

SSB 5248 - H AMD 357

By Representative Ericksen

FAILED 04/08/2003

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that there is a
4 pressing need for reform of the way in which the transportation system
5 in Washington is constructed and maintained. The legislature finds
6 that if the private sector can perform a service faster and in a more
7 economical manner than state government, as demonstrated under chapter
8 354, Laws of 2002, then the department of transportation should not be
9 hindered by state law from providing services in the most cost-
10 effective manner. The legislature also finds that reforming current
11 laws governing the payment of prevailing wages to ensure the accuracy
12 of such wages is necessary to recapture public support for future
13 expansion of the transportation system in Washington. The legislature
14 intends that ten pilot projects should be conducted in a wide variety
15 of locations in Washington state, both urban and rural, to test the
16 process of having the department of transportation draft its own
17 permits, subject to a single review by the regulatory agencies, in
18 order to evaluate the use of this streamlined process.

19 **Sec. 2.** RCW 41.80.020 and 2002 c 354 s 303 are each amended to
20 read as follows:

21 (1) Except as otherwise provided in this chapter, the matters
22 subject to bargaining include wages, hours, and other terms and
23 conditions of employment, and the negotiation of any question arising
24 under a collective bargaining agreement.

25 (2) The employer is not required to bargain over matters pertaining
26 to:

27 (a) Health care benefits or other employee insurance benefits,
28 except as required in subsection (3) of this section;

29 (b) Any retirement system or retirement benefit; or

1 (c) Rules of the director of personnel or the Washington personnel
2 resources board adopted under section 203, chapter 354, Laws of 2002.

3 (3) Matters subject to bargaining include the number of names to be
4 certified for vacancies, promotional preferences, and the dollar amount
5 expended on behalf of each employee for health care benefits. However,
6 except as provided otherwise in this subsection for institutions of
7 higher education, negotiations regarding the number of names to be
8 certified for vacancies, promotional preferences, and the dollar amount
9 expended on behalf of each employee for health care benefits shall be
10 conducted between the employer and one coalition of all the exclusive
11 bargaining representatives subject to this chapter. Any such provision
12 agreed to by the employer and the coalition shall be included in all
13 master collective bargaining agreements negotiated by the parties. For
14 institutions of higher education, promotional preferences and the
15 number of names to be certified for vacancies shall be bargained under
16 the provisions of RCW 41.80.010(4).

17 (4) The employer and the exclusive bargaining representative shall
18 not agree to any proposal that would prevent the implementation of
19 approved affirmative action plans or that would be inconsistent with
20 the comparable worth agreement that provided the basis for the salary
21 changes implemented beginning with the 1983-1985 biennium to achieve
22 comparable worth.

23 (5) The employer and the exclusive bargaining representative shall
24 not bargain over matters pertaining to:

25 (a) Management rights established in RCW 41.80.040; or

26 (b) With respect to the department of transportation, the
27 department's purchase of services by contract or any matters governed
28 by RCW 41.06.142.

29 (6) Except as otherwise provided in this chapter, if a conflict
30 exists between an executive order, administrative rule, or agency
31 policy relating to wages, hours, and terms and conditions of employment
32 and a collective bargaining agreement negotiated under this chapter,
33 the collective bargaining agreement shall prevail. A provision of a
34 collective bargaining agreement that conflicts with the terms of a
35 statute is invalid and unenforceable.

36 ~~((7) This section does not prohibit bargaining that affects~~
37 ~~contracts authorized by RCW 41.06.142.))~~

1 **Sec. 3.** RCW 47.06C.050 and 2001 1st sp.s. c 2 s 5 are each amended
2 to read as follows:

3 (1) The committee shall select and conduct permit reform pilot
4 projects in three locales: (a) Urban near built-out conditions; (b)
5 urban centers serving as crucial rural connectors; and (c) rural
6 corridors critical to statewide economic productivity. The pilot
7 projects must test the assignment of responsibilities such as selected
8 permit drafting and selected compliance activities to the department.

9 (2) The committee shall commence efforts to apply streamlining
10 lessons learned from the streamlined permit process for the pilot
11 projects to as many other transportation projects of statewide
12 significance as quickly as possible. In reporting to the legislature,
13 the committee may recommend statutory or regulatory changes that would
14 result in streamlining for future projects.

15 (3) The department and permitting agencies shall apply an interim
16 interdisciplinary permit review process for the pilot projects as set
17 forth in this section. This process must provide coordinated review
18 and approval of permit applications; provide coordinated and
19 consolidated public hearings where required by one or more regulatory
20 agencies under state law; and coordinate timelines for permit decision
21 making.

22 (4) The committee shall give notice to the legislative authority of
23 each affected county and city of the projects the committee has
24 designated as pilot projects. Each county and city notified must be
25 offered the opportunity to participate in the pilot projects as
26 provided for in this chapter. The department shall provide funding
27 assistance for participation.

28 (5) The committee shall develop a dispute resolution process to
29 resolve conflicts in interpretation of environmental standards and best
30 management practices, mitigation requirements, permit requirements,
31 assigned responsibilities, the streamlined process for pilot projects
32 set forth in this section, and other related issues by September 1,
33 2001. The dispute resolution process may not abrogate or supplant any
34 appeal right of any party under existing statutes. The dispute
35 resolution process must be designed to include federal agencies if they
36 choose to participate. The dispute resolution process must be applied
37 to the pilot projects.

