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SENATE BILL 6654

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State of Washington

64th Legislature

2016 Regular Session

By Senators Chase and Hasegawa

Read first time 02/08/16. 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; adding a new section to  
5 chapter 82.32 RCW; creating a new section; and providing an effective  
6 date.

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

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

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

1 of this chapter (~~shall~~) must be mathematically determined by the  
2 number of hours worked in such period of time.

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

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

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

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

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

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

33 (6) "Publicly subsidized work" means a private construction  
34 project, including the constructing of new structures or the  
35 repairing, altering, or improving of existing structures, when:

36 (a) A qualifying tax preference applies to the project;

37 (b) The project occurs on land that the party undertaking the  
38 project leases from the state or any county, municipality, or  
39 political subdivision; or

1 (c) The party undertaking the project is headquartered on land  
2 leased from the state or any county, municipality, or political  
3 subdivision.

4 (7) "Qualifying tax preference" means any exemption or deferral  
5 of state sales or use tax under Title 82 RCW on all or a portion of  
6 (a) the labor and services rendered in the constructing of new  
7 structures or the repairing, altering, or improving of existing  
8 structures, or (b) materials incorporated into such new or existing  
9 structures during the course of the constructing, repairing,  
10 altering, or improving. "Qualifying tax preference" does not include  
11 a sale that is not subject to state sales tax because it is taxed  
12 under any provision of chapter 82.04 RCW other than RCW 82.04.250(1).

13 (8) "Subsidy recipient" means the private party undertaking  
14 publicly subsidized work.

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

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

32 (2) If the hourly minimum rate of wage stated in the contract  
33 specifies residential construction rates and it is later determined  
34 that the work performed is commercial and subject to commercial  
35 construction rates, the state, county, municipality, (~~or~~) political  
36 subdivision, or subsidy recipient that entered into the contract must  
37 pay the difference between the residential rate stated and the actual  
38 commercial rate to the contractor, subcontractor, or other person

1 doing or contracting to do the whole or any part of the work under  
2 the contract.

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

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

16 (i) The contractor's registration certificate number; and  
17 (ii) The prevailing rate of wage for each classification of  
18 workers entitled to prevailing wages under RCW 39.12.020 and the  
19 estimated number of workers in each classification.

20 (b) Each statement of intent to pay prevailing wages must be  
21 approved by the industrial statistician of the department of labor  
22 and industries before it is submitted to the disbursing officer or  
23 person. Unless otherwise authorized by the department of labor and  
24 industries, each voucher claim submitted by a contractor for payment  
25 on a project estimate must state that the prevailing wages have been  
26 paid in accordance with the prefiled statement or statements of  
27 intent to pay prevailing wages on file with the public agency or  
28 subsidy recipient. Following the final acceptance of a public works  
29 project, it is the duty of the officer or person charged with the  
30 disbursement of public funds((7)) to require the contractor and each  
31 and every subcontractor from the contractor or a subcontractor to  
32 submit to such officer or person an affidavit of wages paid before  
33 the funds retained according to the provisions of RCW 60.28.011 are  
34 released to the contractor. On a public works project where no  
35 retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit  
36 of wages paid must be submitted to the state, county, municipality,  
37 or other public body charged with the duty of disbursing or  
38 authorizing disbursement of public funds prior to final acceptance of  
39 the public works project. For publicly subsidized work, following the

1 contract completion date of the project the officer or person charged  
2 with the disbursement of funds must require the contractor and every  
3 subcontractor to the contractor or subcontractor to submit an  
4 affidavit of wages paid before final payment is made to the  
5 contractor. If a subcontractor performing work on a public works  
6 project fails to submit an affidavit of wages paid form, the  
7 contractor or subcontractor with whom the subcontractor had a  
8 contractual relationship for the project may file the forms on behalf  
9 of the nonresponsive subcontractor. Affidavit forms may only be filed  
10 on behalf of a nonresponsive subcontractor who has ceased operations  
11 or failed to file as required by this section. The contractor filing  
12 the affidavit must accept responsibility for payment of prevailing  
13 wages unpaid by the subcontractor on the project pursuant to RCW  
14 39.12.020 and 39.12.065. Intentionally filing a false affidavit on  
15 behalf of a subcontractor subjects the filer to the same penalties as  
16 are provided in RCW 39.12.050. Each affidavit of wages paid must be  
17 certified by the industrial statistician of the department of labor  
18 and industries before it is submitted to the disbursing officer.

