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**SENATE BILL 5565**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Kuderer, Wellman, Palumbo, Hunt, Keiser, Das, Randall, and Takko

AN ACT Relating to direct contractor liability for payment of wages and benefits; adding new sections to chapter 49.48 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The purpose of this act is to:

(1) Protect construction employees and their families by ensuring that employment obligations of wage and benefit contribution payments are made for their work on privately funded construction projects;

(2) Protect construction employers who are put at a competitive disadvantage by others that fail to pay wages and benefit contributions;

(3) Encourage self-policing in the construction industry, where subcontractors fail to comply with employment obligations or where subcontracting is used to evade employment obligations, by making direct contractors liable for the wage and benefit contributions not paid by subcontractors; and

(4) Give direct contractors the means to monitor the wage and benefit contribution payments of subcontractors, as is similarly required on publicly funded construction projects.

NEW SECTION. **Sec.**  A new section is added to chapter 49.48 RCW to read as follows:

(1)(a) A direct contractor entering into a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, shall assume, and is liable for, any debt owed to an employee or third party owed fringe or other benefit payments or contributions on a wage claimant's behalf, incurred by a subcontractor at any tier, acting under, by, or for the direct contractor for the employee's performance of labor included in the subject of the contract between the direct contractor and the owner.

(b) The direct contractor's liability under this section shall extend only to any unpaid wages, including interest, and any fringe benefit payments or contributions. The liability may not extend to any penalties or other damages.

(c) A direct contractor or any other person may not evade, or commit any act that negates, the requirements of this section. However, this section does not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created under this section.

(2)(a) The department may enforce against a direct contractor the liability for unpaid wages created by subsection (1) of this section pursuant to RCW 49.48.083. A direct contractor may appeal a citation and notice of assessment under RCW 49.48.084 and the department may collect wages and interest owed under RCW 49.48.086. Alternatively, the department may file a civil action against the direct contractor to enforce the liability under this subsection. For either an administrative action or civil cause of action under this subsection (2), the direct contractor's liability does not extend beyond wages and interest.

(b) A third party owed fringe or other benefit payments or contributions on a wage claimant's behalf may bring a civil action against a direct contractor to enforce the liability created by subsection (1) of this section. The court shall award a prevailing plaintiff in such an action the plaintiff's reasonable: (i) Attorneys' fees; (ii) costs; and (iii) expert witness fees.

(c) A joint committee or other interested party may bring a civil action against a direct contractor or subcontractor at any tier for unpaid wages owed to an employee by the direct contractor or subcontractor, including unpaid wages owed by the direct contractor, under subsection (1) of this section. The court shall award a prevailing plaintiff in such an action the plaintiff's reasonable: (i) Attorneys' fees; (ii) costs; and (iii) expert witness fees. Before filing an action under this subsection, a joint committee or other interested party must provide the direct contractor and subcontractor that employed the employee at least thirty days' notice by first-class mail. The notice need only describe the general nature of the claim and does not limit the liability of the direct contractor or preclude subsequent amendments of any action to encompass additional employees employed by the contractor.

(d) No other person or entity may bring an action against a direct contractor to enforce the liability created by subsection (1) of this section.

(3) This section does not apply to work entered into by the state or any political subdivision of the state.

(4)(a) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor must provide:

(i) Payroll records that contain the certified information required by the department for nonagricultural employees and the last four digits of the employees' social security number. The records must also contain sufficient information to apprise the requesting party of the subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf; and

(ii) Award information that includes the project name, name and address of the subcontractor, contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journey level and apprentice hours, and contact information for its subcontractors on the project.

(b) A direct contractor may withhold as disputed all sums owed if a subcontractor does not timely provide the information required under (a) of this subsection within ten business days of the request, until that information is provided.

(c) A subcontractor's failure to comply with (a) of this subsection may not relieve a direct contractor from any of the obligations of this section.

(5) The obligations and remedies in this section are in addition to any obligations and remedies otherwise provided in law. This section does not impose liability on a direct contractor for anything other than unpaid wages and fringe or other benefit payments or contributions including interest owed.

(6) A civil action authorized by this section must be commenced within one year from the date the claimed labor was performed or the claimed contract work was substantially completed or abandoned, whichever occurred first.

NEW SECTION. **Sec.**  A new section is added to chapter 49.48 RCW to read as follows:

The definitions in this section apply throughout this section and sections 1 and 2 of this act unless the context clearly requires otherwise.

(1) "Department" means the department of labor and industries.

(2) "Direct contractor" means a contractor that has a direct contractual relationship with an owner.

(3) "Fringe or other benefit payments or contributions" means 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.

(4) "Interested party" means a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by section 2 of this act, and the director of labor and industries or the director's designee.

(5) "Joint committee" means a joint labor-management cooperation committee established pursuant to Title 29 U.S.C. Sec. 175a of the federal labor management cooperation act of 1978.

(6) "Owner" means the person who causes the erection, construction, alteration, or repair of a building, structure, or other private work.

(7) "Subcontractor" means a contractor that does not have a direct contractual relationship with an owner. "Subcontractor" includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

(8) "Wages" has the same meaning as "wage" in RCW 49.46.010.

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