
SENATE BILL 6615

State of Washington

64th Legislature

2016 Regular Session

By Senator Chase

Read first time 01/29/16. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to extending the application of prevailing wage
2 requirements to publicly subsidized projects; amending RCW 39.12.010,
3 39.12.030, 39.12.040, 39.12.042, 39.12.050, 39.12.065, and 39.12.070;
4 adding a new section to chapter 39.12 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read
7 as follows:

8 (1) The "prevailing rate of wage", for the intents and purposes
9 of this chapter, shall be the rate of hourly wage, usual benefits,
10 and overtime paid in the locality, as hereinafter defined, to the
11 majority of workers, laborers, or mechanics, in the same trade or
12 occupation. In the event that there is not a majority in the same
13 trade or occupation paid at the same rate, then the average rate of
14 hourly wage and overtime paid to such laborers, workers, or mechanics
15 in the same trade or occupation shall be the prevailing rate. If the
16 wage paid by any contractor or subcontractor to laborers, workers, or
17 mechanics on any public work is based on some period of time other
18 than an hour, the hourly wage for the purposes of this chapter shall
19 be mathematically determined by the number of hours worked in such
20 period of time.

1 (2) The "locality" for the purposes of this chapter shall be the
2 largest city in the county wherein the physical work is being
3 performed.

4 (3) The "usual benefits" for the purposes of this chapter shall
5 include the amount of:

6 (a) The rate of contribution irrevocably made by a contractor or
7 subcontractor to a trustee or to a third person pursuant to a fund,
8 plan, or program; and

9 (b) The rate of costs to the contractor or subcontractor which
10 may be reasonably anticipated in providing benefits to workers,
11 laborers, and mechanics pursuant to an enforceable commitment to
12 carry out a financially responsible plan or program which was
13 communicated in writing to the workers, laborers, and mechanics
14 affected, for medical or hospital care, pensions on retirement or
15 death, compensation for injuries or illness resulting from
16 occupational activity, or insurance to provide any of the foregoing,
17 for unemployment benefits, life insurance, disability and sickness
18 insurance, or accident insurance, for vacation and holiday pay, for
19 defraying costs of apprenticeship or other similar programs, or for
20 other bona fide fringe benefits, but only where the contractor or
21 subcontractor is not required by other federal, state, or local law
22 to provide any of such benefits.

23 (4) An "interested party" for the purposes of this chapter shall
24 include a contractor, subcontractor, an employee of a contractor or
25 subcontractor, an organization whose members' wages, benefits, and
26 conditions of employment are affected by this chapter, and the
27 director of labor and industries or the director's designee.

28 (5) "Public work" has the same meaning as in RCW 39.04.010,
29 except for the purposes of this chapter, "public work" also includes
30 publicly subsidized work.

31 (6) "Publicly subsidized work" means all work, construction,
32 alterations, repairs, or improvements other than maintenance when:

33 (a) One or more parties to the contract has received or will
34 receive a qualifying tax preference;

35 (b) The work occurs on land that a party to the contract leases
36 from the state or any county, municipality, or political subdivision;

37 (c) One or more parties to the contract is headquartered on land
38 leased from the state or any county, municipality, or political
39 subdivision.

1 (7) "Qualifying tax preference" means any tax exemption or
2 deferral under Title 82 RCW.

3 (8) "Subsidy recipient" means the private party to a contract for
4 publicly subsidized work who received a qualifying tax preference or
5 leases public land as described in subsection (6) of this section.

6 **Sec. 2.** RCW 39.12.030 and 2009 c 62 s 1 are each amended to read
7 as follows:

8 (1) The specifications for every contract for the construction,
9 reconstruction, maintenance or repair of any public work (~~(to which~~
10 ~~the state or any county, municipality, or political subdivision~~
11 ~~created by its laws is a party,)) shall contain a provision stating~~
12 the hourly minimum rate of wage, not less than the prevailing rate of
13 wage, which may be paid to laborers, workers, or mechanics in each
14 trade or occupation required for such public work employed in the
15 performance of the contract either by the contractor, subcontractor
16 or other person doing or contracting to do the whole or any part of
17 the work contemplated by the contract, and the contract shall contain
18 a stipulation that such laborers, workers, or mechanics shall be paid
19 not less than such specified hourly minimum rate of wage. If the
20 awarding agency or subsidy recipient determines that the work
21 contracted for meets the definition of residential construction, the
22 contract must include that information.

23 (2) If the hourly minimum rate of wage stated in the contract
24 specifies residential construction rates and it is later determined
25 that the work performed is commercial and subject to commercial
26 construction rates, the state, county, municipality, (~~or~~) political
27 subdivision, or subsidy recipient that entered into the contract must
28 pay the difference between the residential rate stated and the actual
29 commercial rate to the contractor, subcontractor, or other person
30 doing or contracting to do the whole or any part of the work under
31 the contract.

