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**HOUSE BILL 2136**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representatives Ormsby, Schmidt, and Doglio; by request of Attorney General

Prefiled 01/04/24.

1 AN ACT Relating to prevailing wage sanctions, penalties, and  
2 debarment; amending RCW 39.12.010; adding a new section to chapter  
3 39.12 RCW; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that government  
6 contracts should not be awarded to those that knowingly and  
7 intentionally violate Washington state's prevailing wage laws. The  
8 legislature also finds that businesses that follow the law and pay  
9 workers appropriately are placed at a competitive disadvantage to  
10 those that reduce costs by failing to pay prevailing wages or failing  
11 to file or falsely file with the Washington state department of labor  
12 and industries or sanctioned under RCW 39.12.055. In order to create  
13 a consistent, fair playing field for businesses and avoid taxpayer  
14 contracts going to those that repeatedly violate the law and  
15 illegally withhold money from workers, the state should amend the  
16 state prevailing wage laws to extend those businesses' sanctions to  
17 their substantially identical companies. These sanctions include  
18 penalties issued under chapter 39.12 RCW; findings of violations that  
19 the department of labor and industries count toward a bar on bidding  
20 on public works; and debarment, prohibiting bidding on public works.

1       **Sec. 2.** RCW 39.12.010 and 2019 c 242 s 2 are each amended to  
2 read as follows:

3       (1) The "prevailing rate of wage" is the rate of hourly wage,  
4 usual benefits, and overtime paid in the locality, as hereinafter  
5 defined, to the majority of workers, laborers, or mechanics, in the  
6 same trade or occupation. In the event that there is not a majority  
7 in the same trade or occupation paid at the same rate, then the  
8 average rate of hourly wage and overtime paid to such laborers,  
9 workers, or mechanics in the same trade or occupation is the  
10 prevailing rate. If the wage paid by any contractor or subcontractor  
11 to laborers, workers, or mechanics on any public work is based on  
12 some period of time other than an hour, the hourly wage is  
13 mathematically determined by the number of hours worked in such  
14 period of time.

15       (2) The "locality" is the largest city in the county wherein the  
16 physical work is being performed.

17       (3) The "usual benefits" includes the amount of:

18       (a) The rate of contribution irrevocably made by a contractor or  
19 subcontractor to a trustee or to a third person pursuant to a fund,  
20 plan, or program; and

21       (b) The rate of costs to the contractor or subcontractor, which  
22 may be reasonably anticipated in providing benefits to workers,  
23 laborers, and mechanics pursuant to an enforceable commitment to  
24 carry out a financially responsible plan or program which was  
25 communicated in writing to the workers, laborers, and mechanics  
26 affected, for medical or hospital care, pensions on retirement or  
27 death, compensation for injuries or illness resulting from  
28 occupational activity, or insurance to provide any of the foregoing,  
29 for unemployment benefits, life insurance, disability and sickness  
30 insurance, or accident insurance, for vacation and holiday pay, for  
31 defraying costs of apprenticeship or other similar programs, or for  
32 other bona fide fringe benefits, but only where the contractor or  
33 subcontractor is not required by other federal, state, or local law  
34 to provide any of such benefits.

35       (4) An "interested party" includes a contractor, subcontractor,  
36 an employee of a contractor or subcontractor, an organization whose  
37 members' wages, benefits, and conditions of employment are affected  
38 by this chapter, and the director of labor and industries or the  
39 director's designee.

1 (5) An "inadvertent filing or reporting error" is a mistake and  
2 is made notwithstanding the use of due care by the contractor,  
3 subcontractor, or employer. An inadvertent filing or reporting error  
4 includes a contractor who, in good faith, relies on a written  
5 determination provided by the department of labor and industries and  
6 pays its workers, laborers, and mechanics accordingly, but is later  
7 found to have not paid the proper prevailing wage rate.

8 (6) "Unpaid prevailing wages" or "unpaid wages" means the  
9 employer fails to pay all of the prevailing rate of wages owed for  
10 any workweek by the regularly established payday for the period in  
11 which the workweek ends. Every employer must pay all wages, other  
12 than usual benefits, owing to its employees not less than once a  
13 month. Every employer must pay all usual benefits owing to its  
14 employees by the regularly established deadline for those benefits.

15 (7) "Rate of contribution" means the effective annual rate of  
16 usual benefit contributions for all hours, public and private, worked  
17 during the year by an employee (commonly referred to as  
18 "annualization" of benefits). The only exemption to the annualization  
19 requirements is for defined contribution pension plans that have  
20 immediate participation and vesting.

21 (8) "Contractor" means any prime contractor, subcontractor, or  
22 other employer as defined by rules adopted by the department of labor  
23 and industries.

24 (9) "Contractor" includes an entity, however organized, with  
25 substantially identical operations, corporate, or management  
26 structure to an entity that has been found in violation under RCW  
27 39.12.050, 39.12.055, or 39.12.065, or any associated rules. The  
28 nonexclusive factors used to determine substantial identity include  
29 an assessment of whether there is: Substantial continuity of the same  
30 business operation; use of the same machinery, equipment, or both  
31 tangible and intangible real or personal property; similarity of jobs  
32 and types of working conditions; continuity of supervisors; and  
33 similarity of product or services.

34 NEW SECTION. Sec. 3. A new section is added to chapter 39.12  
35 RCW to read as follows:

36 A contractor for the purposes of enforcing this chapter includes  
37 a contractor as defined by the department of labor and industries  
38 with substantially identical operations, corporate, or management  
39 structure to an entity that has been debarred or otherwise sanctioned

1 under RCW 39.12.050, 39.12.055, 39.12.065, or any associated rule, is  
2 subject to the same debarment or sanction as that entity. These  
3 sanctions include penalties issued under this chapter, findings of  
4 violations that the department of labor and industries count toward a  
5 bar on bidding on public works; and debarment, prohibiting bidding on  
6 public works. The department of labor and industries may enforce this  
7 section under the enforcement provisions of this chapter and  
8 associated rules.

9 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2026.

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