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**SUBSTITUTE SENATE BILL 6421**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators King, Kline, and Holmquist Newbry)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to the affidavit of wages paid on public works; and  
2 amending RCW 39.12.040.

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~~) the disbursing officer.  
4 Unless otherwise authorized by the department of labor and industries,  
5 each voucher claim submitted by a contractor for payment on a project  
6 estimate shall state that the prevailing wages have been paid in  
7 accordance with the prefiled statement or statements of intent to pay  
8 prevailing wages on file with the public agency. Following the final  
9 acceptance of a public works project, it shall be the duty of the  
10 officer charged with the disbursement of public funds, to require the  
11 contractor and each and every subcontractor from the contractor or a  
12 subcontractor to submit to such officer an "Affidavit of Wages Paid"  
13 before the funds retained according to the provisions of RCW 60.28.011  
14 are released to the contractor. If a subcontractor performing work on  
15 a public works project fails to submit an "affidavit of wages paid"  
16 form, the contractor or subcontractor with whom the subcontractor had  
17 a contractual relationship for the project may file the forms on behalf  
18 of the nonresponsive subcontractor. Affidavit forms may only be filed  
19 on behalf of a nonresponsive subcontractor who has ceased operations or  
20 failed to file as required by this section. Filings made on behalf of  
21 a subcontractor may not be accepted sooner than thirty-one days after  
22 the acceptance date of the public works project and the contractor  
23 filing the affidavit must accept responsibility for payment of  
24 prevailing wages unpaid by the subcontractor on the project pursuant to  
25 RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on  
26 behalf of a subcontractor subjects the filer to the same penalties as  
27 are provided in RCW 39.12.050. Each affidavit of wages paid must be  
28 certified by the industrial statistician of the department of labor and  
29 industries before it is submitted to (~~said~~) the disbursing 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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