b) The department of general administration shall develop  
17 standard contract language to meet the requirements of subsections  
18 (1)(a) and (2)(a) of this section and make the language available on  
19 its web site.

20 (6) For purposes of this section, "off-site, prefabricated,  
21 nonstandard, project-specific items" means products or items that are:  
22 (a) Made primarily of architectural or structural precast concrete,  
23 fabricated steel, pipe and pipe systems, or sheet metal and sheet  
24 metal duct work; (b) produced specifically for the public work and not  
25 considered to be regularly available shelf items; (c) produced or  
26 manufactured by labor expended to assemble or modify standard items;  
27 and (d) produced at an off-site location.

28 (7) Upon request, the department of labor and industries must  
29 submit any data collected under this act to the appropriate committees  
30 of the legislature for review.

31 (8) This section applies to contracts entered into on or after  
32 September 1, 2009, and expires December 31, 2011.

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1        NEW SECTION.    **Sec. 2.**    The expiration of section 1 of this act  
2 does not affect any request or proceeding instituted prior to the  
3 expiration of section 1 of this act."

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5        EFFECT:

6 The amendment provides as follows:

- 7        • The out-of-state contractor is required to submit the list of  
8        prefabricated items and produce certified payroll, and is  
9        subject to penalty for failing to do so.  
10       • The in-state contractor is required to have the provision  
11       relating to certified payroll and jurisdiction in the contract,  
12       and is subject to a \$1000 fine for failure to include the  
13       provision in the contract.

14 The amendment adds the requirement in section (1)(c) that the in-  
state contractor notify the awarding agency when reasonably possible  
upon receipt of the prefabricated item.

The language requires L&I to submit data collected, upon request, to  
the appropriate committees of the legislature.

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