

WSR 21-17-115
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 17, 2021, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-159.

Title of Rule and Other Identifying Information: Prevailing wage intent and affidavit filing fees; chapter 296-127 WAC, Prevailing wage.

Hearing Location(s): On September 21, 2021, at 1 p.m. Virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) [https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjEzOTU4YWUtNjEzNy00MzM3LWFiOTMtYThhNGU4MjUyOTY3%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjEzOTU4YWUtNjEzNy00MzM3LWFiOTMtYThhNGU4MjUyOTY3%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d, or call in (audio only) +1 253-372-2181, Phone conference ID 928 608 41# (pound sign must be entered). The virtual/telephonic hearing starts at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: September 28, 2021.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, email Beverly.Clark@Lni.wa.gov, fax 360-902-5292, by 5:00 p.m. on September 21, 2021.

Assistance for Persons with Disabilities: Contact Beverly Clark, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@Lni.wa.gov, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is proposing rules to amend chapter 296-127 WAC, Prevailing wage, in order to implement the legislative changes made within 2019's Prevailing wage program fees—Determination—Limit Act (chapter 193, Laws of 2019, SB 5566) that will address fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages.

SB 5566 amended RCW 39.12.070 to allow for a filing fee for intents and affidavits to be \$40 or less, and specifically for the 2019-2021 biennium fees to not be more than twenty dollars.

This rule making is proposed to be consistent with RCW 39.12.070, which allows for L&I to set the fee, and states the fee must be \$40 or less. In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

Reasons Supporting Proposal: There are approximately one thousand public agencies that contract for public work in Washington state. Under the provisions of RCW 39.12.040, these agencies cannot make payment, release contract retainage, or accept the contract work as complete without the required approved and certified intent and affidavit forms. This means a rule setting the filing fees that allow processing of these forms must be in place or many payments on public works will not be possible under the law. Without the legal ability to make payments, public works will come to a statewide standstill.

Statutory Authority for Adoption: Chapter 193, Laws of 2019, SB 5566; and RCW 39.12.070.

Statute Being Implemented: RCW 39.12.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jim Christensen, Tumwater, Washington, 360-902-5330.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required in accordance with RCW 34.05.328 (5)(b)(iii), as these rules are RCW 34.05.328 (5)(b)(vi) adjusting certain fees.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 17, 2021

Joel Sacks

Director

OTS-3153.3

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-040 Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a forty-dollar filing fee for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-045 Affidavit of wages paid. (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a forty-dollar filing fee for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-045, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-045, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-045, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-045, filed 8/27/82.]