

HOUSE BILL REPORT

HB 1992

As Reported by House Committee On: Commerce & Labor

Title: An act relating to the application of chapter 39.12 RCW to construction projects that involve tax incentives, loans, or public land or property that is sold or leased

Brief Description: Concerning the application of chapter 39.12 RCW to construction projects that involve tax incentives, loans, or public land or property that is sold or leased.

Sponsors: Representatives Conway, Simpson, Wood, Moeller, Williams, Liias, Sullivan and Chase.

Brief History:

Committee Activity:

Commerce & Labor: 2/10/09; 1/22/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Extends application of the prevailing wage requirements to construction projects that involve tax incentives, loans provided by a public entity, or public land or property that is sold or leased.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill 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: Alison Hellberg (786-7152).

Background:

Employers must pay workers on all public works contracts and public building service maintenance contracts at least the prevailing wage. The prevailing wage is the rate of hourly

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wage, usual benefits, and overtime paid to the majority of workers in the same trade or occupation in the largest city in the county where the work is performed. The Department of Labor and Industries determines the prevailing wage by periodically surveying the trades.

A public work is defined as all work, construction, alteration, repair, or improvement that is executed at the cost of the state or any other local public agency. This includes demolition, remodeling, renovation, road construction, building construction, ferry construction, and utilities construction.

Prevailing wages must also be paid on projects that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities.

Summary of Substitute Bill:

Prevailing wage requirements apply to construction projects that are paid for in whole or in part by the equivalent of public funds, which are not already covered by the prevailing wage requirements. A definition is provided for "paid for in whole or in part by the equivalent of public funds," which means:

- tax deferrals, exemptions, credits, or any other form of tax incentive established by the state or any county, municipality, or political subdivision created by its laws, and intended to promote economic development;
- loans provided to a private entity by the state or any county, municipality, or political subdivision created by its law, or other assistance provided in connection with the bonding authority of the state or any county, municipality, or political subdivision created by its laws that allows a private entity to obtain lower interest rates for financing of a construction project;
- sales or transfers of public land or property to a private entity for less than fair market value by the state or any county, municipality, or political subdivision created by its laws; or
- long-term leases of public land or property to a private entity for less than fair market value by the state or any county, municipality, or political subdivision created by its laws.

The implementation of the requirement is staggered, so the provisions would apply to projects estimated to cost at least \$3 million starting on January 1, 2011, to projects at least \$2 million on January 1, 2012, and to projects at least \$1 million on January 1, 2013.

Substitute Bill Compared to Original Bill:

The provisions of the bill are deleted. Prevailing wage requirements apply to projects that are paid for in whole or in part by the equivalent of public funds. A definition is provided for "paid for in whole or in part by the equivalent of public funds," which means:

- tax deferrals, exemptions, credits, or any other form of tax incentive established by the state or any county, municipality, or political subdivision created by its laws, and intended to promote economic development;

- loans provided to a private entity by the state or any county, municipality, or political subdivision created by its law, or other assistance provided in connection with the bonding authority of the state or any county, municipality, or political subdivision created by its laws that allows a private entity to obtain lower interest rates for financing of a construction project;
- sales or transfers of public land or property to a private entity for less than fair market value by the state or any county, municipality, or political subdivision created by its laws; or
- long-term leases of public land or property to a private entity for less than fair market value by the state or any county, municipality, or political subdivision created by its laws.

The implementation of the requirement is staggered, so the provisions would apply to projects estimated to cost at least \$3 million starting on January 1, 2011, to projects at least \$2 million on January 1, 2012, and to projects at least \$1 million on January 1, 2013. These provisions only apply to projects not already covered by prevailing wage requirements.

Appropriation: None.

Fiscal Note: Available. A fiscal note on the substitute bill was requested on February 2, 2010.

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

Staff Summary of Public Testimony:

(In support) The use of public-private partnerships has grown considerably, and many of these projects fall outside of the prevailing wage requirements. This public involvement needs to be examined to determine when the prevailing wage applies and when public involvement is the equivalent of using public funds. The proposed substitute bill softens the requirement by setting thresholds and staggering implementation.

There is value in economic development activities, but economic development starts when construction starts. The unemployment in the construction industry is incredibly high and the current system creates an uneven playing field for local contractors and workers.

(With concerns) The most important issue is to do no harm to agriculture. Because of leases of public land and various tax incentives used by agriculture this could have negative consequences. It is important that local irrigation districts and farmworker housing projects continue to be exempt from prevailing wage requirements.

(Opposed) There are many issues with the bill, even with the proposed substitute bill. There has been no work with stakeholders on this bill since it was heard last year. It is unclear what projects this applies to, and it might be difficult for local governments to administer and for

the Department of Labor and Industries to implement. The concept of "fair market value" is also unclear.

Paying prevailing wage increases the costs of projects. As businesses are struggling, the added costs will mean that many projects will not go forward. Ports have an economic development mission and are meant to bring jobs into communities. These types of projects are not undertaken to avoid paying prevailing wage.

There are some particular problems with the lease provisions. In many rural areas, nearly 80 percent of the land available for development and agriculture is public. Businesses in these areas have no choice but to operate on public land. Paperwork for prevailing wage is cumbersome and time-consuming, especially for a small business not accustomed to doing public works projects. It could also lead to wage inflation because there are still issues with how prevailing wages are determined.

Persons Testifying: (In support) Representative Conway, prime sponsor; David Johnson, Washington State Building and Construction Trades Council; Mark Martinez, Pierce County Building Trades; and Jeff Washburn, United Association Local Union 26.

(With concerns) Scott Dilley, Washington Farm Bureau.

(Opposed) Rick Slunaker, Associated General Contractors of Washington; Ginger Eagle, Washington Public Ports Association; Patsy Martin, Port of Skagit County; Jerry Heller, Port of Everett; James Curry, Associated Builders and Contractors; Patrick Conner, National Federation of Independent Business; Heather Hanson, Washington State Nursery and Landscape Association; Jeanne McNeil; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.