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HOUSE BILL 2468

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State of Washington                      53rd Legislature                      1994 Regular Session

By Representatives H. Myers, Conway and Jones

Read first time 01/14/94. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to violations of the prevailing wage laws; and  
2 amending RCW 39.12.065.

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

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

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

16            A complaint concerning nonpayment of the prevailing rate of wage  
17 shall be filed with the department of labor and industries no later  
18 than thirty days from the acceptance date of the public works project.  
19 The failure to timely file such a complaint shall not prohibit a

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

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

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

16 (b) The bond filed by the contractor or subcontractor with the  
17 department of labor and industries as provided in RCW 18.27.040 and  
18 19.28.120;

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

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

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

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

1 contractor or subcontractor has not paid the prevailing wage rate under  
2 a determination issued as provided in subsection (1) of this section,  
3 the unpaid wages shall constitute a lien against the bonds and  
4 retainage as provided herein and in RCW 18.27.040, 19.28.120,  
5 39.08.010, and 60.28.010.

6 (b) If a contractor or subcontractor is found under this section to  
7 have violated the requirement to pay the prevailing rate of wage for a  
8 second time within a five-year period, the contractor or subcontractor  
9 shall be subject to the sanctions prescribed in (a) of this subsection  
10 and shall not be allowed to bid on any public works contract for two  
11 years. If a previous or subsequent violation of a prevailing wage law  
12 under federal or other state law is found against the contractor or  
13 subcontractor within five years from a violation under this section,  
14 the contractor or subcontractor shall not be allowed to bid on any  
15 public works contract for two years.

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