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SENATE BILL 5746

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline and King

Read first time 02/09/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to prevailing wage affidavits; amending RCW  
2 39.12.040; and prescribing penalties.

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

4 **Sec. 1.** RCW 39.12.040 and 2009 c 219 s 2 are each amended to read  
5 as follows:

6 (1) Except as provided in subsection (2) of this section, before  
7 payment is made by or on behalf of the state, or any county,  
8 municipality, or political subdivision created by its laws, of any sum  
9 or sums due on account of a public works contract, it shall be the duty  
10 of the officer or person charged with the custody and disbursement of  
11 public funds to require the contractor and each and every subcontractor  
12 from the contractor or a subcontractor to submit to such officer a  
13 "Statement of Intent to Pay Prevailing Wages". For a contract in  
14 excess of ten thousand dollars, the statement of intent to pay  
15 prevailing wages shall include:

16 (a) The contractor's registration certificate number; and

17 (b) The prevailing rate of wage for each classification of workers  
18 entitled to prevailing wages under RCW 39.12.020 and the estimated  
19 number of workers in each classification.

1 Each statement of intent to pay prevailing wages must be approved  
2 by the industrial statistician of the department of labor and  
3 industries before it is submitted to said officer. Unless otherwise  
4 authorized by the department of labor and industries, each voucher  
5 claim submitted by a contractor for payment on a project estimate shall  
6 state that the prevailing wages have been paid in accordance with the  
7 prefiled statement or statements of intent to pay prevailing wages on  
8 file with the public agency. Following the final acceptance of a  
9 public works project, it shall be the duty of the officer charged with  
10 the disbursement of public funds, to require the contractor and each  
11 and every subcontractor from the contractor or a subcontractor to  
12 submit to such officer an "Affidavit of Wages Paid" before the funds  
13 retained according to the provisions of RCW 60.28.011 are released to  
14 the contractor. If a subcontractor performing work on a public works  
15 project fails to submit a statement of intent to pay prevailing wages  
16 or an "Affidavit of Wages Paid" form, the contractor or subcontractor  
17 with whom the subcontractor had a contractual relationship for the  
18 project may file the forms on behalf of the nonresponsive  
19 subcontractor, pursuant to rules adopted by the department of labor and  
20 industries. Intent or affidavit forms may only be filed on behalf of  
21 a subcontractor who has ceased operations or failed to file as required  
22 by this section. Filings made on behalf of a subcontractor may not be  
23 accepted sooner than thirty-one days after the acceptance date of the  
24 public works project pursuant to RCW 39.12.065. Intentionally filing  
25 a false affidavit on behalf of a subcontractor subjects the filer to  
26 the same penalties as are provided in RCW 39.12.050. Each affidavit of  
27 wages paid must be certified by the industrial statistician of the  
28 department of labor and industries before it is submitted to said  
29 officer.

30 (2) As an alternate to the procedures provided for in subsection  
31 (1) of this section, for public works projects of two thousand five  
32 hundred dollars or less and for projects where the limited public works  
33 process under RCW 39.04.155(3) is followed:

34 (a) An awarding agency may authorize the contractor or  
35 subcontractor to submit the statement of intent to pay prevailing wages  
36 directly to the officer or person charged with the custody or  
37 disbursement of public funds in the awarding agency without approval by

1 the industrial statistician of the department of labor and industries.  
2 The awarding agency shall retain such statement of intent to pay  
3 prevailing wages for a period of not less than three years.

4 (b) Upon final acceptance of the public works project, the awarding  
5 agency shall require the contractor or subcontractor to submit an  
6 affidavit of wages paid. Upon receipt of the affidavit of wages paid,  
7 the awarding agency may pay the contractor or subcontractor in full,  
8 including funds that would otherwise be retained according to the  
9 provisions of RCW 60.28.011. Within thirty days of receipt of the  
10 affidavit of wages paid, the awarding agency shall submit the affidavit  
11 of wages paid to the industrial statistician of the department of labor  
12 and industries for approval.

13 (c) A statement of intent to pay prevailing wages and an affidavit  
14 of wages paid shall be on forms approved by the department of labor and  
15 industries.

16 (d) In the event of a wage claim and a finding for the claimant by  
17 the department of labor and industries where the awarding agency has  
18 used the alternative process provided for in subsection (2) of this  
19 section, the awarding agency shall pay the wages due directly to the  
20 claimant. If the contractor or subcontractor did not pay the wages  
21 stated in the affidavit of wages paid, the awarding agency may take  
22 action at law to seek reimbursement from the contractor or  
23 subcontractor of wages paid to the claimant, and may prohibit the  
24 contractor or subcontractor from bidding on any public works contract  
25 of the awarding agency for up to one year.

26 (e) Nothing in this section shall be interpreted to allow an  
27 awarding agency to subdivide any public works project of more than two  
28 thousand five hundred dollars for the purpose of circumventing the  
29 procedures required by ((RCW 39.12.040(1))) subsection (1) of this  
30 section.

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