

SENATE BILL REPORT

SB 5565

As of February 18, 2019

Title: An act relating to direct contractor liability for payment of wages and benefits.

Brief Description: Concerning direct contractor liability for payment of wages and benefits.

Sponsors: Senators Kuderer, Wellman, Palumbo, Hunt, Keiser, Das, Randall and Takko.

Brief History:

Committee Activity: Labor & Commerce: 2/15/19.

Brief Summary of Bill

- Authorizes the Department of Labor and Industries to enforce against a direct contractor unpaid wages owed by a subcontractor.
- Authorizes a third-party owed fringe or other benefit payments or contributions by a subcontractor to bring a civil action against a direct contractor.
- Authorizes an interested party to bring a civil action against a direct contractor or subcontractor for wages owed, including against the direct contractor, for wages owed by a subcontractor.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: An individual owed wages may file a wage payment complaint with the Department of Labor and Industries (L&I) under the Wage Payment Act (WPA). L&I must investigate, and if it finds a violation, must issue a notice and order of assessment, and may order the employer to pay employees all wages owed, including interest. L&I may also order a civil penalty if the violation was willful.

Under L&I rule, an employer must keep records of each employee's name, address, occupation, hours worked on a daily and weekly basis, rate or rates of pay, total wages earned, deductions, and net pay for the pay period.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Federal law recognizes joint labor-management cooperation committees to improve labor and management relations, and for other purposes.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A direct contractor entering into a contract for erecting, constructing, altering, or repairing a building, structure, or other private work is liable for any debt owed to an employee, or a third-party owed benefit contributions on a wage claimant's behalf, incurred by a subcontractor for the employee's work. The direct contractor's liability is for unpaid wages, including interest, and any fringe benefit payments or contributions. The liability does not include any penalties or other damages.

A direct contractor is a contractor having a direct contractual relationship with an owner. Fringe or other benefit payments or contributions are payments made by an employer on behalf of employees for group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions.

Causes of action are established as follows:

1. L&I may enforce the liability for unpaid wages, as well as interest, under the WPA. Alternatively, L&I may file a civil cause of action.
2. A third party owed fringe or other benefit payments or contributions may sue a direct contractor.
3. A joint labor-management cooperation committee established under federal law or an interested party may sue a direct contractor or subcontractor at any tier for unpaid wages, including the wages owed by the direct contractor under the direct contractor liability. Before filing in court, the joint committee or other interested party must provide at least 30 days' notice to the direct contractor and subcontractor that employed the employee.

Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors must provide payroll records including the last four digits of the employees' Social Security numbers and contain sufficient information to apprise the direct contractor of the payment status of benefits payments or contributions and specified information regarding the project. If a subcontractor does not timely provide the information requested within ten days of the request, a direct contractor may withhold sums owed.

A one-year statute of limitations is provided, from the date the claimed labor was performed or the contract work was substantially completed or abandoned, whichever occurred first.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Employees should not go without payment and the bill addresses nonpayment by subcontractors. Sometimes, general contractors hire unscrupulous subcontractors to lower bid prices because they know the workers will not get paid. Many times, workers will accept the wrong amount because it is better than nothing. Private work does not have the same protections as public work, this bill adds some additional protections for workers. The bill will change behavior by making general contractors be more selective with subcontractors.

CON: The bill will increase the burden and costs on general contractors because they will need to hire additional payroll staff to monitor subcontractors. Those costs will be passed onto the consumer. L&I has the staff and expertise to monitor wage payments, general contractors do not. The bill will make subcontractors play loose with the rules because they know someone else is on the hook for nonpayment of wages. Employees have other recourse, including filing liens. The bill makes general contractors responsible for subcontractors that they have no contractual relationship with. The bill includes engineering and design services, and these firms are not equipped to implement the bill. There is no incentive to hire bad subcontractors because there would be no repeat work. There are no protections for general contractors acting in good faith because the bill is strict liability.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Cory Elliott, NW Carpenters; Josh Swanson, International Union of Operating Engineers Local 302.

CON: Rick Hjelm, Phase 2 Construction; Tom Kweciak, Building Industry Association of Washington; Jerry Vanderwood, Associated General Contractors; Tymon Berger, Berger Construction Law; Cliff Webster, Architects & Engineers Legislative Council; Associated Builders and Contractors.

Persons Signed In To Testify But Not Testifying: No one.