H-2884.2

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**SUBSTITUTE HOUSE BILL 2136**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Ormsby, Schmidt, Doglio, Farivar, Berry, Simmons, Reed, Ramel, Mena, Goodman, Berg, Fosse, Reeves, Pollet, and Kloba; by request of Attorney General)

AN ACT Relating to prevailing wage sanctions, penalties, and debarment; amending RCW 39.12.010; adding a new section to chapter 39.12 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds that government contracts should not be awarded to those that knowingly and intentionally violate Washington state's prevailing wage laws. The legislature also finds that businesses that follow the law and pay workers appropriately are placed at a competitive disadvantage to those that reduce costs by failing to pay prevailing wages or failing to file or falsely file with the Washington state department of labor and industries or sanctioned under RCW 39.12.055. In order to create a consistent, fair playing field for businesses and avoid taxpayer contracts going to those that repeatedly violate the law and illegally withhold money from workers, the state should amend the state prevailing wage laws to extend those businesses' sanctions to their substantially identical companies. These sanctions include penalties issued under chapter 39.12 RCW; findings of violations that the department of labor and industries count toward a bar on bidding on public works; and debarment, prohibiting bidding on public works.

**Sec.**  RCW 39.12.010 and 2019 c 242 s 2 are each amended to read as follows:

(1) The "prevailing rate of wage" is the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation is the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage is mathematically determined by the number of hours worked in such period of time.

(2) The "locality" is the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" includes the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor, which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" includes a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

(5) An "inadvertent filing or reporting error" is a mistake and is made notwithstanding the use of due care by the contractor, subcontractor, or employer. An inadvertent filing or reporting error includes a contractor who, in good faith, relies on a written determination provided by the department of labor and industries and pays its workers, laborers, and mechanics accordingly, but is later found to have not paid the proper prevailing wage rate.

(6) "Unpaid prevailing wages" or "unpaid wages" means the employer fails to pay all of the prevailing rate of wages owed for any workweek by the regularly established payday for the period in which the workweek ends. Every employer must pay all wages, other than usual benefits, owing to its employees not less than once a month. Every employer must pay all usual benefits owing to its employees by the regularly established deadline for those benefits.

(7) "Rate of contribution" means the effective annual rate of usual benefit contributions for all hours, public and private, worked during the year by an employee (commonly referred to as "annualization" of benefits). The only exemption to the annualization requirements is for defined contribution pension plans that have immediate participation and vesting.

(8) "Contractor" means any prime contractor, subcontractor, or other employer as defined by rules adopted by the department of labor and industries. "Contractor" includes an entity, however organized, with substantially identical operations, corporate, or management structure to an entity that has been found in violation under RCW 39.12.050, 39.12.055, or 39.12.065, or any associated rules. The nonexclusive factors used to determine substantial identity include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery, equipment, or both tangible and intangible real or personal property; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services. An entity with operational, corporate, and management structures distinct from an entity that has been found in violation under RCW 39.12.050, 39.12.055, or 39.12.065, or any associated rules, shall not be deemed a substantially identical entity.

NEW SECTION. **Sec.**  A new section is added to chapter 39.12 RCW to read as follows:

(1) For the purposes of enforcing this chapter, if a contractor has substantially identical operations, corporate, or management structure to another entity that has been debarred or otherwise sanctioned under RCW 39.12.050, 39.12.055, 39.12.065, or any associated rule, then the contractor is subject to the same debarment or sanction as that other entity. These sanctions include: Penalties issued under this chapter; findings of violations that the department of labor and industries count toward a bar on bidding on public works; and debarment, prohibiting bidding on public works. The department of labor and industries may enforce this section under the enforcement provisions of this chapter and associated rules.

(2) The director may issue a notice of violation under this section to a contractor described in subsection (1) of this section to extend the sanctions of a debarred or sanctioned entity imposed through a final and binding order or agreement to the contractor. A hearing must be held following a timely appeal of the notice of violation in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and is not subject to further appeal.

NEW SECTION. **Sec.**  This act takes effect January 1, 2026.

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