

SENATE BILL REPORT

ESSB 5035

As Amended by House, April 10, 2019

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 & Commerce: 2/05/19, 2/12/19 [DPS, w/oRec].

Floor Activity:

Passed Senate: 3/01/19, 40-7.

Passed House: 4/10/19, 59-36.

Brief Summary of Engrossed First Substitute Bill

- Extends the time period for filing a prevailing wage complaint from 30 days to 60 days from the acceptance date of the public works project.
- Modifies the penalty structure for prevailing wage violations, including increasing the minimum penalty for a violation to \$5,000 or an amount equal to 50 percent of the prevailing wage violation, whichever is greater.
- Requires contractors to retain payroll records for three years and to submit certified payroll records at least once per month.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5035 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Walsh.

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: Jarrett Sacks (786-7448)

Background: State law requires contractors pay prevailing wages to laborers, workers, and mechanics employed on all public works contracts. The prevailing wage is the hourly wage, usual benefits, and overtime paid in the largest city in the county to the majority of individuals in the same trade or occupation.

Each contractor on a public works project must file with the Department of Labor and Industries (L&I) a statement of intent to pay prevailing wages after a project is accepted, but before work begins. In addition, when work is complete, but before final acceptance by the awarding agency, the contractor must file an affidavit of wages paid. Contractors for public works or public building service maintenance contracts in excess of \$10,000 must post a statement of intent to pay prevailing wages at the job site. The posted statement must include the address and telephone number of the L&I industrial statistician, and where a complaint or inquiry concerning prevailing wages may be made. In addition, the posting must list the labor classifications and wages used on the project.

Contractors on a public works contract must pay a civil penalty of \$500 for each reporting and filing violation. For example, a civil penalty may be imposed for submitting false information or failing to file a statement of intent to pay prevailing wages or an affidavit of wages paid. However, the civil penalty does not apply to inadvertent filing or reporting errors. The fined contractor may not bid on any public works contract until the penalty is paid. If a contractor or subcontractor is found to have committed a second violation of the filing or reporting requirements within a five-year period, the contractor or subcontractor is not allowed to bid on any public works contract for one year.

A complaint concerning nonpayment of prevailing wages must be filed no later than 30 days from the acceptance date of the public works project. Upon complaint by an interested party, L&I investigates and issues a determination. A contractor or subcontractor found to have violated the requirements to pay prevailing wage is subject to a civil penalty of not less than \$1,000 or an amount equal to 20 percent of the total prevailing wage violation, whichever is greater. A contractor found to have committed a second violation of the requirement to pay prevailing wage within a five-year period is not allowed to bid on any public works contract for two years.

Summary of Engrossed First Substitute Bill: The time period to file a complaint concerning the nonpayment of prevailing wage is changed from 30 days to 60 days from the acceptance date of the public works project. Failure to timely file a complaint does not prohibit L&I from investigating the matter in pursuit of recovering unpaid wages for a worker or workers. However, L&I may only recover wages owed and cannot charge a contractor with a violation of failing to pay prevailing wage. L&I may not investigate or recover unpaid prevailing wages if the complaint is filed after two years. If L&I finds that a violation occurred, it may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at 1 percent per month.

The civil penalty for the nonpayment of prevailing wage is changed to a minimum of \$5,000 or an amount equal to 50 percent of the total prevailing wage violation found on the contract, whichever is greater, and interest at 1 percent per month. After a complaint is filed and

before a final determination is made, if the contractor or subcontractor pays the unpaid wages, interest of 1 percent per month, and penalties of \$1,000 or an amount equal to 20 percent of the total prevailing wage violation, the matter is resolved without further penalty. If a contractor or subcontractor uses this option twice in a five-year period, the contractor is subject to the higher penalty amounts and is barred from bidding on public works contracts for two years. Notices of violation that are not timely appealed are final and binding and not subject to further appeal.

The director of L&I may waive or reduce a penalty or additional sanction, but may not waive or reduce interest. L&I must regularly submit a report of the waivers granted, including the justification for any waiver, upon request of an interested party.

The burden of proving, by a preponderance of the evidence, that an error was the result of an inadvertent filing or reporting error, and, as a result, is not subject to civil penalties, rests with the contractor or employer. An inadvertent filing or reporting error is a mistake and is made in spite of the use of due care by the contractor or employer. An inadvertent filing or reporting error includes a contractor who, in good faith, relies on a written determination provided by L&I and pays its workers, laborers, and mechanics accordingly, but is later found to have not paid the proper prevailing wage rate.

Each contractor and subcontractor must keep accurate payroll records for three years from the date of acceptance of the public works contract. Contractors must, at least once per month, file a copy of its certified payroll records using L&I's online system or directly with L&I.

A definition of unpaid prevailing wages is added. Unpaid prevailing wages, or unpaid wages, means the employer fails to pay all of the prevailing wage rate owed for any workweek by the regularly established pay day for the period in which the workweek ends. Every employer must pay all wages, other than usual benefits, owing to its employees not less than once a month. Every employer must pay all usual benefits owing to its employees by the regularly established deadline for those benefits.

Appropriation: None.

Fiscal Note: Requested on January 8, 2019.

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

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The bill closes a loophole in current prevailing wage law where contractors can just pay back unpaid wages without additional penalties. Under the current system, if a contractor pays back the unpaid wages, they do not have to pay any interest or additional penalties. The bill gives L&I the authority to deter repeat bad actors.

OTHER: The bill requires awarding agencies to receive certified payroll, which will require them to create secure databases for personal information, even though they have no role under the bill. The changes made to the bill are good, such as giving L&I discretion to waive penalties for good faith mistakes, but some additional work needs to be done.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Mark Riker, Washington State Building and Construction Trades Council; Jim Hernandez, IUOE Local 612; Michael Transue, Mechanical Contractors Association of Western Washington; Mike Webb, Washington State Attorney General; Chief of Staff; Sarah Reyneveld, Washington State Attorney General, Assistant Attorney General.

OTHER: James King, Independent Business Association; Jerry VanderWood, Associated General Contractors; Eric Johnson, Washington Public Ports Association.

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

EFFECT OF HOUSE AMENDMENT(S):

- Provides that L&I must submit a report of waivers upon request, instead of regularly and upon request.
- Adds burden of proof language to the provision addressing the failure to pay prevailing wages due to an inadvertent error.