1 (6) The streamlined process for the pilot projects must be based on
2 the following model:

3 (a) Step 1: The department and permitting agencies will agree on
4 coordination for environmental review under the state and national
5 environmental policy acts, including document preparation, public
6 comment opportunities, and timelines.

7 (b) Step 2: For each project, the department will convene a
8 meeting of all entities with permitting authority to review:

9 (i) The proposed conceptual design for the project and alternative
10 routes, construction approaches, or mitigation approaches;

11 (ii) All known reviewing entities, permit application and approval
12 requirements, and timelines; and

13 (iii) A coordinated timeline that allows all statutory requirements
14 to be met.

15 (c) Step 3: The department will draft all necessary permits to
16 proceed with the preferred alternative using relevant agreements with
17 permitting agencies.

18 (d) Step 4: The department will provide public notice in
19 conformity with all applicable statutes and regulations and allow the
20 required time for public hearings and written comments.

21 (e) Step 5: The department may revise the draft permits after
22 consideration of public comments and applying all relevant agreed upon
23 standards.

24 (f) Step 6: All permits will be disseminated to permitting
25 agencies for final review. All reviews will be completed within forty-
26 five days, at which time the permitting agencies will act upon the
27 permit and either approve the permit or return it without approval.

28 (g) Step 7: If the permit is returned to the department without
29 approval, the permitting agencies will have one opportunity to identify
30 errors or omissions and any remaining specific deficiencies or
31 circumstances not previously addressed by agreements between the
32 department and agencies that must be met or addressed to be compliant
33 with applicable law. The department may revise the permit as warranted
34 and resubmit the permit to the permitting agency, which will have
35 fifteen days from receipt of the revised permit to take final action.

36 (h) Step 8: Disputes related to permit decisions will be addressed
37 by the dispute resolution process established by the committee.

1 (7) The committee shall select ten projects from the project lists
2 that accompany any transportation budget passed in 2003 that are funded
3 but do not yet have state permits in place. The committee should
4 select projects in both urban and rural areas located from a wide
5 variety of locations within Washington state. These will be designated
6 as "Department of Transportation Permit Drafting Pilot Projects."
7 These projects are not required to be projects of statewide
8 significance under this chapter. The department of transportation will
9 draft its own state permits under RCW 47.06C.080(2) and using a
10 timeline developed by the committee. These permits drafted by the
11 department are subject to a single review by state regulatory agencies
12 before approval or denial. The process must be monitored by the
13 committee and used to implement increased drafting of permits by the
14 department of transportation on other projects.

15 **Sec. 4.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read
16 as follows:

17 (1) The "prevailing rate of wage", for the intents and purposes of
18 this chapter, shall be the rate of hourly wage, usual benefits, and
19 overtime paid in the locality, as hereinafter defined, to the majority
20 of workers, laborers, or mechanics, in the same trade or occupation.
21 In the event that there is not a majority in the same trade or
22 occupation paid at the same rate, then the average rate of hourly wage
23 and overtime paid to such laborers, workers, or mechanics in the same
24 trade or occupation shall be the prevailing rate. If the wage paid by
25 any contractor or subcontractor to laborers, workers, or mechanics on
26 any public work is based on some period of time other than an hour, the
27 hourly wage for the purposes of this chapter shall be mathematically
28 determined by the number of hours worked in such period of time.

29 (2) The "locality" (~~for the purposes of this chapter shall be the~~
30 ~~largest city in~~) is the county wherein the physical work is being
31 performed.

32 (3) The "usual benefits" for the purposes of this chapter shall
33 include the amount of:

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

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

14 (4) An "interested party" for the purposes of this chapter shall
15 include a contractor, subcontractor, an employee of a contractor or
16 subcontractor, an organization whose members' wages, benefits, and
17 conditions of employment are affected by this chapter, and the director
18 of labor and industries or the director's designee.

19 **Sec. 5.** RCW 39.12.015 and 1965 ex.s. c 133 s 2 are each amended to
20 read as follows:

21 (1) All determinations of the prevailing rate of wage shall be made
22 by the industrial statistician of the department of labor and
23 industries. By January 1, 2004, the industrial statistician shall
24 determine the prevailing rate of wage using a stratified random
25 sampling method.

26 (2)(a) A stratified random sampling method must be used to the
27 broadest extent possible, subject to available resources.

28 (b) If it is determined by the industrial statistician that sample
29 size, strata size, or other factors do not permit the effective use of
30 a stratified random sampling method, an equally reliable statistical
31 method must be used.

32 (3) In order to ensure a fair and scientifically accurate
33 stratified random sampling survey, the industrial statistician may
34 consult with recognized experts in statistics and sampling, or with
35 representatives of labor unions or business organizations regarding the

1 necessary scientific methods, implementation parameters, and resource
2 allocations.

3 (4) The department of labor and industries shall report to the
4 legislature by December 1, 2004, and December 1, 2005, on the
5 implementation of the stratified random sampling method.

6 NEW SECTION. Sec. 6. Section 2 of this act takes effect July 1,
7 2004."

8 Correct the title.

EFFECT: The Department of Transportation is prohibited from bargaining over matters pertaining to purchasing services by contract.

Provides that the prevailing wage will be determined using a random stratified sampling method based on the county in which the work is being performed.

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