

HOUSE BILL REPORT

EHB 1146

As of House Second Reading
March 11, 1993

Title: An act relating to public contracts.

Brief Description: Requiring compliance with chapter 39.12
RCW of public works.

Sponsors: Representatives Heavey, King, G. Cole, Veloria,
Orr, Quall, Dunshee, Franklin, Scott, Ludwig, Jones, Basich,
Springer and J. Kohl.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 2, 1993, DPA;
Appropriations, March 1, 1993, DPA(CL);
House Second Reading, March 11, 1993.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members:
Representatives Heavey, Chair; G. Cole, Vice Chair; Conway;
King; and Veloria.

Minority Report: Do not pass. Signed by 3 members:
Representatives Lisk, Ranking Minority Member; Chandler,
Assistant Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on
Commerce & Labor. Signed by 18 members: Representatives
Locke, Chair; Valle, Vice Chair; Appelwick; Basich; Dellwo;
Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard;
Linville; Peery; Rust; Sommers; Wang; Wineberry; and Wolfe.

Minority Report: Do not pass. Signed by 9 members:
Representatives Silver, Ranking Minority Member; Carlson,
Assistant Ranking Minority Member; Ballasiotes; Cooke;
Morton; Sehlin; Sheahan; Stevens; and Talcott.

Staff: Beth Redfield (786-7130).

Background: All public works undertaken by the state or local governments must comply with the state prevailing wage law. The prevailing wage law does not apply to facilities built by private contractors for the general market. But if 80 percent or more of a new facility will be occupied by a state agency through a contract to rent, lease or purchase the facility from the private owner, the state agency may not cause the facility to be built unless the contractor complies with the prevailing wage law.

Summary of Bill: If a state agency or local government causes any construction, repair, or improvements, except ordinary maintenance, to be performed by a private party through a contract to rent or purchase at least 50 percent of the project, the contractor must comply with the prevailing wage law. This requirement applies only to construction projects for which competitive bids have not been requested prior to the bill's effective date.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Commerce & Labor) The prevailing wage law is frequently circumvented by public agencies that use developers to remodel or renovate buildings for public occupation. This becomes more of a problem in hard economic times when public agencies increasingly turn to leasing space. The current law only prevents the circumvention of prevailing wage by private developers when the project is new construction. One particularly bad example involved a building that was reconstructed to satisfy elaborate state specifications, but because the roof of an existing building was used, it was considered a remodeling project. It does not protect workers or protect local wages if public agencies are able to participate in the development of a project but not be required to comply with prevailing wage law. If public agencies cause a project to be undertaken, then prevailing wage should apply. Since the time that the law was amended to cover new construction, projects involving remodeling have become the problem.

(Appropriations) Private contractors have circumvented the prevailing wage law by characterizing projects which involve replacement of main structural elements of a building as renovation rather than new construction. The bill is simply closing this loop hole. The state Supreme Court has stated that RCW 39.12 should be liberally interpreted and this bill would clarify the statutory language to that end. Although wages may be higher when prevailing wage is paid, overall cost of construction is generally cheaper due to more

experienced and higher skilled workers. The fiscal impact of the bill represents the amount workers have been subsidizing other operations of the state by receiving substandard wages.

Testimony Against: (Commerce & Labor) When a developer enters into a tenant improvement contract, he or she may not know when the contract is signed or that a government agency is involved. It is unclear what would happen to the contract if, after signing, a public agency becomes a tenant of any part of the facility. If all projects of this type become subject to the prevailing wage, the public agencies will not be able to absorb the higher costs of construction. By including projects that are to be operated by a public agency, the reach of the bill is unclear. Does this include nursing homes, for example? There is a concern about expanding a law that limits competition and subsidizes a sector of the labor market.

(Appropriations) The bill represents an expansion of public policy, going beyond original intent of the law; it does not simply close a loop hole. Payment of the prevailing wage is extended to local governments, school districts, and other special districts. The method for determining the prevailing wage rate excludes many businesses and skews the rate upward. The language in the bill is too general and unclear. The 50 percent threshold is too low.

Witnesses: (Commerce & Labor) (In favor): Allan Darr, International Union of Operating Engineers; Mark Bean, District Council of Carpenters; Otto Herman, Rebound; Cindy Zehnder, Joint Council of Teamsters; and Bob Dilger, Washington Building and Construction Trades Council.
(Opposed): Nancee Wildermuth and James Elder, Associated Builders & Contractors; Duke Schaub, Associated General Contractors; Dick Ducharme, Utility Contractors Association; and Mark Triplett, Washington Aggregate and Concrete Association.

(Appropriations) Representative Mike Heavey, 34th District (in favor); Robert Dilger, Washington State Building Trades Council (in favor); Otto Herman, Rebound (in favor); Mark Bean, District Council of Carpenters (in favor); Jim King, Washington State Building Trades (in favor); Rick Slunaker, Association of General Contractors (opposed); Dick Ducharme, Utility Contractors Association of Washington (opposed); Jim Justin, Association of Washington Cities (opposed); and Gary Smith, Independent Business Association (opposed).