

# HOUSE BILL REPORT

## HB 2669

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### As Reported by House Committee On: Labor & Workforce Development

**Title:** An act relating to enforcing the payment of prevailing wages.

**Brief Description:** Concerning the definitions of "contractor" and "subcontractor" for the purposes of prevailing wages on public works.

**Sponsors:** Representatives Ormsby and Moscoso.

#### **Brief History:**

##### **Committee Activity:**

Labor & Workforce Development: 1/25/12, 1/30/12 [DPS].

#### **Brief Summary of Substitute Bill**

- Provides that when a contractor or subcontractor quits business, a successor entity is liable for any prevailing wage violations if the successor had notice of the violations at the time of the sale or conveyance.
- Defines successor entities and provides factors for determinations whether an entity is a successor.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

**Staff:** Alexa Silver (786-7190).

#### **Background:**

Washington's prevailing wage law requires that contractors and subcontractors on public works projects and public building service maintenance contracts pay their workers

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prevailing wages when employed on such projects and contracts. The prevailing wage is the hourly wage, usual benefits, and overtime paid in the largest city in each county to the majority of workers in a particular trade or occupation. The Department of Labor and Industries (Department) establishes prevailing wage rates for each trade and occupation and is otherwise responsible for administering and enforcing the prevailing wage law.

*Failure to File Intents and Affidavits.*

Contractors and subcontractors on public works projects must submit to the awarding agency an "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid before certain payments are made. Contractors and subcontractors who fail to file intents and affidavits are subject to a civil penalty of \$500 and may not bid on any public works contracts until the penalty is paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on public works contracts for one year. For purposes of enforcing these filing requirements, the Department defines "contractor" and "subcontractor" to include an entity with substantially identical corporate or operational structure to an entity that has previously been found to violate the filing requirements. The factors the Department uses to determine substantial identity are specified in rule.

*Failure to Pay the Prevailing Wage.*

Contractors and subcontractors who fail to pay the prevailing wage are subject to a penalty of \$1,000 or an amount equal to 20 percent of the violation, whichever is greater, and may not bid on any public works contracts until the penalty is paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on public works contracts for two years.

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**Summary of Substitute Bill:**

When a contractor or subcontractor quits business, sells out, exchanges, or otherwise disposes of the contractor or subcontractor's business, a successor entity is liable for a prevailing wage violation committed by the contractor or subcontractor if the successor had actual or constructive notice of the violation at the time of the sale or conveyance. Successor liability includes liability for unpaid prevailing wages and interests, as well as monetary and non-monetary sanctions.

A successor entity is an entity to which a contractor or subcontractor directly or indirectly sells or otherwise conveys in bulk, not in the ordinary course of business, a substantial portion of its assets, whether tangible or intangible. In determining whether an entity is a successor, the Department may consider factors including, but not limited to:

- substantial continuity of the same business operation;
- use of the same machinery or equipment;
- similarity of jobs and working conditions;
- continuity of supervisors;
- use of the substantially same workforce; and
- similarity of products or services.

**Substitute Bill Compared to Original Bill:**

Rather than defining the terms "contractor" and "subcontractor" to include successor entities, the substitute bill creates a new section in the prevailing wage law providing the circumstances under which successor liability exists and defining the liability that extends to the successor.

For the factors that the Department may consider, the substitute bill replaces "continuation of ownership or personnel" with "use of the substantially same workforce" and "continuity of supervisors."

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**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) Contractors who knowingly, repeatedly, and flagrantly violate the law should be identified and held responsible. A few bad actors are cheating employees out of their wages on taxpayer-funded projects and are creating an unfair business advantage. It can be difficult to determine whether a company is a repeat violator when it is a successor company that has been turned over to a sibling, spouse, child, or someone else. This bill would allow the Department to recover from successors the wages owed to workers. The language, however, should be clarified.

(Opposed) There are no concerns with going after bad actors, because they create unfair competition with the rest of the industry. The concern is that the current language is overly broad. The purchase of assets from a failing company, through no fault of the successor, would be in question. People go out of business in tough times and should be able to get a fresh start. Giving something to a family member does not make a person a scofflaw.

**Persons Testifying:** (In support) Representative Ormsby, prime sponsor; and Tamara Jones, Department of Labor and Industries.

(Opposed) Larry Stevens, National Electrical Contractors Association; and Van Collins, Associated General Contractors.

**Persons Signed In To Testify But Not Testifying:** None.