32 **Sec. 3.** RCW 39.12.040 and 2013 c 113 s 5 are each amended to
33 read as follows:

34 (1)(a) Except as provided in subsection (2) of this section,
35 before payment is made by or on behalf of the state, or any county,
36 municipality, or political subdivision created by its laws, or any
37 subsidy recipient, of any sum or sums due on account of a public
38 works contract, it is the duty of the officer or person charged with

1 the custody and disbursement of public funds to require the
2 contractor and each and every subcontractor from the contractor or a
3 subcontractor to submit to such officer a "Statement of Intent to Pay
4 Prevailing Wages". For a contract in excess of ten thousand dollars,
5 the statement of intent to pay prevailing wages must include:

6 (i) The contractor's registration certificate number; and

7 (ii) The prevailing rate of wage for each classification of
8 workers entitled to prevailing wages under RCW 39.12.020 and the
9 estimated number of workers in each classification.

10 (b) Each statement of intent to pay prevailing wages must be
11 approved by the industrial statistician of the department of labor
12 and industries before it is submitted to the disbursing officer or
13 person. Unless otherwise authorized by the department of labor and
14 industries, each voucher claim submitted by a contractor for payment
15 on a project estimate must state that the prevailing wages have been
16 paid in accordance with the prefiled statement or statements of
17 intent to pay prevailing wages on file with the public agency or
18 subsidy recipient. Following the final acceptance of a public works
19 project, it is the duty of the officer charged with the disbursement
20 of public funds((7)) to require the contractor and each and every
21 subcontractor from the contractor or a subcontractor to submit to
22 such officer an affidavit of wages paid before the funds retained
23 according to the provisions of RCW 60.28.011 are released to the
24 contractor. On a public works project where no retainage is withheld
25 pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be
26 submitted to the state, county, municipality, or other public body
27 charged with the duty of disbursing or authorizing disbursement of
28 public funds prior to final acceptance of the public works project.
29 For publicly subsidized work, following the contract completion date
30 of the project the officer or person charged with the disbursement of
31 funds must require the contractor and every subcontractor to the
32 contractor or subcontractor to submit an affidavit of wages paid
33 before final payment is made to the contractor. If a subcontractor
34 performing work on a public works project fails to submit an
35 affidavit of wages paid form, the contractor or subcontractor with
36 whom the subcontractor had a contractual relationship for the project
37 may file the forms on behalf of the nonresponsive subcontractor.
38 Affidavit forms may only be filed on behalf of a nonresponsive
39 subcontractor who has ceased operations or failed to file as required
40 by this section. The contractor filing the affidavit must accept

1 responsibility for payment of prevailing wages unpaid by the
2 subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065.
3 Intentionally filing a false affidavit on behalf of a subcontractor
4 subjects the filer to the same penalties as are provided in RCW
5 39.12.050. Each affidavit of wages paid must be certified by the
6 industrial statistician of the department of labor and industries
7 before it is submitted to the disbursing officer.

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

12 (a) An awarding agency may authorize the contractor or
13 subcontractor to submit the statement of intent to pay prevailing
14 wages directly to the officer or person charged with the custody or
15 disbursement of public funds in the awarding agency without approval
16 by the industrial statistician of the department of labor and
17 industries. The awarding agency must retain such statement of intent
18 to pay prevailing wages for a period of not less than three years.

19 (b) Upon final acceptance of the public works project, the
20 awarding agency must require the contractor or subcontractor to
21 submit an affidavit of wages paid. Upon receipt of the affidavit of
22 wages paid, the awarding agency may pay the contractor or
23 subcontractor in full, including funds that would otherwise be
24 retained according to the provisions of RCW 60.28.011. Within thirty
25 days of receipt of the affidavit of wages paid, the awarding agency
26 must submit the affidavit of wages paid to the industrial
27 statistician of the department of labor and industries for approval.

28 (c) A statement of intent to pay prevailing wages and an
29 affidavit of wages paid must be on forms approved by the department
30 of labor and industries.

31 (d) In the event of a wage claim and a finding for the claimant
32 by the department of labor and industries where the awarding agency
33 has used the alternative process provided for in this subsection (2),
34 the awarding agency must pay the wages due directly to the claimant.
35 If the contractor or subcontractor did not pay the wages stated in
36 the affidavit of wages paid, the awarding agency may take action at
37 law to seek reimbursement from the contractor or subcontractor of
38 wages paid to the claimant, and may prohibit the contractor or
39 subcontractor from bidding on any public works contract of the
40 awarding agency for up to one year.

1 (e) Nothing in this section may be interpreted to allow an
2 awarding agency to subdivide any public works project of more than
3 two thousand five hundred dollars for the purpose of circumventing
4 the procedures required by subsection (1) of this section.

