

SENATE BILL REPORT

SB 5726

As of February 9, 2023

Title: An act relating to the prevailing wages and sick leave benefits for construction workers.

Brief Description: Concerning the prevailing wages and sick leave benefits for construction workers.

Sponsors: Senator King.

Brief History:

Committee Activity: Labor & Commerce: 2/09/23.

Brief Summary of Bill

- Requires the industrial statistician, when there is more than one collective bargaining agreement in a county, to determine the prevailing wage using the majority rate from those agreements, or, when a majority rate is not present, the rate representing the preponderance of hours.
- Provides that an interested party may contest a determination by the industrial statistician to prove the actual rate used in the determination is less than the rate representing the majority number or preponderance of hours.
- Requires public works contracts to specify that wages paid to workers will not be less than the latest prevailing wage rate in effect at the time the work is performed.
- Requires payment for accrued and unused sick leave for certain construction workers separating from employment.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

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

Background: Prevailing Wage. State law requires prevailing wages be paid to laborers, workers, and mechanics employed upon all public works and under all public building service maintenance contracts. Public works means all work, construction, alteration, repair, or improvement other than ordinary maintenance that is executed at the cost of the state or any municipality.

The industrial statistician of the Department of Labor and Industries (L&I) establishes the prevailing wage by adopting the hourly wage, usual benefits, and overtime 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 is used.

The prevailing wage rate for workers is determined 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. L&I publishes prevailing wage rates the first business day in August and February and any updated rates take effect 30 days after publication.

Paid Sick Leave. Every employer must provide each of its employees at least one hour of paid sick leave for every 40 hours worked as an employee. An employee is entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of employment.

Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours. An employer is not required to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within 12 months by the same employer, previously accrued unused paid sick leave must be reinstated and the previous period of employment counts for determining the employee's eligibility to use paid sick leave.

Paid sick leave requirements do not apply to construction workers covered by a collective bargaining agreement (CBA) if:

- the union signatory to the CBA is an approved referral union program;
- the CBA establishes equivalent paid leave provisions; and
- the CBA expressly waives the sick leave requirements established by law.

Equivalent sick leave must meet the requirements in state law, except that the payment of leave may occur before usage.

Referral Union Programs. Unemployment insurance law requires individuals who receive unemployment benefits to actively look for work using customary trade practices. In some trades, labor unions refer members to job openings. The Employment Security Department

(ESD) approves unions that meet certain criteria under the referral union program. An individual that is a member of an approved union under the program, and meets certain requirements set by ESD, satisfies the job search requirements for unemployment insurance purposes.

Summary of Bill: Prevailing Wage. For trades and occupations with more than one collective bargaining agreement in a county, rather than the higher rate prevailing, the industrial statistician must determine and prevail the majority rate from those agreements. When a majority rate is not present, the industrial statistician must determine and prevail the rate representing the preponderance of hours.

An interested party may contest a determination by the industrial statistician. The interested party must allege and prove by competent evidence that the actual rate used in the determination is less than the rate representing the majority number or preponderance of hours worked. Until a final determination, the work in question must proceed under the rate established by the appropriate fiscal officer.

Beginning July 1, 2024, contracts for the construction, reconstruction, maintenance, or repair of any public work must stipulate that the hourly minimum wage rate for laborers, workers, and mechanics must be adjusted to provide that the wage is not less than the latest prevailing wage rate in effect at the time the work is performed. Any cost increases associated by wage adjustments of the prevailing wage must be the basis for equitable adjustment for the contractor affected by the increase.

Paid Sick Leave. For construction workers covered under a referral union program who have not met the 90 day eligibility threshold, the employer must pay the former worker the balance of their accrued and unused paid sick leave upon separation.

Appropriation: None.

Fiscal Note: Requested on February 7, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The language is still a work in progress and we are still trying to reach agreement. There is agreement to keep sick leave in SB 5111. Prevailing wage is pegged to CBAs, but allowing the higher rate to prevail has created an existential crisis for multi-employer CBAs because it allows a few contractors to override the rate in the CBAs for most of workers. Prevailing wage should represent the most hours.

CON: Sick leave should not be coupled with the prevailing wage provisions. It is good that it is being removed. The language on the rest of the bill still needs some work.

OTHER: Sick leave should not be coupled with the prevailing wage provisions.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Jerry VanderWood, Associated General Contractors (AGC).

CON: Mark Riker, Washington State Building and Construction Trades Council.

OTHER: Ray Dumas, OPCMIA Local 528.

Persons Signed In To Testify But Not Testifying: No one.