

# SENATE BILL REPORT

## SB 6421

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 2, 2012

**Title:** An act relating to the statement of intent to pay prevailing wages on public works.

**Brief Description:** Addressing the statement of intent to pay prevailing wages on public works.

**Sponsors:** Senators King, Kline and Holmquist Newbry.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/30/12, 2/02/12 [DPS].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 6421 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

**Staff:** Mac Nicholson (786-7445)

**Background:** Employers on public works projects must pay prevailing wages and submit a statement of intent to pay prevailing wages (intent) after the contract is awarded but before work begins. After all of the work is complete, employers must submit an affidavit of wages paid (affidavit). The forms are filed with the Department of Labor and Industries (L&I) and, when approved, are submitted by the employer to the agency administering the contract. A complaint concerning nonpayment of prevailing wage must be filed with L&I within 30 days of the acceptance date of the public works project. Failure to file a complaint does not preclude a claimant from pursuing a private right of action for unpaid prevailing wages, and the statute of limitations for such causes of action is three years.

State law requires public agencies to withhold 5 percent of money due the contractor for a public improvement or work until completion and/or acceptance of the contract. This is known as retainage, and retainage money is to be set aside as a trust fund for the protection and payment of anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor. Anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor must file a notice of lien

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against retainage within 45 days of the completion of all contract work. After completion of all contract work, the contractor may request that the public agency release the retainage. The agency is to release these funds within 60 days of this request. The public agency administering the contract may not release final retainage until all contractors have submitted an affidavit form that has been certified by the industrial statistician at L&I.

L&I has a policy of allowing a contractor to file an affidavit on behalf of a sub contractor in limited circumstances. A contractor seeking to file on behalf of a subcontractor must submit supporting documentation and an assumption of liability statement, under which the filing contractor accepts liability for any unpaid wages owed by the nonresponsive subcontractor for three years from the date of performance of the work.

**Summary of Bill (Recommended Substitute):** A contractor may file an affidavit on behalf of a subcontractor if the contractor had a contractual relationship with the subcontractor and the subcontractor has ceased operations or failed to file an affidavit as required. An affidavit filed on behalf of a subcontractor may be accepted no sooner than 31 days after the acceptance date of the public works project. A contractor filing on behalf of a subcontractor must accept responsibility for any unpaid wages owed by the nonresponsive subcontractor.

Intentionally filing a false affidavit on behalf of a subcontractor subjects the filing contractor to a civil penalty and disbarment for a period of one year.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):** Adds the requirement that the contractor filing the affidavit on behalf of a subcontractor accept responsibility for payment of unpaid prevailing wages. Also removes language requiring L&I to adopt rules.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This is an important issue to the industry and will help close out projects. The retainage is a large sum of money and is something that represents the profit contractors can expect on a project. It is critical that contractors get the retainage so they have cash flow and can move on to the next project. One subcontractor that doesn't file the affidavit can jam up the process. The cash flow is vital for contractors to pay employees and bid on future contracts. The cash flow is stopped through no fault of the contractor. This is a good, small, and helpful step to improve the business climate.

CON: There is some concern about the policy currently in place and how the bill will impact the policy. The bill lacks the assumption of liability for unpaid wages that existed in a similar piece introduced last session.

OTHER: L&I is concerned about the lack of the assumption of liability in the original bill.

**Persons Testifying:** PRO: Van Collins, Associated General Contractors; Doug Watt, Northwest Cascade, Inc.; Tymon Berger, Ashbaugh Beal, LLP; Aran Buchan, Associated Builders and Contractors.

CON: Terry Tilton, WA State Building and Construction Trades Council.

OTHER: Tamara Jones, L&I.