5 **Sec. 4.** RCW 39.12.042 and 1993 c 404 s 3 are each amended to
6 read as follows:

7 If any agency of the state, or any county, municipality, or
8 political subdivision created by its laws (~~shall~~) , or any subsidy
9 recipient, knowingly fails to comply with the provisions of RCW
10 39.12.040 (~~as now or hereafter amended, such agency of the state, or~~
11 ~~county, municipality, or political subdivision created by its laws~~),
12 it shall be liable to all workers, laborers, or mechanics to the full
13 extent and for the full amount of wages due, pursuant to the
14 prevailing wage requirements of RCW 39.12.020.

15 **Sec. 5.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to
16 read as follows:

17 (1) Any contractor or subcontractor who files a false statement
18 or fails to file any statement or record required to be filed under
19 this chapter and the rules adopted under this chapter, shall, after a
20 determination to that effect has been issued by the director after
21 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum
22 of five hundred dollars for each false filing or failure to file, and
23 shall not be permitted to bid, or have a bid considered, on any
24 public works contract until the penalty has been paid in full to the
25 director. The civil penalty under this subsection shall not apply to
26 a violation determined by the director to be an inadvertent filing or
27 reporting error. Civil penalties shall be deposited in the public
28 works administration account.

29 To the extent that a contractor or subcontractor has not paid
30 wages at the rate due pursuant to RCW 39.12.020, and a finding to
31 that effect has been made as provided by this subsection, such unpaid
32 wages shall constitute a lien against the bonds and retainage as
33 provided in RCW 18.27.040, 19.28.041, 39.08.010, section 8 of this
34 act, and 60.28.011.

35 (2) If a contractor or subcontractor is found to have violated
36 the provisions of subsection (1) of this section for a second time
37 within a five year period, the contractor or subcontractor shall be
38 subject to the sanctions prescribed in subsection (1) of this section

1 and shall not be allowed to bid on any public works contract for one
2 year. The one year period shall run from the date of notice by the
3 director of the determination of noncompliance. When an appeal is
4 taken from the director's determination, the one year period shall
5 commence from the date of the final determination of the appeal.

6 The director shall issue his or her findings that a contractor or
7 subcontractor has violated the provisions of this subsection after a
8 hearing held subject to the provisions of chapter 34.05 RCW.

9 **Sec. 6.** RCW 39.12.065 and 2009 c 219 s 4 are each amended to
10 read as follows:

11 (1) Upon complaint by an interested party, the director of labor
12 and industries shall cause an investigation to be made to determine
13 whether there has been compliance with this chapter and the rules
14 adopted hereunder, and if the investigation indicates that a
15 violation may have occurred, a hearing shall be held in accordance
16 with chapter 34.05 RCW. The director shall issue a written
17 determination including his or her findings after the hearing. A
18 judicial appeal from the director's determination may be taken in
19 accordance with chapter 34.05 RCW, with the prevailing party entitled
20 to recover reasonable costs and attorneys fees.

21 A complaint concerning nonpayment of the prevailing rate of wage
22 shall be filed with the department of labor and industries no later
23 than thirty days from the acceptance date of the public works
24 project. The failure to timely file such a complaint shall not
25 prohibit a claimant from pursuing a private right of action against a
26 contractor or subcontractor for unpaid prevailing wages. The remedy
27 provided by this section is not exclusive and is concurrent with any
28 other remedy provided by law.

29 (2) To the extent that a contractor or subcontractor has not paid
30 the prevailing rate of wage under a determination issued as provided
31 in subsection (1) of this section, the director shall notify the
32 agency or subsidy recipient awarding the public works contract of the
33 amount of the violation found, and the awarding agency or subsidy
34 recipient shall withhold, or in the case of a bond, the director
35 shall proceed against the bond in accordance with the applicable
36 statute to recover, such amount from the following sources in the
37 following order of priority until the total of such amount is
38 withheld:

1 (a) The retainage or bond in lieu of retainage as provided in RCW
2 60.28.011;

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

7 (c) A surety bond, or at the contractor's or subcontractor's
8 option an escrow account, running to the director in the amount of
9 the violation found; and

10 (d) That portion of the progress payments which is properly
11 allocable to the contractor or subcontractor who is found to be in
12 violation of this chapter. Under no circumstances shall any portion
13 of the progress payments be withheld that are properly allocable to a
14 contractor, subcontractor, or supplier, that is not found to be in
15 violation of this chapter.

