

SENATE BILL REPORT

SB 6480

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 2, 2012

Title: An act relating to employers who pay the prevailing wage on public works.

Brief Description: Protecting employers who pay the prevailing wage on public works.

Sponsors: Senators King, Schoesler and Holmquist Newbry.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/30/12, 2/02/12 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6480 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

Staff: Mac Nicholson (786-7445)

Background: Employers on public works projects must pay prevailing wages. The prevailing wage is the hourly wage, usual benefits, and overtime paid to the majority of workers in the largest city of the county where the work is being performed. The prevailing wage is determined by the industrial statistician at the Department of Labor and Industries (L&I). Contractors on a public works project must submit a statement of intent to pay prevailing wages after the contract is awarded but before work begins. After all of the work is complete, employers must submit an affidavit of wages paid (affidavit). The forms are filed with L&I and, when certified by the industrial statistician, are submitted by the employer to the agency administering the contract. A contractor who submits a false affidavit, or fails to submit an affidavit, is subject to civil penalty and can be disqualified from bidding on any public works projects for one year.

A complaint concerning nonpayment of prevailing wage can be filed by any interested party and must be filed with L&I within 30 days of the acceptance date of the public works project. Failure to file a complaint within 30 days does not preclude a claimant from pursuing a

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private right of action for unpaid prevailing wages, and the statute of limitations for such causes of action is three years.

Under the Wage Payment Act (WPA), L&I can investigate wage complaints filed by workers and collect wages owed from the employer. The wage complaint must be filed within three years of the alleged violation of a wage payment requirement. L&I generally has 60 days to complete its investigation and determine whether the employer owes wages. Workers and employers can appeal L&I's decision to superior court.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): An employer who requests and obtains a written determination as to the applicability of prevailing wages on a specific public works project, or a specific determination as to the appropriate classification for the work performed by the employees on a specific project, is not subject to a wage complaint under the WPA from an employee subject to the written determination claiming the employer paid an incorrect rate of wage.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute as Passed Committee): Changes the provisions regarding the employer's safe harbor from wage complaints based on a written determination from L&I. Also eliminated are provisions in the substitute that was heard in committee which provided a safe harbor against wage complaints to contractors who have a history of paying prevailing wages under a specific work classification and a history of receiving certification of affidavits for that work classification.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony as Heard in Committee: PRO: The intent is to reach a sweet spot and provide protection for contractors that have done the right thing. When a contractor has a history of paying a wage and filing affidavits, the contractor should be protected from wage complaints. The wage payment complaints can drive contractors out of business. A subcontractor may file an intent that was certified by L&I, pay wages pursuant to the intent, and well after completion of the work, a complaint may be filed by an employee alleging an incorrect rate of wage. If the subcontractor is out of business, the general contractor may be left holding the bag. The general contractors should be protected when they file the right paperwork and do all the right things.

CON: L&I just matches up the wages and the classification on the intents and affidavits. L&I doesn't know whether the work classified was actually performed, and would need to visit the job site to make that determination. There's concern about the impact of the bill on worker's rights.

OTHER: L&I has concerns about the impact on the ability to help ensure that workers are paid the proper wages for the work they've done.

Persons Testifying: PRO: Van Collins, AGC; Rick Philipovich, BN Builders; Gary Smith, Independent Business Assn.

CON: Bob Abbott, Laborers District Council.

OTHER: Tamara Jones, L&I.