

SENATE BILL REPORT

ESHB 2669

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2012

Title: An act relating to enforcing the payment of prevailing wages.

Brief Description: Enforcing the payment of prevailing wages.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Ormsby and Moscoso).

Brief History: Passed House: 2/13/12, 54-41.

Committee Activity: Labor, Commerce & Consumer Protection: 2/23/12 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

Staff: Mac Nicholson (786-7445)

Background: Employers on public works projects must pay prevailing wages and submit a statement of intent to pay prevailing wages (intent) after the contract is awarded but before work begins. After all of the work is complete, employers must submit an affidavit of wages paid (affidavit). The forms are filed with the Department of Labor and Industries and, when approved, are submitted by the employer to the agency administering the contract.

A contractor or subcontractor who fails to file intents and affidavits, or files false intents and affidavits, is subject to a \$500 fine and cannot bid on a public works contract until the penalty has been paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on a public works contract for one year.

A contractor or subcontractor who fails to pay the prevailing wage when required is subject to a \$1,000 fine or 20 percent of the violation, whichever is greater, and cannot bid on a public works contract until the penalty has been paid. A second violation within a five-year period bars a contractor or subcontractor from bidding on a public works contract for two years.

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.

Summary of Bill (Recommended Amendments): A successor entity is liable for any unpaid prevailing wages of, and monetary and nonmonetary sanctions for, violations of prevailing wage requirements committed by a predecessor contractor if the successor had actual notice of the violation at the time of the sale or conveyance.

A successor entity is an entity to which a contractor directly or indirectly sells or conveys in bulk a substantial portion of its assets for appreciably less than fair market value when the contractor quits business, sells out, exchanges, or disposes of the contractor's business. Several factors are established which may be considered in making a successor determination.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments): The striking amendment removes the provision making the successor liable for prevailing wage violations of the predecessor if the successor had constructive knowledge of the violation. To be a successor, the contractor must have sold a substantial portion of its assets for appreciably less than fair market value. The striking amendment also adds a factor that can be considered when making the successor determination.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is an attempt to address bad actors in the construction industry who switch ownership of the company in a flagrant way and create an unfair advantage. There is a growing problem with businesses that turn over businesses to avoid penalties and paying people what they are supposed to be paid. The bill addresses the contractors who sell or transfer their company to another person and maintain the same employees, name, and other things in an effort to avoid prevailing wage sanctions, including strikes and debarment. Most contractors in this state are good actors. This bill requires contractors to disclose their liabilities when selling or conveying their business.

CON: The intent is a good intent. Bad actors are not beneficial to the industry. This bill casts too broad a net. Constructive notice isn't relevant in the prevailing wage context. The bill doesn't address fair market value for the business, and the bad actors aren't paying fair market value and the transaction isn't an arms length transaction. The bill should look at fair market value and the arms length nature of the transaction. This bill will discourage buyers from purchasing a distressed business. Good contractors could get caught in this legislation.

Persons Testifying: PRO: Representative Ormsby, prime sponsor; Tamara Jones, L&I; Miriam Moses, Rebound.

CON: Van Collins, AGC; Aran Buchan, ABC; Larry Stevens, Mechanical Contractors Assn.,
National Electrical Assn.