
HOUSE BILL 1137

State of Washington

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By Representatives Cairnes, Conway, Campbell, Dunshee, O'Brien, Cooper, Hunt, Simpson, Santos, Kenney, D. Schmidt, Kirby and Keiser

Read first time 01/18/2001. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to civil penalties for prevailing wage
2 settlements; and 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 1994 c 88 s 1 are each amended to read
5 as follows:

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

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

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

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

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

17 (b) If the claimant was employed by the contractor or
18 subcontractor on the public works project, the bond filed by the
19 contractor or subcontractor with the department of labor and
20 industries as provided in RCW 18.27.040 and (~~19.28.120~~)
21 19.28.041;

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

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

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

33 (3) A contractor or subcontractor that is found, in accordance
34 with subsection (1) of this section, to have violated the
35 requirement to pay the prevailing rate of wage or settles a wage
36 claim with the department of labor and industries for failure to
37 pay the prevailing rate of wage shall be subject to a civil
38 penalty of not less than one thousand dollars or an amount equal

1 to twenty percent of the total prevailing wage violation found on
2 the contract, whichever is greater, and shall not be permitted to
3 bid, or have a bid considered, on any public works contract until
4 such civil penalty has been paid in full to the director. If a
5 contractor or subcontractor is found to have participated in a
6 violation of the requirement to pay the prevailing rate of wage
7 for a second time within a five-year period, the contractor or
8 subcontractor shall be subject to the sanctions prescribed in this
9 subsection and as an additional sanction shall not be allowed to
10 bid on any public works contract for two years. If a previous or
11 subsequent violation of a requirement to pay a prevailing rate of
12 wage under federal or other state law is found against the
13 contractor or subcontractor within five years from a violation
14 under this section, the contractor or subcontractor shall not be
15 allowed to bid on any public works contract for two years. A
16 contractor or subcontractor shall not be barred from bidding on
17 any public works contract if the contractor or subcontractor
18 relied upon written information from the department to pay a
19 prevailing rate of wage that is later determined to be in
20 violation of this chapter. The civil penalty and sanctions under
21 this subsection shall not apply to a violation determined by the
22 director to be an inadvertent filing or reporting error. To the
23 extent that a contractor or subcontractor has not paid the
24 prevailing wage rate under a determination issued as provided in
25 subsection (1) of this section, the unpaid wages shall constitute
26 a lien against the bonds and retainage as provided herein and in
27 RCW 18.27.040, (~~19.28.120~~) 19.28.041, 39.08.010, and 60.28.010.

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