

# SENATE BILL REPORT

## EHB 1836

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As of April 2, 2009

**Title:** An act relating to public works involving off-site prefabrication.

**Brief Description:** Regarding public works involving off-site prefabrication.

**Sponsors:** Representatives Ormsby, Wood, Dunshee, Campbell, Moeller, Van De Wege, Simpson, Driscoll, Chase and Conway.

**Brief History:** Passed House: 3/12/09, 61-36.

**Committee Activity:** Labor, Commerce & Consumer Protection: 3/24/09, 3/30/09 [DPA, DNP].

**Ways & Means:** 4/02/09.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

**Staff:** Mac Nicholson (786-7445)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Michael Bezanson (786-7449)

**Background:** Laborers, workers, and mechanics working on public works projects must be paid no less than the prevailing wage. The prevailing wage is the hourly wage, usual benefits, and overtime paid to the majority of workers, laborers, or mechanics in the largest city in the county where the physical work is being performed. When project-specific nonstandard items are produced off-site, the prevailing wage is determined using the location where the prefabrication occurs. If prefabrication occurs out of state, prevailing wage laws are not applied.

Contractors and subcontractors on public works projects must keep accurate payroll records, showing the name, address, straight time rate, hourly rate of usual benefits, overtime hours

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worked, and the actual rate of wages paid. A contractor must file a certified copy of the payroll records with the awarding agency and with the Department of Labor and Industries (L&I) upon request.

**Summary of Bill (Recommended Amendments):** On public works projects over \$1,000,000, all contracts for the production of off-site, prefabricated, nonstandard, project-specific items entered into by the contractor or any subcontractor with an out-of-state contractor must contain a provision requiring the out-of-state contractor to submit a certified list of any off-site, prefabricated, project-specific items produced under the contract outside the state. The list must be submitted to the awarding agency and to L&I within ten days of delivery of the item and must include a general description of the item; the name and address of the contractor, subcontractor, or employer; and the name, address, and federal employer identification number of the contractor, subcontractor, or employer that produced the item. Failure to file a certified list subjects the out-of-state contractor to penalty under prevailing wage statutes. No penalty may be imposed for a first violation if the list is filed within a reasonable time as determined by L&I. The in-state contractor that contracted for the prefabricated item produced outside the state must notify the awarding agency when reasonably possible upon receipt of the item.

On public works projects over \$1,000,000, all contracts for the production of off-site, prefabricated, nonstandard, project-specific items entered into by the contractor or any subcontractor with an out-of-state contractor must contain a provision requiring the out-of-state contractor to produce certified payroll records. The contract must also state that the producer of the prefabricated items consents to the jurisdiction of Washington for enforcement purposes. An in-state contractor who fails to include language in the contract, upon determination by L&I, is subject to a \$1,000 civil penalty for each second or subsequent failure to comply.

Within ten days of receipt of a request by an interested party, certified payroll records must be filed with the awarding agency and with L&I. The payroll records must contain the number of labor hours expended and the hourly rate of wages paid. Failure to produce certified copies constitutes failure to file a record as required, subjecting the out-of-state contractor to prevailing wage penalties.

L&I must develop and make available forms for use by contractors, and submit data upon request to the Legislature for review. The Department of General Administration must develop and make available standard contract language for use by contractors.

Off-site, prefabricated, nonstandard, project-specific items are defined.

The provisions of the legislation apply to contracts entered into on or after September 1, 2009, and expire December 31, 2011.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments):** The amendment clarified language regarding who is required to submit the list and the certified payroll.

The amendment adds the requirement that the in-state contractor notify the awarding agency when reasonably possible upon receipt of the prefabricated item.

The amendment requires L&I to submit data collected, upon request, to the appropriate committees of the Legislature for review.

**Appropriation:** None.

**Fiscal Note:** Requested on March 18, 2009.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony (Labor, Commerce & Consumer Protection):**

PRO: Spokane is a border community that often has public works projects where prefabricated items are made off-site and shipped to the construction site. If the prefabrication is done in-state, then the manufacturer would be subject to prevailing wage law. If the prefabrication is done across the border, then the state prevailing wage provisions don't apply. The state needs to get information to see how much of this is going on. The bill simply gathers data. Washington business might face an uneven playing field in submitting bids on public works projects. The bill is specific to four areas of prefabrication, and provides transparency about where tax money is going on public construction projects. The concept of the bill was a request of fabricators in Eastern Washington who face unfair competition with out-of-state fabricators. The only responsibility of the general contractor is to include language in public works contracts. Out-of-state fabricators should have to do what in-state fabricators are required to do now on public works projects.

CON: This bill does some unusual things and raises concerns for contractors. The bill uses the state prevailing wage statutes to reach out beyond boundaries of Washington to regulate activities happening in another state. The cost of the bill is substantial, given that the purpose of the data is unclear. The bill collects wage and hour information, but does not show how much money is going out of state. The bill is confusing in places and has technical issues. Out-of-state contractors cannot be made to pay prevailing wage. The use of the prevailing wage trust fund to finance the legislation is an imprudent use of resources. There is a constitutional issue when the state uses police powers to reach into another state to regulate activities. This legislation could also trigger retaliation from other states that negatively impacts Washington contractors.

OTHER: Contractors are sympathetic to the issue of unfair competition but its not a big issue at this time. The bill would set up contractors for prevailing wage violations if the out-of-state fabricator doesn't submit the list or other records. The bill has some technical issues and data could be collected without using the prevailing wage statutes.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: Representative Ormsby, prime sponsor; David Johnson, Washington State Building Trades; Cody Arledge, Sheetmetal Workers Local 66.

CON: Van Collins, Associated General Contractors; James Curry, Associated Builders and Contractors.

OTHER: Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association.