

HOUSE BILL REPORT

HB 1395

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

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: Representatives Pellicciotti, Hansen, Reeves, Sells, Frame, Peterson, Dolan, Doglio, Ormsby, Blake, Riccelli, Valdez and Goodman.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/31/19, 2/19/19 [DPS];

Appropriations: 2/25/19, 2/28/19 [DPS(LAWS)].

Brief Summary of Substitute Bill

- Allows the Department of Labor and Industries to enforce against a direct contractor unpaid wages owed by a subcontractor.
- Allows a third party owed fringe or other benefit payments or contributions by a subcontractor to bring a civil action against a direct contractor.
- Allows 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, after 30 days' notice to the direct contractor and subcontractor.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

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.

Staff: Joan Elgee (786-7106).

Background:

An individual owed wages may file a wage payment complaint with the Department of Labor and Industries (Department) under the Wage Payment Act (WPA). The Department 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. The Department may also order a civil penalty if the violation was willful. An employee may pursue a private cause of action if it terminates the administrative action within 10 business days after it receives the Department's notice of assessment.

Under some circumstances, joint employment may exist and more than one employer may be liable for wage payments.

Under Department 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.

Federal law recognizes Joint Labor-Management Cooperation Committees to improve labor and management relations, and for other purposes.

Summary of Substitute Bill:

A direct contractor entering into a contract for the erection, construction, alteration, or repair of a building, structure, or other private work is liable for any debt owed to an employee. A direct contractor is also liable for a debt owed to a third party for fringe or other benefit payments or contributions made on behalf of an employee, incurred by a subcontractor at any tier on behalf of the employee. The liability does not include any penalties or other damages. A direct contractor or subcontractor may enforce against a subcontractor it hires any liability created by this provision.

The liability created does not apply to work entered into by the state or any political subdivision.

The liability may be enforced as follows:

- The Department may enforce the liability for unpaid wages, as well as interest, under the WPA when there is a citation and notice of assessment issued to an employer under the WPA. The Department may also investigate a direct contractor under the WPA procedures upon a complaint filed by an interested party. Alternatively, the Department may file a civil cause of action.
- A third party owed fringe or other benefit payments or contributions may sue a direct contractor.
- A joint labor-management cooperation committee established under federal law or other 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.

A third party or a joint labor-management cooperation committee that prevails is entitled to reasonable attorneys' fees, costs, and expert witness fees.

Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors must provide payroll records that include only the last four digits of the employees' Social Security numbers and contain sufficient information to apprise the direct contractor of the payment status in making fringe or other benefits payments or contributions and specified information regarding the project. If a subcontractor does not provide the information requested within 10 days of the request, a direct contractor may withhold as disputed all sums owed.

A one-year statute of limitations is provided for both the administrative and civil causes of action, which runs from the date the claimed labor was performed or the contract work was substantially completed or abandoned, whichever occurred first. The statute of limitations for a civil cause of action is tolled during an administrative investigation.

A "direct contractor" is a contractor that has 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.

Substitute Bill Compared to Original Bill:

The substitute bill:

- adds the process for the Department to enforce liability administratively, through a citation and notice of assessment issued to an employer or upon complaint of an interested party;
 - applies the statute of limitations for civil actions to administrative actions for unpaid wages and adds the tolling provision; and
 - deletes a reference to "certified" payroll and adds statutory references with respect to payroll, and corrects terminology.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Not receiving a paycheck because of wage theft is a serious problem. Many Americans cannot afford an unexpected obligation. A small minority of subcontractors do not pay their workers and there is no real recourse. Enforcement is problematic. There is no retainage and the bond is grossly inadequate. The bill is modelled after a California law which has discouraged working with dishonest subcontractors. Workers have asked for their pay and have been shown a gun or have been reported to Immigration and Customs Enforcement after completing a job. Some subcontractors do not pay because they were not paid by the direct contractor. This bill encourages self-policing by making the direct contractor, who received the benefit of the work and has leverage over the subcontractors, responsible for the wages. Contractors will bid more responsibly, similar to the process in public works. The bill will help the economy and contractors who follow the rules. There are some technical issues.

(Opposed) Wage theft is not supported and opponents are willing to work on the issue. However, this bill might make it easier to break the law because the direct contractor will be responsible, and it may discourage entrepreneurship. A stakeholder process is needed. Some issues to consider are making sure the direct contractor does not pay twice and whether the worker must first go through the WPA process. How can problems be discovered quickly, and going after culpable parties when there are up to 75 subcontractors on one house project, it is impossible to monitor all of them. Even homeowners would turn into enforcement officers. There are existing processes. If the Department cannot enforce the law, it should do something.

Persons Testifying: (In support) Representative Pellicciotti, prime sponsor; Evelyn Shapiro O'Conner, Cory Elliott, and Miguel Perry, Pacific Northwest Regional Council of Carpenters; and Josh Swanson, International Union of Operating Engineers Local 302.

(Opposed) Jerry VanderWood, Associated General Contractors; Rick Hjelm, Phase II Construction; and Tom Kwieciak, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele, Sutherland and Ybarra.

Staff: Jessica Van Horn (786-7288).

**Summary of Recommendation of Committee On Appropriations Compared to
Recommendation of Committee On Labor & Workplace Standards:**

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 25, 2019.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) To accomplish the requirements of this bill, direct contractors will just need a simple document from subcontractors saying that employees have been paid in full before progress payments are made. The amount of recovered unpaid wages will exceed the state investment for this bill.

(Opposed) Everyone should be paid for their work. There are already statutes in place for recovering unpaid wages. The bill removes responsibility from subcontractors to ensure that wages and benefits are paid, and places many requirements on prime contractors. It will require direct contractors to serve as wage and hour enforcement officers, when the Department of Labor and Industries staff already do that work and have enforcement tools for that purpose. Tracking payments is difficult and expensive, and direct contractors are often unfamiliar with subcontractors' employees. If the Department of Labor and Industries does not have the resources to enforce current law, the Legislature should provide more funding. Potential unintended consequences include delays in payment to subcontractors, general contractors choosing not to use new or small subcontractors, and general contractors having to buy expensive bonds for unknown liabilities. The fiscal note underestimates the long-term costs to the state. Commercial office spaces will become more expensive to build as a result of contractors taking out expensive bonds and having to pass on the costs, and tenants, like state agencies, will pay higher rents as a result. There is support for a more holistic approach, such as investigating whether benefit trusts are a viable option, and reviewing the Department of Labor and Industries' current enforcement resources.

Persons Testifying: (In support) Cory Elliott, Northwest Carpenters.

(Opposed) Tom Kwieciak, Building Industry Association of Washington; Jerry VanderWood, Associated General Contractors; and Cliff Webster, Architects and Engineers Legislative Council and Associated Builders and Contractors.

Persons Signed In To Testify But Not Testifying: None.