
ENGROSSED SUBSTITUTE HOUSE BILL 2388

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Heavey, H. Myers, Campbell, King and Anderson; by request of Department of Labor & Industries)

Read first time 02/02/94.

1 AN ACT Relating to penalties for multiple failures by a contractor
2 or subcontractor to pay the prevailing rate of wage; amending RCW
3 39.12.065; and prescribing penalties.

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

5 **Sec. 1.** RCW 39.12.065 and 1985 c 15 s 2 are each amended to read
6 as follows:

7 (1) Upon complaint by an interested party, the director of labor
8 and industries shall cause an investigation to be made to determine
9 whether there has been compliance with this chapter and the rules
10 adopted hereunder, and if the investigation indicates that a violation
11 may have occurred, a hearing shall be held in accordance with chapter
12 34.05 RCW. The director shall issue a written determination including
13 his or her findings after the hearing. A judicial appeal from the
14 director's determination may be taken in accordance with chapter 34.05
15 RCW, with the prevailing party entitled to recover reasonable costs and
16 attorneys fees.

17 A complaint concerning nonpayment of the prevailing rate of wage
18 shall be filed with the department of labor and industries no later
19 than thirty days from the acceptance date of the public works project.

1 The failure to timely file such a complaint shall not prohibit a
2 claimant from pursuing a private right of action against a contractor
3 or subcontractor for unpaid prevailing wages. The remedy provided by
4 this section is not exclusive and is concurrent with any other remedy
5 provided by law.

6 (2) To the extent that a contractor or subcontractor has not paid
7 the prevailing rate of wage under a determination issued as provided in
8 subsection (1) of this section, the director shall notify the agency
9 awarding the public works contract of the amount of the violation
10 found, and the awarding agency shall withhold, or in the case of a
11 bond, the director shall proceed against the bond in accordance with
12 the applicable statute to recover, such amount from the following
13 sources in the following order of priority until the total of such
14 amount is withheld:

15 (a) The retainage or bond in lieu of retainage as provided in RCW
16 60.28.010;

17 (b) If the claimant was employed by the contractor or subcontractor
18 on the public works project, the bond filed by the contractor or
19 subcontractor with the department of labor and industries as provided
20 in RCW 18.27.040 and 19.28.120;

21 (c) A surety bond, or at the contractor's or subcontractor's option
22 an escrow account, running to the director in the amount of the
23 violation found; and

24 (d) That portion of the progress payments which is properly
25 allocable to the contractor or subcontractor who is found to be in
26 violation of this chapter. Under no circumstances shall any portion of
27 the progress payments be withheld that are properly allocable to a
28 contractor, subcontractor, or supplier, that is not found to be in
29 violation of this chapter.

30 The amount withheld shall be released to the director to distribute
31 in accordance with the director's determination.

32 (3) A contractor or subcontractor that is found, in accordance with
33 subsection (1) of this section, to have violated the requirement to pay
34 the prevailing rate of wage shall be subject to a civil penalty of not
35 less than one thousand dollars or an amount equal to twenty percent of
36 the total prevailing wage violation found on the contract, whichever is
37 greater, and shall not be permitted to bid, or have a bid considered,
38 on any public works contract until such civil penalty has been paid in
39 full to the director. If a contractor or subcontractor is found to

1 have participated in a violation of the requirement to pay the
2 prevailing rate of wage for a second time within a five-year period,
3 the contractor or subcontractor shall be subject to the sanctions
4 prescribed in this subsection and as an additional sanction shall not
5 be allowed to bid on any public works contract for two years. If a
6 previous or subsequent violation of a requirement to pay a prevailing
7 rate of wage under federal or other state law is found against the
8 contractor or subcontractor within five years from a violation under
9 this section, the contractor or subcontractor shall not be allowed to
10 bid on any public works contract for two years. A contractor or
11 subcontractor shall not be barred from bidding on any public works
12 contract if the contractor or subcontractor relied upon written
13 information from the department to pay a prevailing rate of wage that
14 is later determined to be in violation of this chapter. The civil
15 penalty and sanctions under this subsection shall not apply to a
16 violation determined by the director to be an inadvertent filing or
17 reporting error. To the extent that a contractor or subcontractor has
18 not paid the prevailing wage rate under a determination issued as
19 provided in subsection (1) of this section, the unpaid wages shall
20 constitute a lien against the bonds and retainage as provided herein
21 and in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

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