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

23 (a) An awarding agency or subsidy recipient may authorize the  
24 contractor or subcontractor to submit the statement of intent to pay  
25 prevailing wages directly to the officer or person charged with the  
26 custody or disbursement of public funds in the awarding agency or the  
27 subsidy recipient's funds without approval by the industrial  
28 statistician of the department of labor and industries. The awarding  
29 agency or subsidy recipient must retain such statement of intent to  
30 pay prevailing wages for a period of not less than three years.

31 (b) Upon final acceptance of the public works project, the  
32 awarding agency or subsidy recipient must require the contractor or  
33 subcontractor to submit an affidavit of wages paid. Upon receipt of  
34 the affidavit of wages paid, the awarding agency may pay the  
35 contractor or subcontractor in full, including funds that would  
36 otherwise be retained according to the provisions of RCW 60.28.011.  
37 Within thirty days of receipt of the affidavit of wages paid, the  
38 awarding agency or subsidy recipient must submit the affidavit of  
39 wages paid to the industrial statistician of the department of labor  
40 and industries for approval.

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

4 (d) In the event of a wage claim and a finding for the claimant  
5 by the department of labor and industries where the awarding agency  
6 or subsidy recipient has used the alternative process provided for in  
7 this subsection (2), the awarding agency or subsidy recipient must  
8 pay the wages due directly to the claimant. If the contractor or  
9 subcontractor did not pay the wages stated in the affidavit of wages  
10 paid, the awarding agency or subsidy recipient may take action at law  
11 to seek reimbursement from the contractor or subcontractor of wages  
12 paid to the claimant, and may prohibit the contractor or  
13 subcontractor from bidding on any public works contract of the  
14 awarding agency for up to one year.

15 (e) Nothing in this section may be interpreted to allow an  
16 awarding agency or subsidy recipient to subdivide any public works  
17 project of more than two thousand five hundred dollars for the  
18 purpose of circumventing the procedures required by subsection (1) of  
19 this section.

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

22 If any agency of the state, or any county, municipality, or  
23 political subdivision created by its laws (~~((shall knowingly fail))~~),  
24 or any subsidy recipient, knowingly fails to comply with the  
25 provisions of RCW 39.12.040 (~~((as now or hereafter amended, such~~  
26 ~~agency of the state, or county, municipality, or political~~  
27 ~~subdivision created by its laws, shall be))~~), it is liable to all  
28 workers, laborers, or mechanics to the full extent and for the full  
29 amount of wages due, pursuant to the prevailing wage requirements of  
30 RCW 39.12.020.

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

33 (1)(a) Any contractor or subcontractor who files a false  
34 statement or fails to file any statement or record required to be  
35 filed under this chapter and the rules adopted under this chapter,  
36 (~~((shall))~~) must, after a determination to that effect has been issued  
37 by the director after hearing under chapter 34.05 RCW, forfeit as a  
38 civil penalty the sum of five hundred dollars for each false filing

1 or failure to file, and (~~shall~~) may not be permitted to bid, or  
2 have a bid considered, on any public works contract until the penalty  
3 has been paid in full to the director. The civil penalty under this  
4 subsection (~~shall~~) does not apply to a violation determined by the  
5 director to be an inadvertent filing or reporting error. Civil  
6 penalties (~~shall~~) must be deposited in the public works  
7 administration account.

8 (b) To the extent that a contractor or subcontractor has not paid  
9 wages at the rate due pursuant to RCW 39.12.020, and a finding to  
10 that effect has been made as provided by this subsection, such unpaid  
11 wages (~~shall~~) constitute a lien against the bonds and retainage as  
12 provided in RCW 18.27.040, 19.28.041, 39.08.010, section 8 of this  
13 act, and 60.28.011.

14 (2)(a) If a contractor or subcontractor is found to have violated  
15 the provisions of subsection (1) of this section for a second time  
16 within a five year period, the contractor or subcontractor (~~shall~~  
17 ~~be~~) is subject to the sanctions prescribed in subsection (1) of this  
18 section and (~~shall~~) is not (~~be~~) allowed to bid on any public  
19 works contract for one year. The one year period (~~shall~~) runs from  
20 the date of notice by the director of the determination of  
21 noncompliance. When an appeal is taken from the director's  
22 determination, the one year period (~~shall~~) commences from the date  
23 of the final determination of the appeal.

24 (b) The director (~~shall~~) must issue his or her findings that a  
25 contractor or subcontractor has violated the provisions of this  
26 subsection after a hearing held subject to the provisions of chapter  
27 34.05 RCW.

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

30 (1)(a) Upon complaint by an interested party, the director of  
31 labor and industries (~~shall~~) must cause an investigation to be made  
32 to determine whether there has been compliance with this chapter and  
33 the rules adopted hereunder, and if the investigation indicates that  
34 a violation may have occurred, a hearing (~~shall~~) must be held in  
35 accordance with chapter 34.05 RCW. The director (~~shall~~) must issue  
36 a written determination including his or her findings after the  
37 hearing. A judicial appeal from the director's determination may be  
38 taken in accordance with chapter 34.05 RCW, with the prevailing party  
39 entitled to recover reasonable costs and attorneys fees.

