
**Labor & Workplace Standards
Committee**

HB 2136

Brief Description: Concerning prevailing wage sanctions, penalties, and debarment.

Sponsors: Representatives Ormsby, Schmidt, Doglio, Farivar, Berry, Simmons, Reed, Ramel, Mena, Goodman, Berg, Fosse, Reeves, Pollet and Kloba; by request of Attorney General.

Brief Summary of Bill

- Provides that a contractor is subject to the same sanctions or debarment from bidding on public works projects if it has substantially identical operations, corporate, or management structure to another entity that has been sanctioned or debarred under state prevailing wage laws.

Hearing Date: 1/16/24

Staff: Kelly Leonard (786-7147).

Background:

The Washington State Prevailing Wages on Public Works Act requires laborers, mechanics, and others workers to be paid prevailing wages when employed on public works projects and public building service maintenance contracts. Public works include all work, construction, alteration, repair, or improvement, other than ordinary maintenance, that is done at the cost of the state or any municipality.

The parties involved in a public works contract must include prevailing wage requirements in the applicable bid documents and contract. The prevailing wage, which is set by the industrial statistician of the Department of Labor and Industries (L&I), is based on the hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers,

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laborers, and mechanics performing the same work. The rate is established separately for each county. For any particular project, a contractor must use the prevailing wage rate for workers in place at the time of the prime contractor's bid due date, or the date the contract is awarded if the contract is not awarded within six months of the bid due date. The prevailing wage rate determined at that time remains the same for the life of the project.

In order to bid a public works contract, a prime contractor and its subcontractors must qualify as "responsible bidders" under state law. This includes maintaining proper contractor registration and licenses and maintaining industrial insurance coverage for employees. A contractor or subcontractor is not considered a responsible bidder if it is debarred from bidding on public works projects based on certain state laws pertaining to prevailing wage, contractor registration, industrial insurance, or apprentices, as follows:

Violation	Number of Violations/Time Period	Length of Debarment
Failure to file or making a false filing of prevailing wage forms.	Two or more times in a five-year period.	One year.
Failure to pay workers the correct prevailing wage rate.	Two or more times in a five-year period.	Two years.
Misreporting of hours worked or misreporting of premiums paid to industrial insurance. Failure to obtain a certificate of coverage for industrial insurance. Failure to comply with contractor registration requirements. Determined to be out of compliance by the Washington State Apprenticeship and Training Council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship.	Two or more times in a five-year period.	One year.

L&I maintains a list of all contractors who are forbidden either to bid on a public works project or to have a bid accepted. The industrial statistician must refuse to certify any statement of intent to pay the prevailing wage or affidavit of wages paid that he or she determines was submitted by

a contractor on the list.

Summary of Bill:

A definition of "contractor" is added to the state law governing prevailing wages on public works. A "contractor" refers to any prime contractor, subcontractor, or other employer as defined by rules adopted by L&I. A contractor also includes an entity, however organized, with substantially identical operations, corporate, or management structure to an entity that has been found to be in violation of state laws on prevailing wage, contractor registration, industrial insurance, or apprentices. The nonexclusive factors used to determine substantial identity include an assessment of whether there is: substantial continuity of the same business operation; use of the same machinery, equipment, or both tangible and intangible real or personal property; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

If a contractor has substantially identical operations, corporate, or management structure to another entity that has been debarred or sanctioned by L&I, then the debarment or sanctions apply to the contractor. L&I may take enforcement action against these contractors.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

Effective Date: The bill takes effect on January 1, 2026.