

SENATE BILL REPORT

SB 5395

As of February 15, 2013

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

Brief Description: Extending the application of prevailing wage requirements.

Sponsors: Senators Conway, Hasegawa, Kohl-Welles, Kline, Keiser, Cleveland and Chase.

Brief History:

Committee Activity: Commerce & Labor: 2/13/13.

SENATE COMMITTEE ON COMMERCE & LABOR

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 same trade or occupation 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. Prevailing wage requirements apply to all public works and public building service maintenance contracts of the state or any county, municipality, or political subdivision.

Agencies awarding public works projects have responsibilities and liabilities under prevailing wage statutes. Agencies must require submission of intents and affidavits, withhold and release retainage, and can be liable for unpaid wages in certain instances.

Summary of Bill: Prevailing wage requirements apply to all publicly subsidized work, construction, alterations, repairs, and improvements other than ordinary maintenance.

Work is publicly subsidized if at least one party to the contract received or will receive a tax preference or a loan from the state or any political subdivision; or if the work occurs on land that a party to the contract leases or purchased for less than fair market value from the state or any political subdivision.

The following sales and use tax deferral programs and exemptions would trigger prevailing wage requirements:

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.

- construction and equipment purchases for certain facilities in high unemployment counties;
- construction and equipment purchases for high technology research and development and pilot manufacturing;
- construction and equipment purchases for biotechnology and medical device manufacturing;
- construction of corporate headquarters within a community empowerment zone;
- construction of warehouses, distribution centers, grain elevators, and cold storage;
- construction, maintenance, and purchases for anaerobic digesters; and
- construction and equipment purchases for retail sellers of biodiesel and E85 motor fuel.

An entity seeking to qualify for one of the listed tax deferral programs or exemptions must comply with prevailing wage requirements.

The private party that received the benefit from the tax preference, loan, lease, or purchase is considered a subsidy recipient. Subsidy recipients take on the same duties, responsibilities, and liabilities as awarding agencies under the prevailing wage statutes. A subsidy recipient may be subject to a civil penalty in the amount of unpaid wages or the value of the tax preference, whichever is greater, if a contractor on the subsidized project fails to pay prevailing wages.

Every contractor and subcontractor on a publicly subsidized project must file a surety bond with L&I, in the amount of 5 percent of the amount due on the contract. The bond can be used to recover for prevailing wage violations. In lieu of a bond, the contractor or subcontractor can deposit 5 percent of the amount due on the contract in an interest-bearing account.

Appropriation: None.

Fiscal Note: Available on companion bill.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill addresses an issue of work done on port property that was not done under prevailing wage requirements. There are a lot of public private partnerships in the state, and often there is a public role in some of these projects but they are not using prevailing wage requirements. Prevailing wages protect the middle class in Washington communities. Property is leased out with subsidies, and out-of-state contractors using out-of-state labor end up building on the property. The public has a vested interest on tax subsidized property. Prevailing wage increases productivity.

CON: This bill would apply to private companies who use a tax preference, and by using that tax preference it turns a private project into a public project. What is the use of a tax incentive if it would require higher construction costs in the form of prevailing wages? The intent of the bill is good, but this approach won't have the desired effect. Public private partnerships are needed to create jobs. Land leased at market rates is not really a subsidy,

and this bill would make it difficult to attract private partners. An employer creating a new business will not take advantage of tax incentives if they have to then comply with prevailing wage requirements. This bill actually creates a disincentive. Nonprofits want to do a project for the city on city property, but if this bill passes then prevailing wages would apply and would kill the project. Contractors will not know if the owner got a subsidy or a tax break, so contractors could be liable for prevailing wages without knowing.

OTHER: There is an unintended consequence of the bill. The Department of Natural Resources (DNR) manages millions of acres and leases land at market rate, and would ask to amend the bill to exclude lands leased at market rates. There are technical concerns to make the legislation implementable.

Persons Testifying: PRO: Senator Conway, prime sponsor; David Myers, WA State Building Trades Council.

CON: Grover Laseke, City of Woodland; Ginger Eagle, WA Public Ports Assn.; Jay Hupp, Port of Shelton; Sandy Larson, Darlene Johnson, Patrick Connor, National Federation of Independent Businesses; Gary Smith, Independent Business Assn.

OTHER: Tamara Jones, L&I; Kyle Blum, DNR.