1       **(b)** A complaint concerning nonpayment of the prevailing rate of  
2 wage (~~shall~~) must be filed with the department of labor and  
3 industries no later than thirty days from the acceptance date of the  
4 public works project. The failure to timely file such a complaint  
5 (~~shall~~) does not prohibit a claimant from pursuing a private right  
6 of action against a contractor or subcontractor for unpaid prevailing  
7 wages. The remedy provided by this section is not exclusive and is  
8 concurrent with any other remedy provided by law.

9       **(2)(a)** To the extent that a contractor or subcontractor has not  
10 paid the prevailing rate of wage under a determination issued as  
11 provided in subsection (1) of this section, the director (~~shall~~)  
12 must notify the agency or subsidy recipient awarding the public works  
13 contract of the amount of the violation found, and the awarding  
14 agency (~~shall~~) or subsidy recipient must withhold, or in the case  
15 of a bond, the director (~~shall~~) must proceed against the bond in  
16 accordance with the applicable statute to recover, such amount from  
17 the following sources in the following order of priority until the  
18 total of such amount is withheld:

19       ~~((a))~~ **(i)** The retainage or bond in lieu of retainage as  
20 provided in RCW 60.28.011;

21       ~~((b))~~ **(ii)** If the claimant was employed by the contractor or  
22 subcontractor on the public works project, the bond, assigned savings  
23 account, cash deposit, or other negotiable security filed by the  
24 contractor or subcontractor with the department of labor and  
25 industries as provided in RCW 18.27.040 and 19.28.041;

26       ~~((c))~~ **(iii)** A surety bond, or at the contractor's or  
27 subcontractor's option an escrow account, running to the director in  
28 the amount of the violation found; and

29       ~~((d))~~ **(iv)** That portion of the progress payments (~~which~~) that  
30 is properly allocable to the contractor or subcontractor who is found  
31 to be in violation of this chapter. Under no circumstances (~~shall~~)  
32 may any portion of the progress payments be withheld that are  
33 properly allocable to a contractor, subcontractor, or supplier, that  
34 is not found to be in violation of this chapter.

35       **(b)** The amount withheld (~~shall~~) must be released to the  
36 director to distribute in accordance with the director's  
37 determination.

38       **(3)(a)** A contractor or subcontractor that is found, in accordance  
39 with subsection (1) of this section, to have violated the requirement  
40 to pay the prevailing rate of wage (~~shall be~~) is subject to a civil



1 penalty of not less than one thousand dollars or an amount equal to  
2 twenty percent of the total prevailing wage violation found on the  
3 contract, whichever is greater, and (~~shall not be~~) is not permitted  
4 to bid, or have a bid considered, on any public works contract until  
5 such civil penalty has been paid in full to the director. If the  
6 contractor or subcontractor performs work on a subsidized public  
7 works project, the subsidy recipient is subject to a civil penalty in  
8 the amount of the unpaid wages. Civil penalties must be deposited in  
9 the public works administration account.

10 (b) If a contractor or subcontractor is found to have  
11 participated in a violation of the requirement to pay the prevailing  
12 rate of wage for a second time within a five-year period, the  
13 contractor or subcontractor (~~shall be~~) is subject to the sanctions  
14 prescribed in (a) of this subsection and as an additional sanction  
15 (~~shall not be~~) is not allowed to bid on any public works contract  
16 for two years. (~~Civil penalties shall be deposited in the public~~  
17 ~~works administration account.~~) If a previous or subsequent violation  
18 of a requirement to pay a prevailing rate of wage under federal or  
19 other state law is found against the contractor or subcontractor  
20 within five years from a violation under this section, the contractor  
21 or subcontractor (~~shall not be~~) is not allowed to bid on any public  
22 works contract for two years. A contractor or subcontractor (~~shall~~)  
23 may not be barred from bidding on any public works contract if the  
24 contractor or subcontractor relied upon written information from the  
25 department to pay a prevailing rate of wage that is later determined  
26 to be in violation of this chapter.

27 (c) The civil penalty and sanctions under this subsection  
28 (~~shall~~) do not apply to a violation determined by the director to  
29 be an inadvertent filing or reporting error.

30 (d) To the extent that a contractor or subcontractor has not paid  
31 the prevailing wage rate under a determination issued as provided in  
32 subsection (1) of this section, the unpaid wages (~~shall~~)  
33 constitutes a lien against the bonds and retainage as provided herein  
34 and in RCW 18.27.040, 19.28.041, 39.08.010, section 8 of this act,  
35 and 60.28.011.

