

HOUSE BILL REPORT

SSB 6421

As Passed House:
February 29, 2012

Title: An act relating to the affidavit of wages paid on public works.

Brief Description: Addressing the affidavit of wages paid on public works.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators King, Kline and Holmquist Newbry).

Brief History:

Committee Activity:

Labor & Workforce Development: 2/15/12, 2/21/12 [DP].

Floor Activity:

Passed House: 2/29/12, 98-0.

Brief Summary of Substitute Bill

- Permits a contractor or subcontractor on a public works project to file an affidavit of wages paid on behalf of a subcontractor who has failed to file under certain circumstances.
- Requires a contractor who files an affidavit on behalf of a nonresponsive subcontractor to accept responsibility for unpaid prevailing wages.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass. Signed by 12 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Green, Kenney, Miloscia, Moeller, Ormsby, Roberts, Taylor and Warnick.

Staff: Alexa Silver (786-7190).

Background:

Washington's prevailing wage law requires that contractors and subcontractors on public works projects and public building service maintenance contracts pay their workers prevailing wages when employed on such projects and contracts. The prevailing wage is the

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hourly wage, usual benefits, and overtime paid in the largest city in each county to the majority of workers in a particular trade or occupation. The Department of Labor and Industries (Department) establishes prevailing wage rates for each trade and occupation and is otherwise responsible for administering and enforcing the prevailing wage law.

Contract Retainage. Public agencies that award public improvement contracts withhold a contract retainage of up to 5 percent of the money due to the contractor. The retainage is a trust fund for the protection and payment of anyone who may have a claim under the contract. Laborers and suppliers have a lien on the retainage and have 45 days from completion of the contract work to give notice of the lien. Once the contract work is completed, the contractor may request release of the retainage, and the public agency has 60 days to release the retainage, subject to the requirements of the prevailing wage law.

Intents and Affidavits. Contractors and subcontractors on public works projects must submit an "intent" to pay prevailing wage to the awarding agency before any payment is made. After the final acceptance of the project, contractors and subcontractors must submit an "affidavit" that prevailing wages have been paid. Intents and affidavits are certified by the industrial statistician at the Department before they are submitted to the awarding agency. An awarding agency may not release the contract retainage until all affidavits are submitted.

The Department permits a contractor to file an affidavit on behalf of a subcontractor if the subcontractor fails to file because it has gone out of business, filed for bankruptcy, or refused to file. To file on behalf of such a subcontractor, the contractor must obtain authorization from the Department and assume liability for any worker wage claims.

Contractors and subcontractors who fail to file or who file false intents and affidavits are subject to a civil penalty of \$500 and may not bid on any public works contracts until the penalty is paid. A second violation within a five-year period bars the contractor or subcontractor from bidding on public works contracts for one year.

Complaints. An interested party may file a complaint concerning nonpayment of prevailing wage rates with the Department. A complaint must be filed no later than 30 days from the acceptance date of the project.

Summary of Bill:

A contractor or subcontractor may file an affidavit that prevailing wages have been paid on behalf of a subcontractor who has failed to submit an affidavit if they have a contractual relationship for the project. The nonresponsive subcontractor must have ceased operations or failed to file an affidavit as required. An affidavit filed on behalf of a nonresponsive subcontractor may be accepted no sooner than 31 days after the acceptance date of the project.

The contractor who files the affidavit accepts responsibility for payment of unpaid prevailing wages. A contractor or subcontractor who intentionally files a false affidavit on behalf of a subcontractor is subject to penalties for false filing.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The law requires all affidavits to be filed before the contract retainage is released, so one company can hold up payment to all companies. This situation may arise with a bad actor who does not want to file, as well as with a company that has gone out of business. Profit margins in the construction industry are currently very thin, and the five percent contract retainage may be a significant amount of money. These funds are used to pay employees and bid new projects. Having the retainage released may mean the difference between getting future bonding because of cash flow, and not getting that bonding, which means the contractor cannot work. This bill is important for improving the business climate in the state. It does not let anybody off the hook; any wages due will be paid. Concerns that were expressed in the Senate have been addressed.

(Opposed) None.

Persons Testifying: Senator King, prime sponsor; Van Collins, Associated General Contractors of Washington; Larry Stevens, Mechanical Contractors Association of Western Washington; and Aran Buchan, Associated Builders and Contractors.

Persons Signed In To Testify But Not Testifying: None.