

SENATE BILL REPORT

SB 5565

As of January 16, 2020

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: Senators Kuderer, Wellman, Palumbo, Hunt, Keiser, Das, Randall and Takko.

Brief History:

Committee Activity: Labor & Commerce: 2/15/19, 1/16/20.

Brief Summary of Bill

- Authorizes the Department of Labor and Industries to enforce against a direct contractor unpaid wages owed by a subcontractor.
- Authorizes a third-party owed fringe or other benefit payments or contributions by a subcontractor to bring a civil action against a direct contractor.
- Authorizes an interested party to bring a civil action against a direct contractor or subcontractor for wages owed by a subcontractor.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: An individual owed wages may file a wage payment complaint with the Department of Labor and Industries (L&I) under the Wage Payment Act (WPA). L&I 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. L&I may also order a civil penalty if the violation was willful.

Under L&I 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.

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.

Federal law recognizes joint labor-management cooperation committees to improve labor and management relations, and for other purposes.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A direct contractor entering into a contract for erecting, constructing, altering, or repairing a building, structure, or other private work is liable for any debt owed to an employee, or a third-party owed benefit contributions on a wage claimant's behalf, incurred by a subcontractor for the employee's work. The direct contractor's liability is for unpaid wages, including interest, and any fringe benefit payments or contributions. The liability does not include any penalties or other damages.

A direct contractor is a contractor having 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.

Causes of action are established as follows:

1. L&I may enforce the liability for unpaid wages, as well as interest, under the WPA. Alternatively, L&I may file a civil cause of action.
2. A third party owed fringe or other benefit payments or contributions may sue a direct contractor.
3. A joint labor-management cooperation committee established under federal law or an 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.

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

A one-year statute of limitations is provided, from the date the claimed labor was performed or the contract work was substantially completed or abandoned, whichever occurred first.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute (Regular Session 2019):

PRO: Employees should not go without payment and the bill addresses nonpayment by subcontractors. Sometimes, general contractors hire unscrupulous subcontractors to lower bid prices because they know the workers will not get paid. Many times, workers will accept the wrong amount because it is better than nothing. Private work does not have the same protections as public work, this bill adds some additional protections for workers. The bill will change behavior by making general contractors be more selective with subcontractors.

CON: The bill will increase the burden and costs on general contractors because they will need to hire additional payroll staff to monitor subcontractors. Those costs will be passed onto the consumer. L&I has the staff and expertise to monitor wage payments, general contractors do not. The bill will make subcontractors play loose with the rules because they know someone else is on the hook for nonpayment of wages. Employees have other recourse, including filing liens. The bill makes general contractors responsible for subcontractors that they have no contractual relationship with. The bill includes engineering and design services, and these firms are not equipped to implement the bill. There is no incentive to hire bad subcontractors because there would be no repeat work. There are no protections for general contractors acting in good faith because the bill is strict liability.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Cory Elliott, NW Carpenters; Josh Swanson, International Union of Operating Engineers Local 302.CON: Rick Hjelm, Phase 2 Construction; Tom Kwieciak, Building Industry Association of Washington; Jerry Vanderwood, Associated General Contractors; Tymon Berger, Berger Construction Law; Cliff Webster, Architects & Engineers Legislative Council; Associated Builders and Contractors.

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

Staff Summary of Public Testimony on Proposed Substitute (Regular Session 2020):

PRO: The bill ensures people get paid for the work they perform. Subcontractors do not pay employees, and general contractors can absorb the cost better than an employee when wages are not paid. Wage theft in the construction industry is not new. The issue is getting worse because the industry rewards the low bidder. In particular, it hurts minority and disadvantaged workers. This concept has worked in other states. Washington D.C. just had a large settlement with an electrical contractor using its law. The bill will lead to general contractors choosing law abiding subcontractors. The current process for wage recovery takes too long for workers to recover wages and when they do, it is not what they are owed.

CON: The bill will raise costs of every private project in the state. It will require higher bond amounts and additional staff to certify payrolls. It does not require L&I to exhaust going after the subcontractor before going after the general contractor. Other methods, including regulating labor brokers, would be better than this bill. The bill will require the need for payment bonds, which small contractors cannot obtain. The bill does not consider other industries or data. The bill hurts law-abiding businesses. General contractors will hold money and small businesses will have to wait to get paid, which will harm them. The costs of the bill will pass onto homeowners. The bill may include design services unintentionally. Strict liability for wages is a bad approach because it does not incentivize the correct behavior.

OTHER: The bill does not consider the due diligence required for creditors and they will have to start looking at every subcontractor. The bill will increase the cost of loans and, as a result, increase the cost of housing. The bill is detrimental to small volume general contractors. The best person to pay this is the subcontractor. The bill is taking a simple process and making it complicated.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Cory Elliot, Government Relations, Pacific Northwest Regional Council of Carpenters; Megan Bloch, Research and Policy Analyst, Pacific Northwest Regional Council of Carpenters; Matt Capece, Representative of the General President of the United Brotherhood of Carpenters; Neil Hartman, Washington State Building and Construction Trades Council.

CON: Jerry Vanderwood, Associated General Contractors of Washington; Troy Stedman, Abbott Construction; Dawn Stephens, Charter Construction, Inc; Bob Battles, Association of Washington Business; John Erwin, John Erwin Remodeling Inc.; David Danton, Lexar Homes; Rick Hjelm, Phase II General Contractor, Inc.; Cliff Webster, Architects and Engineers Legislative Council; Tymon Berger, National Utility Contractors Association; Tom Kwieciak, Building Industry Association of Washington.

OTHER: Aaron Marvin, Owner, A.C.T. Builders; Tram Bowen, Flagstar Bank; Judson Willis, Lexar Homes.

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