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

38 (1) The department of labor and industries may charge fees to  
39 awarding agencies or subsidy recipients on public works for the

1 approval of statements of intent to pay prevailing wages and the  
2 certification of affidavits of wages paid. The department may also  
3 charge fees to persons or organizations requesting the arbitration of  
4 disputes under RCW 39.12.060. The amount of the fees (~~shall~~) must  
5 be established by rules adopted by the department under the  
6 procedures in the administrative procedure act, chapter 34.05 RCW.  
7 Except as provided in subsection (3) of this section, the fees  
8 (~~shall~~) apply to all approvals, certifications, and arbitration  
9 requests made after the effective date of the rules. All fees  
10 (~~shall~~) must be deposited in the public works administration  
11 account. The department may refuse to arbitrate for contractors,  
12 subcontractors, persons, or organizations which have not paid the  
13 proper fees. The department may, if necessary, request the attorney  
14 general to take legal action to collect delinquent fees.

15 (2) The department (~~shall~~) must set the fees permitted by this  
16 section at a level that generates revenue that is as near as  
17 practicable to the amount of the appropriation to administer this  
18 chapter, including, but not limited to, the performance of adequate  
19 wage surveys, and to investigate and enforce all alleged violations  
20 of this chapter, including, but not limited to, incorrect statements  
21 of intent to pay prevailing wage, incorrect certificates of  
22 affidavits of wages paid, and wage claims, as provided for in this  
23 chapter and chapters 49.48 and 49.52 RCW. However, the fees charged  
24 for the approval of statements of intent to pay prevailing wages and  
25 the certification of affidavits of wages paid (~~shall~~) must be forty  
26 dollars.

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

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

34 (1) Every contractor and subcontractor on a publicly subsidized  
35 public works project as defined in RCW 39.12.010 (5) and (6) must  
36 file with the department of labor and industries a surety bond issued  
37 by a surety insurer that meets the requirements under chapter 48.28  
38 RCW in the sum of five percent of the amount due on the public works  
39 project. The bond must name the state of Washington as obligee with

1 good and sufficient surety in a form to be approved by the  
2 department. The bond must be continuous and may be canceled by the  
3 surety upon the surety giving written notice to the director of labor  
4 and industries. The bond must be conditioned to recover against the  
5 contractor and its officers, agents, and employees by reason of its  
6 violation of this chapter. A change in the name of a business or a  
7 change in the type of business entity does not impair a bond for the  
8 purposes of this section so long as one of the original applicants  
9 for the bond maintains partial ownership in the business covered by  
10 the bond.

11 (2) As an alternative to posting a bond, the contractor or  
12 subcontractor on a publicly subsidized public works project as  
13 defined in RCW 39.12.010 (5) and (6) may deposit five percent of the  
14 amount due on the public works contract in an interest-bearing  
15 assigned savings account, upon forms provided by the department of  
16 labor and industries.

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.32  
18 RCW to read as follows:

19 (1) The department must declare the amount of qualifying tax  
20 preference claimed by a subsidy recipient on publicly subsidized work  
21 to be immediately due if, with respect to the publicly subsidized  
22 work, the subsidy recipient fails to provide the department, upon  
23 request, with copies of certified affidavits of wages paid as  
24 required by RCW 39.12.040 or the department receives notice from the  
25 department of labor and industries that a subsidy recipient has  
26 knowingly failed to comply with RCW 39.12.040. If the qualifying tax  
27 preference is a deferral of sales and use taxes and the economic  
28 benefits of the deferral are passed to a lessee, the lessee is  
29 responsible for repayment of the deferred taxes to the extent the  
30 lessee has received the economic benefit.

31 (2) The department must assess interest at the rate provided  
32 under this chapter for delinquent taxes, but not penalties,  
33 retroactively to the date that the qualifying tax preference was  
34 claimed. If the amount of qualifying tax preference was not reported  
35 to the department by the subsidy recipient and the subsidy recipient  
36 fails to provide that information to the department upon request, the  
37 department may proceed under RCW 82.32.100 to estimate the amount due  
38 from the subsidy recipient under this section.

1           (3) For purposes of this section, the definitions in RCW  
2 39.12.010 apply to this section.

3           NEW SECTION.   **Sec. 10.** This act does not apply with respect to  
4 publicly subsidized work, as defined in RCW 39.12.010, for which any  
5 contract to undertake the publicly subsidized work was executed  
6 before July 1, 2017.

7           NEW SECTION.   **Sec. 11.** This act takes effect July 1, 2017.

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