
SENATE BILL 5418

State of Washington

68th Legislature

2023 Regular Session

By Senators Conway, Keiser, Hasegawa, Kuderer, Saldaña, Frame, and Trudeau

1 AN ACT Relating to expanding the definition of public work; and
2 amending RCW 39.04.010 and 39.12.010.

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

4 **Sec. 1.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to
5 read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Award" means the formal decision by the state or
9 municipality notifying a responsible bidder with the lowest
10 responsive bid of the state's or municipality's acceptance of the bid
11 and intent to enter into a contract with the bidder.

12 (2) "Contract" means a contract in writing for the execution of
13 public work for a fixed or determinable amount duly awarded after
14 advertisement and competitive bid, or a contract awarded under the
15 small works roster process in RCW 39.04.155.

16 (3) "Municipality" means every city, county, town, port district,
17 district, or other public agency authorized by law to require the
18 execution of public work, except drainage districts, diking
19 districts, diking and drainage improvement districts, drainage
20 improvement districts, diking improvement districts, consolidated
21 diking and drainage improvement districts, consolidated drainage

1 improvement districts, consolidated diking improvement districts,
2 irrigation districts, or other districts authorized by law for the
3 reclamation or development of waste or undeveloped lands.

4 (4) "Public work" means all work, construction, alteration,
5 repair, or improvement other than ordinary maintenance, executed at
6 the cost of the state or of any municipality, including those
7 supported in part or in whole by the granting or loaning of public
8 dollars or by tax deferral or reimbursement, or which is by law a
9 lien or charge on any property therein. All public works, including
10 maintenance when performed by contract shall comply with chapter
11 39.12 RCW. "Public work" does not include work, construction,
12 alteration, repair, or improvement performed under contracts entered
13 into under RCW 36.102.060(4) or under development agreements entered
14 into under RCW 36.102.060(7) or leases entered into under RCW
15 36.102.060(8).

16 (5) "Responsible bidder" means a contractor who meets the
17 criteria in RCW 39.04.350.

18 (6) "State" means the state of Washington and all departments,
19 supervisors, commissioners, and agencies of the state.

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

22 (1) The "prevailing rate of wage" is the rate of hourly wage,
23 usual benefits, and overtime paid in the locality, as hereinafter
24 defined, to the majority of workers, laborers, or mechanics, in the
25 same trade or occupation. In the event that there is not a majority
26 in the same trade or occupation paid at the same rate, then the
27 average rate of hourly wage and overtime paid to such laborers,
28 workers, or mechanics in the same trade or occupation is the
29 prevailing rate. If the wage paid by any contractor or subcontractor
30 to laborers, workers, or mechanics on any public work is based on
31 some period of time other than an hour, the hourly wage is
32 mathematically determined by the number of hours worked in such
33 period of time.

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

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

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

1 (b) The rate of costs to the contractor or subcontractor, which
2 may be reasonably anticipated in providing benefits to workers,
3 laborers, and mechanics pursuant to an enforceable commitment to
4 carry out a financially responsible plan or program which was
5 communicated in writing to the workers, laborers, and mechanics
6 affected, for medical or hospital care, pensions on retirement or
7 death, compensation for injuries or illness resulting from
8 occupational activity, or insurance to provide any of the foregoing,
9 for unemployment benefits, life insurance, disability and sickness
10 insurance, or accident insurance, for vacation and holiday pay, for
11 defraying costs of apprenticeship or other similar programs, or for
12 other bona fide fringe benefits, but only where the contractor or
13 subcontractor is not required by other federal, state, or local law
14 to provide any of such benefits.

15 (4) An "interested party" includes a contractor, subcontractor,
16 an employee of a contractor or subcontractor, an organization whose
17 members' wages, benefits, and conditions of employment are affected
18 by this chapter, and the director of labor and industries or the
19 director's designee.

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

27 (6) "Unpaid prevailing wages" or "unpaid wages" means the
28 employer fails to pay all of the prevailing rate of wages owed for
29 any workweek by the regularly established pay day for the period in
30 which the workweek ends. Every employer must pay all wages, other
31 than usual benefits, owing to its employees not less than once a
32 month. Every employer must pay all usual benefits owing to its
33 employees by the regularly established deadline for those benefits.

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

40 (8) (a) "Public work" means:

1 (i) All work, construction, alteration, enlargement, improvement,
2 repair, and/or demolition that is executed by contract, purchase
3 order, or any other legal agreement and that is executed at the cost
4 of the state of Washington or of any municipality, including those
5 supported in part or in whole by the granting or loaning of public
6 dollars or by tax deferral or reimbursement. The source of the
7 funding shall not determine the applicability of the statute, and may
8 include, but is not limited to, such sources as those payments made
9 through contracts with insurance companies on behalf of the insured
10 state or municipality;

11 (ii) All work, construction, alteration, enlargement,
12 improvement, repair, and/or demolition which, by law, constitutes a
13 lien or charge on any property of the state or of a municipality;

14 (iii) All work, construction, alteration, repair, or improvement,
15 other than ordinary maintenance, that the state or a municipality
16 causes to be performed by a private party through a contract to rent,
17 lease, or purchase at least 50 percent of the project by one or more
18 state agencies or municipalities, pursuant to RCW 39.04.260;

19 (iv) Maintenance, except ordinary maintenance, when performed by
20 contract. Maintenance is defined as keeping existing facilities in
21 good usable, operational condition;

22 (v) Janitorial and building service maintenance as defined by the
23 department of labor and industries by rule, when performed by
24 contract, on public buildings and/or assets; and

25 (vi) The fabrication and/or manufacture of nonstandard items
26 produced by contract specifically for a public works project as
27 defined in (a) (i) through (v) of this subsection.

28 (b) "Public work" does not include work, construction,
29 alteration, enlargement, improvement, repair, demolition, and/or
30 maintenance for which no wage or salary compensation is paid,
31 consistent with the requirements of RCW 35.21.278.

32 (c) For the purposes of this subsection (8), "ordinary
33 maintenance" means maintenance work performed by the regular
34 employees of the state or any county, municipality, or political
35 subdivision created by its laws.

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