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

18 (3)(a) A contractor or subcontractor that is found, in accordance
19 with subsection (1) of this section, to have violated the requirement
20 to pay the prevailing rate of wage shall be subject to a civil
21 penalty of not less than one thousand dollars or an amount equal to
22 twenty percent of the total prevailing wage violation found on the
23 contract, whichever is greater, and shall not be permitted to bid, or
24 have a bid considered, on any public works contract until such civil
25 penalty has been paid in full to the director. If the contractor or
26 subcontractor performs work on a subsidized public works project, the
27 subsidy recipient is subject to a civil penalty in the amount of the
28 unpaid wages. Civil penalties must be deposited in the public works
29 administration account.

30 (b) If a contractor or subcontractor is found to have
31 participated in a violation of the requirement to pay the prevailing
32 rate of wage for a second time within a five-year period, the
33 contractor or subcontractor shall be subject to the sanctions
34 prescribed in (a) of this subsection and as an additional sanction
35 shall not be allowed to bid on any public works contract for two
36 years. (~~Civil penalties shall be deposited in the public works~~
37 ~~administration account.~~) If a previous or subsequent violation of a
38 requirement to pay a prevailing rate of wage under federal or other
39 state law is found against the contractor or subcontractor within
40 five years from a violation under this section, the contractor or

1 subcontractor shall not be allowed to bid on any public works
2 contract for two years. A contractor or subcontractor shall not be
3 barred from bidding on any public works contract if the contractor or
4 subcontractor relied upon written information from the department to
5 pay a prevailing rate of wage that is later determined to be in
6 violation of this chapter.

7 (c) The civil penalty and sanctions under this subsection shall
8 not apply to a violation determined by the director to be an
9 inadvertent filing or reporting error.

10 (d) To the extent that a contractor or subcontractor has not paid
11 the prevailing wage rate under a determination issued as provided in
12 subsection (1) of this section, the unpaid wages shall constitute a
13 lien against the bonds and retainage as provided herein and in RCW
14 18.27.040, 19.28.041, 39.08.010, section 8 of this act, and
15 60.28.011.

16 **Sec. 7.** RCW 39.12.070 and 2014 c 148 s 1 are each amended to
17 read as follows:

18 (1) The department of labor and industries may charge fees to
19 awarding agencies or subsidy recipients on public works for the
20 approval of statements of intent to pay prevailing wages and the
21 certification of affidavits of wages paid. The department may also
22 charge fees to persons or organizations requesting the arbitration of
23 disputes under RCW 39.12.060. The amount of the fees shall be
24 established by rules adopted by the department under the procedures
25 in the administrative procedure act, chapter 34.05 RCW. Except as
26 provided in subsection (3) of this section, the fees shall apply to
27 all approvals, certifications, and arbitration requests made after
28 the effective date of the rules. All fees shall be deposited in the
29 public works administration account. The department may refuse to
30 arbitrate for contractors, subcontractors, persons, or organizations
31 which have not paid the proper fees. The department may, if
32 necessary, request the attorney general to take legal action to
33 collect delinquent fees.

34 (2) The department shall set the fees permitted by this section
35 at a level that generates revenue that is as near as practicable to
36 the amount of the appropriation to administer this chapter,
37 including, but not limited to, the performance of adequate wage
38 surveys, and to investigate and enforce all alleged violations of
39 this chapter, including, but not limited to, incorrect statements of

1 intent to pay prevailing wage, incorrect certificates of affidavits
2 of wages paid, and wage claims, as provided for in this chapter and
3 chapters 49.48 and 49.52 RCW. However, the fees charged for the
4 approval of statements of intent to pay prevailing wages and the
5 certification of affidavits of wages paid shall be forty dollars.

6 (3) If, at the time an individual or entity files an affidavit of
7 wages paid, the individual or entity is exempt from the requirement
8 to pay the prevailing rate of wage under RCW 39.12.020, the
9 department of labor and industries may not charge a fee to certify
10 the affidavit of wages paid.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.12
12 RCW to read as follows:

13 (1) Every contractor and subcontractor on a publicly subsidized
14 public works project as defined in RCW 39.12.010 (5) and (6) must
15 file with the department of labor and industries a surety bond issued
16 by a surety insurer that meets the requirements under chapter 48.28
17 RCW in the sum of five percent of the amount due on the public works
18 project. The bond must name the state of Washington as obligee with
19 good and sufficient surety in a form to be approved by the
20 department. The bond must be continuous and may be canceled by the
21 surety upon the surety giving written notice to the director of labor
22 and industries. The bond must be conditioned to recover against the
23 contractor and its officers, agents, and employees by reason of its
24 violation of this chapter. A change in the name of a business or a
25 change in the type of business entity does not impair a bond for the
26 purposes of this section so long as one of the original applicants
27 for the bond maintains partial ownership in the business covered by
28 the bond.

29 (2) As an alternative to posting a bond, the contractor or
30 subcontractor on a publicly subsidized public works project as
31 defined in RCW 39.12.010 (5) and (6) may deposit five percent of the
32 amount due on the public works contract in an interest-bearing
33 account.

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