

HOUSE BILL REPORT

HB 1836

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to public works involving off-site prefabrication.

Brief Description: Regarding public works involving off-site prefabrication.

Sponsors: Representatives Ormsby, Wood, Dunshee, Campbell, Moeller, Van De Wege, Simpson, Driscoll, Chase and Conway.

Brief History:

Committee Activity:

Commerce & Labor: 2/10/09, 2/20/09 [DP].

Brief Summary of Bill

- Requires contractors on public works projects that are not required to pay prevailing wages to submit lists of specified information regarding certain off-site prefabricated items to the awarding agency and to the Department of Labor and Industries (Department).
- Requires all contractors on public works projects to submit certified payroll records regarding certain off-site prefabricated items to the awarding agency and to the Department upon request by an interested party.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Joan Elgee (786-7106)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under Washington's prevailing wage law, wages paid to laborers, workers, or mechanics on all public works contracts of the state or political subdivisions must be not less than the prevailing rate of wage in the same trade or occupation in the locality within the state where the labor is performed. The Washington State Supreme Court has held that the prevailing wage law applies to the off-site manufacture of prefabricated items for use on a particular project. An Attorney General's Opinion states that the prevailing wage law does not apply to work performed outside Washington.

The specifications for every public work contract must contain the minimum wage rate, not less than the prevailing wage, and the contract must contain a stipulation that the laborers, workers, and mechanics shall not be paid less than the specified rate.

Before payment is made under a public works contract, the responsible officer must require the contractor and subcontractors to submit a "Statement of Intent to Pay Prevailing Wages." After final acceptance of the project, the responsible officer must require the contractor and subcontractors to submit an "Affidavit of Wages Paid" before the retainage is released. Each claim submitted by a contractor must state that the prevailing wages have been paid.

By rule, the Department of Labor and Industries (Department) requires contractors and subcontractors to keep accurate payroll records. Within 10 days after a contractor or subcontractor receives a written request from an interested party or the Department, the contractor or subcontractor must file a certified copy of the payroll records with the awarding agency and with the Department. The records must include the name, address, trade or occupation, hourly rate, actual rate of wages paid, and other specified items for each laborer, worker, and mechanic employed on a public works project.

Contractors or subcontractors who fail to file required statements or records are subject to civil penalty and may not bid on any public works contracts until the penalty is paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on public works contracts for one year.

A person engaged in construction in the state must register as a contractor with the Department.

Summary of Bill:

Requirements are put in place until December 31, 2011, requiring certain contractors, subcontractors, and employers on public works projects to submit specified lists and records regarding off-site, prefabricated, nonstandard, project-specific items. Some of the requirements apply only to contractors, subcontractors, and employers who are not required to submit a statement of intent to pay prevailing wages.

Public works contracts must contain a provision requiring public works contractors, subcontractors, and employers that are not required to submit a statement of intent to pay prevailing wages to submit a list to the awarding agency and to the Department of Labor and Industries (Department) of off-site, prefabricated, nonstandard, project-specific items

produced under each contract. The list must identify: (1) the item; (2) the name and address of the contractor, subcontractor, or employer; (3) the name and address of the contractor, subcontractor, or employer producing the item; and (4) the Unified Business Identifier (UBI) number of the contractor, subcontractor, or employer producing the item. Employers required to register as contractors are not included.

Upon request of an interested party, contractors, subcontractors, and employers of off-site, prefabricated, nonstandard, project-specific items must file with the awarding agency and the Department certified copies of payroll records that contain the number of labor hours expended and the hourly rate of wages paid to the workers in each trade or occupation producing the items. Public works contracts must contain a provision requiring the production of the certified payroll records and noncompliance is a violation of the records filing provision.

Before final acceptance of a project, the awarding agency must receive from contractors, subcontractors, and employers not required to submit a statement of intent to pay prevailing wages copies of the certified payroll records that have been requested, as well as the lists regarding off-site, prefabricated, nonstandard, project-specific items. The awarding agency must report noncompliance with this requirement to the Department and the Department must issue a notice of violation to a contractor, subcontractor, or employer that has failed to comply. The failure to submit the lists and records does not affect the release of retained funds.

"Off-site, prefabricated, nonstandard, project-specific items" means products or items that are: (1) made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (2) produced specifically for the public work and not considered to be regularly available shelf items; (3) produced or manufactured by labor expended to assemble or modify standard items; and (4) produced at an off-site location.

The provisions do not apply to entities responsible for supplying the materials to the manufacturers, fabricators, or employers that will be used to complete, construct, or assemble the product, products, or items prior to their delivery to the public works site.

The lists, payroll records, and certifications must be on forms made available by the Department.

The provisions expire December 31, 2011.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is this year's version of the transparency awareness and contractor fairness bill. The issue especially affects border areas. This bill gathers limited data over a time-specific period to establish a baseline of the competition. Washington state contractors are not able to compete with out-of-state contractors who do not have to pay prevailing wage. Awarding agencies and their governing bodies and taxpayers need to know where tax dollars are being spent. Contractors and employers are moving out of state.

A Capital Projects Advisory Review Board group has been working on this issue. Substantial changes have been made. The bill has been pared down to the highest priced items and there is a sunset clause. If subcontracted to an in-state employer who is already subject to prevailing wage, that subcontractor does not need to be listed. If a contractor is subcontracting to Montana, then the contractor would have to provide the list with a bid. The provisions do not apply to any Washington state fabricator or contractor. A third party may request payroll records for the out-of-state contractor.

(With concerns) The bill could potentially create higher costs for public works. Collecting the detailed information will result in higher overhead costs. Some contractors may choose not to bid because of the requirements. The bill is silent on who will analyze and report on the requirements. The bill sends three different messages as to when the lists must be obtained: before work is done, before final acceptance, or before release of retainage. This could result in higher bids.

(Opposed) This is a confusing bill and won't do what the proponents want. The bill will be the subject of litigation. A contractor could be subject to penalty for not submitting the lists but it is not clear who provides the lists. In one section, contractors must provide the lists of out-of-state work but in another section, contractors who pay prevailing wage are not required to provide the lists. It creates a per se violation for failure to submit payroll records through a bootstrap argument without due process. Enforcement is a problem because it would have to be done down the chain of privity to reach an out-of state contractor and it's not clear the state can do that. The opponents understand the intent and are sympathetic but there are lots of questions. Creating lists is costly. It's not clear what certification means.

(Information only) The fiscal note is somewhat indeterminate because this is a new area.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; Mark Riker, Sheet Metal Workers Local 66; and Dave Johnson, Washington State Building and Construction Trades Council.

(With concerns) Mike Purdy, University of Washington.

(Opposed) Van Collins, Associated General Contractors; and Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association.

(Information only) Dave Soma, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.