
HOUSE BILL 2539

State of Washington

57th Legislature

2002 Regular Session

By Representatives Conway, Cairnes, Kirby, Campbell, Lysen, Dunshee, Sullivan, Upthegrove, Hunt, Wood, Chase, Simpson and Haigh

Read first time 01/21/2002. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to private right of action for unpaid prevailing
2 wages; 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 2001 c 219 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 claimant or interested party as defined in
2 RCW 39.12.010 may pursue a private right of action against a contractor
3 or subcontractor for unpaid prevailing wages notwithstanding that a
4 timely complaint was not filed with the department of labor and
5 industries. The remedy provided by this section is not exclusive and
6 is concurrent with any other remedy provided by law.

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

16 (a) The retainage or bond in lieu of retainage as provided in RCW
17 60.28.010;

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

22 (c) A surety bond, or at the contractor's or subcontractor's option
23 an escrow account, running to the director in the amount of the
24 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 portion of
28 the progress payments be withheld that are properly allocable to a
29 contractor, subcontractor, or supplier, that is not found to be in
30 violation of this chapter.

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

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

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

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