

HOUSE BILL REPORT

HB 1025

As Reported by House Committee On:
Labor & Workforce Development

Title: An act relating to extending the application of prevailing wage requirements.

Brief Description: Extending the application of prevailing wage requirements.

Sponsors: Representatives Moeller, Appleton, Ormsby and Pollet.

Brief History:

Committee Activity:

Labor & Workforce Development: 1/23/13, 2/13/13 [DPS].

Brief Summary of Substitute Bill

- Requires payment of prevailing wage on publicly subsidized work.
- Assigns to subsidy recipients the responsibilities and liabilities of awarding agencies, and subjects subsidy recipients to a civil penalty if the contractor or subcontractor fails to pay prevailing wage.
- Requires a contractor or subcontractor on publicly subsidized work to maintain a surety bond.
- Provides that entities qualify for certain construction-related tax incentive programs only if they comply with the prevailing wage law.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

Staff: Alexa Silver (786-7190).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington's prevailing wage law requires that contractors and subcontractors on public works projects and public building service maintenance contracts pay their workers prevailing wages when employed on such projects and contracts. A public work is defined as all work, construction, alteration, repair, or improvement that is executed at the cost of the state or a local public agency.

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.

A contract for public work must specify the prevailing rate of wage, and if the awarding agency determines that the residential rate applies, the contract must include that information. If it is later determined that the commercial rate applies, the awarding agency must pay the difference between the residential and commercial rates to the contractor.

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. An awarding agency may not release the contract retainage until an affidavit is submitted. If an awarding agency knowingly fails to comply with the requirements related to intents and affidavits, it is liable to workers for the amount of wages due.

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. Unpaid wages are a lien on the retainage and the contractor bond.

Summary of Substitute Bill:

Public work is defined to include "subsidized public work," which means all work, construction, alterations, repairs, or improvements, other than ordinary maintenance, where a party to the contract for the work received or will receive: (1) a qualifying tax preference for the project; or (2) a loan for the project from the state or any county, municipality, or political subdivision. The following types of work are excluded from the definition: work that takes place on land owned or controlled by a housing authority or a nonprofit housing organization eligible to receive funding; work financed by a loan provided by a housing authority; and affordable housing projects that receive financing from the Housing Finance Commission and are not subject to federal prevailing wage requirements.

The construction-related sales and use tax incentive programs that require payment of prevailing wage are those for: (1) construction of warehouses, distribution centers, grain elevators, and cold storage; (2) purchases to construct structures used for retail sales of biofuels; (3) installing and constructing anaerobic digesters; (4) construction and equipment purchases for manufacturing facilities in high unemployment counties; (5) construction and

equipment purchases for high technology; (6) construction and equipment purchases for biotechnology and medical device manufacturing; and (7) construction of a corporate headquarters facility in a community empowerment zone.

An entity is qualified for one of these tax incentive programs only if it complies with the prevailing wage law. Upon request, the Department must provide written certification of a tax preference recipient's compliance.

The responsibilities and liabilities of awarding agencies apply to subsidy recipients. For example, a subsidy recipient may be liable for the difference between the residential and commercial rate, may not make final payment until an affidavit is submitted to the subsidy recipient, and may be liable to workers for wages due. In addition, if the contractor or subcontractor is subject to a civil penalty for failure to pay prevailing wage, the subsidy recipient is also subject to a civil penalty in the amount of the unpaid wages or the value of the tax preference, whichever is greater.

Contractors and subcontractors on subsidized public works must file a surety bond or deposit funds in an account that the Department may access in case of violation of the law. The value of the surety bond or deposit must be 5 percent of the amount due on the contract.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the definition of "subsidized public work" by:

- removing reference to work that takes place on land that a party to the contract leases from the state or a county, municipality, or political subdivision or purchased from the state or a county, municipality, or political subdivision for less than fair market value;
- removing reference to the existing definition of "public work";
- requiring that a party to the contract "for the project" received or will receive a tax preference or public loan; and
- exempting affordable housing projects.

The substitute bill requires that the Department provide a certificate of compliance with prevailing wage law. It also clarifies the requirement that affidavits be submitted to subsidy recipients.

Appropriation: None.

Fiscal Note: Available.

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) If a person voluntarily chooses to receive a tax incentive, which we all pay for as taxpayers, that is considered the public share. There are loopholes saying that when public

property is leased out that the buildings on top of it are not a public interest. Public-private partnerships on public lands have historically been set up to benefit the community and provide benchmarks that drive the economies of communities. This has eroded. When companies do construction on public land and take tax incentives, they have a responsibility to pay prevailing wage. People in the community paying taxes should benefit from these projects.

Prevailing wage should apply to all state money that goes into these projects. Prevailing wage keeps cash in communities. The impacts of these projects are long term and affect families and taxpayers. This bill is not just about one project; long-term leases at less than fair market value are happening elsewhere, too.

(With concerns) There are technical concerns with how to achieve this, and some definitions should be tightened up. Ports use limited public resources to leverage private sector investment to create jobs for people in the community. This bill damages the ability to create those partnerships. As the bill is written, if someone leases property from any government agency, the person is covered by the requirements in the bill. This is not a subsidy because it is not leased at less than fair market value. Tax incentives are created to encourage certain industries, and this bill would create an odd counter-development.

(Opposed) Ports are mandated to promote economic development, such as new permanent jobs in the community and new tax revenues. Ports are not in the business of hiring; they create land and space for entrepreneurs to come to our state. They buy and sell land only when it is in the interest of economic development. The companies that lease port property will be financially impacted by the requirement to pay prevailing wage; their costs may be 25 to 30 percent higher. The requirement to pay prevailing wage will eat up the value of the tax incentive, and these projects will become economically unrealistic. This bill handcuffs developers and public agencies like ports, preventing them from fulfilling the economic development mandate from the state.

This bill will add requirements that are not imposed in other regions. It is too broad and heavy-handed and will harm projects. Competition is keen. Most of these projects are carefully negotiated over years by local officials. These projects add positive value to the communities and the state. The bill will increase costs significantly and risk hundreds of millions of dollars in private investment. A contractor does not have a way to know whether a project owner has received a tax preference. This is too confusing and would be a burden on small businesses.

Cities operate industrial parks and want to redevelop downtown commercial areas. The new requirements could create a chill on the attractiveness of developing these areas.

Prevailing wage came from a racist effort by established workers in the North to prevent workers who were moving up from the South from working on projects. Prevailing wage locks in the status quo and prevents competition.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Nicole Grant, Certified Electrical Workers of Washington; Darrell Chapman, International Brotherhood of

Electrical Workers, Local 191; and David Meyers, Washington State Building and Construction Trades Council.

(With concerns) Tamara Jones, Department of Labor & Industries; and Ginger Eagle, Washington Public Ports Association.

(Opposed) Bill McGregor, Port of Olympia; Van Collins, Associated General Contractors; Candice Bock, Association of Washington Cities; Mark Stanley; Larry Stevens, National Electrical Contractors Association and Mechanical Contractors Association of Western Washington; and Trent England, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.