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SENATE BILL 6281

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Pelz, Prentice and Winsley; by request of Department of Labor & Industries

Read first time 01/18/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to penalties for multiple failures by a contractor  
2 or subcontractor to pay the prevailing rate of wage; amending RCW  
3 39.12.065; and prescribing penalties.

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

5 **Sec. 1.** RCW 39.12.065 and 1985 c 15 s 2 are each amended to read  
6 as follows:

7 (1) Upon complaint by an interested party, the director of labor  
8 and industries shall cause an investigation to be made to determine  
9 whether there has been compliance with this chapter and the rules  
10 adopted hereunder, and if the investigation indicates that a violation  
11 may have occurred, a hearing shall be held in accordance with chapter  
12 34.05 RCW. The director shall issue a written determination including  
13 his or her findings after the hearing. A judicial appeal from the  
14 director's determination may be taken in accordance with chapter 34.05  
15 RCW, with the prevailing party entitled to recover reasonable costs and  
16 attorneys fees.

17 A complaint concerning nonpayment of the prevailing rate of wage  
18 shall be filed with the department of labor and industries no later  
19 than thirty days from the acceptance date of the public works project.

1 The failure to timely file such a complaint shall not prohibit a  
2 claimant from pursuing a private right of action against a contractor  
3 or subcontractor for unpaid prevailing wages. The remedy provided by  
4 this section is not exclusive and is concurrent with any other remedy  
5 provided by law.

6 (2) To the extent that a contractor or subcontractor has not paid  
7 the prevailing rate of wage under a determination issued as provided in  
8 subsection (1) of this section, the director shall notify the agency  
9 awarding the public works contract of the amount of the violation  
10 found, and the awarding agency shall withhold, or in the case of a  
11 bond, the director shall proceed against the bond in accordance with  
12 the applicable statute to recover, such amount from the following  
13 sources in the following order of priority until the total of such  
14 amount is withheld:

15 (a) The retainage or bond in lieu of retainage as provided in RCW  
16 60.28.010;

17 (b) The bond filed by the contractor or subcontractor with the  
18 department of labor and industries as provided in RCW 18.27.040 and  
19 19.28.120;

20 (c) A surety bond, or at the contractor's or subcontractor's option  
21 an escrow account, running to the director in the amount of the  
22 violation found; and

23 (d) That portion of the progress payments which is properly  
24 allocable to the contractor or subcontractor who is found to be in  
25 violation of this chapter. Under no circumstances shall any portion of  
26 the progress payments be withheld that are properly allocable to a  
27 contractor, subcontractor, or supplier, that is not found to be in  
28 violation of this chapter.

29 The amount withheld shall be released to the director to distribute  
30 in accordance with the director's determination.

31 (3) A contractor or subcontractor that is found, in accordance with  
32 subsection (1) of this section, to have violated the requirement to pay  
33 the prevailing rate of wage shall be subject to a civil penalty of not  
34 less than one thousand dollars or an amount equal to twenty percent of  
35 the total prevailing wage violation found on the contract, whichever is  
36 greater, and shall not be permitted to bid, or have a bid considered,  
37 on any public works contract until such civil penalty has been paid in  
38 full to the director. If a contractor or subcontractor is found to  
39 have violated the requirement to pay the prevailing rate of wage for a

1 second time within a five-year period, the contractor or subcontractor  
2 shall be subject to the sanctions prescribed in this subsection and  
3 shall not be allowed to bid on any public works contract for two years.  
4 The civil penalty under this subsection shall not apply to a violation  
5 determined by the director to be an inadvertent filing or reporting  
6 error. To the extent that a contractor or subcontractor has not paid  
7 the prevailing wage rate under a determination issued as provided in  
8 subsection (1) of this section, the unpaid wages shall constitute a  
9 lien against the bonds and retainage as provided herein and in RCW  
10 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

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