
SUBSTITUTE SENATE BILL 5746

State of Washington

62nd Legislature

2011 Regular Session

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

READ FIRST TIME 02/21/11.

1 AN ACT Relating to prevailing wage affidavits; amending RCW
2 39.12.040; and prescribing penalties.

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

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

36 (a) An awarding agency may authorize the contractor or
37 subcontractor to submit the statement of intent to pay prevailing wages
38 directly to the officer or person charged with the custody or

1 disbursement of public funds in the awarding agency without approval by
2 the industrial statistician of the department of labor and industries.
3 The awarding agency shall retain such statement of intent to pay
4 prevailing wages for a period of not less than three years.

5 (b) Upon final acceptance of the public works project, the awarding
6 agency shall require the contractor or subcontractor to submit an
7 affidavit of wages paid. Upon receipt of the affidavit of wages paid,
8 the awarding agency may pay the contractor or subcontractor in full,
9 including funds that would otherwise be retained according to the
10 provisions of RCW 60.28.011. Within thirty days of receipt of the
11 affidavit of wages paid, the awarding agency shall submit the affidavit
12 of wages paid to the industrial statistician of the department of labor
13 and industries for approval.

14 (c) A statement of intent to pay prevailing wages and an affidavit
15 of wages paid shall be on forms approved by the department of labor and
16 industries.

17 (d) In the event of a wage claim and a finding for the claimant by
18 the department of labor and industries where the awarding agency has
19 used the alternative process provided for in subsection (2) of this
20 section, the awarding agency shall pay the wages due directly to the
21 claimant. If the contractor or subcontractor did not pay the wages
22 stated in the affidavit of wages paid, the awarding agency may take
23 action at law to seek reimbursement from the contractor or
24 subcontractor of wages paid to the claimant, and may prohibit the
25 contractor or subcontractor from bidding on any public works contract
26 of the awarding agency for up to one year.

27 (e) Nothing in this section shall be interpreted to allow an
28 awarding agency to subdivide any public works project of more than two
29 thousand five hundred dollars for the purpose of circumventing the
30 procedures required by ((RCW 39.12.040(1))) subsection (1) of this
31 section.

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