

SENATE BILL REPORT

ESSB 5726

As Passed Senate, March 2, 2023

Title: An act relating to the prevailing wages on public works.

Brief Description: Concerning the prevailing wages on public works.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senator King).

Brief History:

Committee Activity: Labor & Commerce: 2/09/23, 2/16/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 3/2/23, 49-0.

Brief Summary of Engrossed First Substitute Bill

- Requires the industrial statistician, when there is more than one collective bargaining agreement in a county, to determine the prevailing wage using the rate that represents the majority of workers, laborers, or mechanics under those agreements, or, when a majority rate is not present, the rate representing the most workers, laborers, or mechanics.
- Provides that an interested party may appeal a determination by the industrial statistician to prove the actual rate used in the determination is not the rate representing the majority of workers, laborers, or mechanics.
- Requires, with some exceptions, public works contracts to specify that wages paid to workers will not be less than the latest prevailing wage rate in effect at the time the work is performed.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5726 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson and Schoesler.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Stanford.

Staff: Jarrett Sacks (786-7448)

Background: Prevailing Wage. State law requires prevailing wages be paid to laborers, workers, and mechanics employed upon all public works and under all public building service maintenance contracts. Public works means all work, construction, alteration, repair, or improvement other than ordinary maintenance that is executed at the cost of the state or any municipality.

The industrial statistician of the Department of Labor and Industries (L&I) establishes the prevailing wage by adopting the hourly wage, usual benefits, and overtime established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For trades and occupations with more than one collective bargaining agreement in the county, the higher rate is used.

The prevailing wage rate for workers is determined 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. L&I publishes prevailing wage rates the first business day in August and February and any updated rates take effect 30 days after publication.

Summary of Engrossed First Substitute Bill: Prevailing Wage. Beginning June 1, 2027, for non-ship building and ship repair trades and occupations with more than one collective bargaining agreement in a county, rather than the higher rate prevailing, the industrial statistician must determine and prevail the rate that represents the majority of workers, laborers, or mechanics under those agreements. When a majority rate is not present, the industrial statistician must determine and prevail the rate representing the most workers, laborers, or mechanics. The industrial statistician must consider the applicable collective bargaining agreements and may seek input from the labor management signatory parties and their multi-employer bargaining unit representatives, if applicable, regarding which rate is the majority rate, or the rate representing the most workers, laborers, or mechanics in the same trade or occupation in the event there is no majority. In no case where there is a collective bargaining agreement in a county, may the industrial statistician conduct a wage survey or otherwise apply hours worked data to set the prevailing wage, except for using hours worked data to resolve an appeal.

An interested party may appeal a determination by the industrial statistician. The interested party must allege and prove by competent evidence that the actual rate used in the determination is not the rate representing the majority number or plurality of workers, laborers, or mechanics in the same trade or occupation under the collective bargaining agreements. Until a final determination, the work in question must proceed under the rate established by the industrial statistician.

Except for small works roster contracts, contracts for the construction, reconstruction, maintenance, or repair of any public work must stipulate that the hourly minimum wage rate for laborers, workers, and mechanics must be adjusted to provide that the wage is not less than the latest prevailing wage rate in effect at the time the work is performed. This requirement does not apply to housing projects where at least 50 percent of the residential units are made available for low income housing, or to residential construction.

Until December 31, 2029, cost increases directly resulting from wage adjustments of the prevailing rate of wage under the bill are a good cause justification for the contractor of any level affected by the increase to require a financial adjustment to their contract for the following scopes of work:

- carpenters;
- cement masons;
- laborers;
- power equipment operators; and
- teamsters.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The language is still a work in progress and we are still trying to reach agreement. There is agreement to keep sick leave in SB 5111. Prevailing wage is pegged to CBAs, but allowing the higher rate to prevail has created an existential crisis for multi-employer CBAs because it allows a few contractors to override the rate in the CBAs for most of workers. Prevailing wage should represent the most hours.

CON: Sick leave should not be coupled with the prevailing wage provisions. It is good that it is being removed. The language on the rest of the bill still needs some work.

OTHER: Sick leave should not be coupled with the prevailing wage provisions.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Jerry VanderWood, Associated General Contractors (AGC).

CON: Mark Riker, Washington State Building and Construction Trades Council.

OTHER: Ray Dumas, OPCMIA Local 528.

Persons Signed In To Testify But Not Testifying: No one.