

**Labor & Workplace Standards
Committee**

HB 1072

Brief Description: Enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection.

Sponsors: Representatives Sells, Doglio, Gregerson, Valdez, Appleton, Jinkins, Goodman, Bergquist, Stanford and Ormsby; by request of Attorney General.

Brief Summary of Bill

- Allows a contractor against whom a complaint has been filed for failure to pay prevailing wages to avoid further penalty (limited to once within a five-year period) by paying the unpaid wages, interest, and a penalty of the greater of \$1,000 or 20 percent of the total prevailing wage violation.
- Raises penalties for failure to pay prevailing wages from the greater of \$1,000 or 20 percent of the total wage violation to the greater of \$5,000 or 50 percent of the total wage violation.
- Extends the time period for filing prevailing wage complaints, establishes payroll requirements in law, and makes other changes.

Hearing Date: 2/11/19

Staff: Joan Elgee (786-7106).

Background:

Prevailing Wage – General.

State law requires that prevailing wages be paid to laborers, workers, and mechanics employed upon all public works and under all public building service maintenance contracts. The requirements apply to contractors and subcontractors (contractors). Public work is all work, construction, alteration, repair, or improvement other than ordinary maintenance that is executed at the cost of the state or any municipality. The prevailing rate of wage is generally the hourly

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wage, usual benefits, and overtime paid to workers in the same trade or occupation for the geographic jurisdiction as established in collective bargaining agreements. The Department of Labor and Industries (Department) administers the program.

Contractors on public works projects must submit a "Statement of Intent to Pay Prevailing Wages" to the awarding agency before any payment by the agency is made. Once the project is completed and before final acceptance by the awarding agency, contractors must submit an "Affidavit of Wages Paid." Intents must be approved and affidavits certified by the industrial statistician at the Department before they are submitted to the awarding agency. On contracts greater than \$10,000, contractors must post, in a location visible to workers, a copy of the approved statement of intent and contact information where a complaint or inquiry regarding prevailing wages may be made.

Prevailing Wage Violation.

The Director of the Department must investigate prevailing wage complaints filed by interested parties. A complaint to the Department regarding nonpayment of prevailing wages must be filed no later than 30 days from the acceptance date of the project. However, a claimant may pursue a private right of action regardless of whether the claimant filed a complaint with the Department.

For a filing violation, a contractor is subject to a \$500 civil penalty and may not bid (debar) on any public works contract until the penalty is paid. If the contractor is found to have violated the filing requirements a second time within five years, the debar period is one year.

For a failure to pay prevailing wages, the contractor is subject to a civil penalty of the greater of \$1,000 or 20 percent of the total wage violation on the contract. In addition, the contractor may not bid until the penalty has been paid and for a second violation within five years, the debar period is two years. The debar penalty does not apply if the contractor relied on written information from the Department.

For a filing violation or a failure to pay prevailing wage violation, the civil penalty does not apply to an inadvertent error. The Department defines an error as "inadvertent" if the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

Other Requirements.

With some exceptions, to be a responsible bidder on a public works project, a contractor or subcontractor must have received training on the requirements relating to public works and prevailing wage.

By rule, a contractor must keep payroll records for three years, showing the name, trade or occupation, hourly rate of usual benefits, overtime hours worked, and other matters. A contractor must file a certified copy of the payroll records with the Department and the awarding agency within 10 days of a request from the Department or any interested party.

Summary of Bill:

A contractor against whom a complaint has been filed for failure to pay prevailing wages may avoid further penalty by paying the unpaid wages, interest, and a penalty of the greater of \$1,000

or 20 percent of the total prevailing wage violation, limited to once within a five-year period. If the contractor utilizes the process for a second time within a five-year period, the contractor is subject to the penalty and debar sanctions.

The penalty for a failure to pay prevailing wages is changed to \$5,000 or 50 percent of the total violation. The time period for filing a wage complaint is extended to 120 days from the acceptance date of the project. The failure to timely file a complaint does not prohibit the Department from investigating and recovering owed wages; however, the Department may not charge the contractor with a violation. In a judicial appeal the prevailing party is entitled to recover interest on the wages at the highest rate allowed.

With respect to a filing violation, the Director of the Department must consider whether the contractor or employer attended public works and prevailing wage training, both for determining if the violation should be applied and for enhancing the curriculum of the required training. A failure to file any statement required to be posted also is subject to penalty.

An inadvertent error is defined as a mistake that occurs only once and is made notwithstanding the use of due care by the contractor or employer.

An employer must pay all wages, other than fringe benefits, not less than twice a month. "Usual benefits" includes the effective annual rate of contributions for all hours, public and private, worked during the year by an employee, commonly referred to as annualization of benefits.

Payroll requirements are placed in law. A contractor must keep payroll records for three years from the date of acceptance of the project, showing the employees' name, address, trade or occupation, hours worked and hourly rate, and other matters. At least biweekly, the contractor must file a copy of its certified payroll records with the awarding agency. Noncompliance with the payroll requirements is a prevailing wage violation.

Appropriation: None.

Fiscal Note: Requested on January 14, 2019.

Effective Date: The bill takes effect on January 1, 2020.