

HOUSE BILL REPORT

ESSB 5035

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection.

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

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña, Hasegawa, Conway, Keiser, Wellman and Kuderer; by request of Attorney General).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/18/19, 3/21/19 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- 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, and adds interest.
- Allows a contractor against whom the Department of Labor and Industries has begun an investigation, but not issued a notice of violation, to avoid further sanctions by paying the unpaid wages, interest, and a lesser penalty (limited to once within a five-year period).
- Defines "unpaid wages," extends the time period for filing prevailing wage complaints, and establishes a time frame for investigation of unpaid wages.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. 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:

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 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 requirements.

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 Violations.

The Director of the Department (Director) 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 within 30 days. Unpaid wages are a lien against the required bond and retainage. The law does not define "unpaid wages."

For a failure to file or false 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 sanction 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 filing or reporting error. By rule, 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.

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 information. 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 Amended Bill:

An employer must pay all wages, other than usual benefits, not less than twice a month. A definition of "unpaid wages" is added to mean the employer fails to pay all of the prevailing rate of wages owed for any workweek by the regularly established pay day for the period in which the workweek ends. If the Department finds a violation of the prevailing wage requirement, it may issue a notice of violation for unpaid wages, penalties, and interest at 1 percent per month.

A contractor or subcontractor (contractor) against whom the Department has begun an investigation, but not issued a notice of violation, 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. This process is available only if the Department has not issued a notice of violation that resulted in final judgment in the last five-year period. The Director may also waive or reduce a penalty or additional sanction, including when the Director determines the contractor paid all wages and interest or there was an inadvertent filing or reporting error, except that the Director may not waive or reduce interest. Upon request of an interested party, the Department must provide a report of waivers made and justification for the waivers.

The penalty for failure to pay prevailing wages is changed to \$5,000 or 50 percent of the total violation and interest at 1 percent per month. The time period for filing a wage complaint is extended to 60 days from the acceptance date of the project. If a complaint is not timely filed, the Department may investigate and recover owed wages within two years from the acceptance date of the project; however, the Department may not charge the contractor with a violation.

A failure to file any statement required to be posted also is subject to penalty.

"Inadvertent error" is defined as a mistake that is made notwithstanding the use of due care by the contractor or employer, including a contractor who in good faith relies on a written determination from the Department. The burden of proving an error, by a preponderance of the evidence, is on the contractor.

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 monthly, the contractor must file a copy of its certified payroll records online or may file a copy with the Department in a format approved by the Department. Noncompliance with the payroll requirements is a prevailing wage violation.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill strikes "regularly" from the requirement to provide a report of waivers upon request of an interested party. It also adds burden of proof language for proving an inadvertent error for purposes of a wage violation, using the same language as for a false failing or failure to file violation.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 8, 2019.

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

Staff Summary of Public Testimony:

(In support) This bill will improve the public contracting process and protect workers and responsible contractors. This bill combats wage theft and penalizes egregious violators by addressing the loophole in which contractors receive no penalties if they pay immediately, increasing penalties, and providing for 1 percent interest for workers who do not receive wages owed. The continued discretion for the Department to waive penalties for those who make mistakes is a good policy and will help small businesses. Being able to rely on written determinations will encourage people to contact the Department. Many complaints are dismissed under the current 30-day window because they are untimely. The stakeholder process was appreciated.

(Opposed) None.

Persons Testifying: Mike Webb, Office of the Attorney General; Jerry VanderWood, Associated General Contractors; James King, Independent Business Association; Jim Hernandez, International Union of Operating Engineers Local 612; and Mark Riker, Washington State Building and Construction Trades Council.

Persons Signed In To Testify But Not Testifying: None.