

SENATE BILL REPORT

SB 5746

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 21, 2011

Title: An act relating to prevailing wage affidavits.

Brief Description: Regarding prevailing wage affidavits.

Sponsors: Senators Kline and King.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/17/11, 2/21/11 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5746 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

Staff: Mac Nicholson (786-7445)

Background: Employers on public works projects must pay prevailing wages and submit a statement of intent to pay prevailing wages (intent) after the contract is awarded and before work begins. After all the work is complete, employers must submit an affidavit of wages paid (affidavit). The forms are filed with the Department of Labor and Industries (L&I) and, once they are approved, are submitted by the employer to the agency administering the contract. A complaint concerning nonpayment of prevailing wage must be filed with L&I within 30 days of the acceptance date of the public works project. Failure to file a complaint does not preclude a claimant from pursuing a private right of action for unpaid prevailing wages.

State law requires public agencies to withhold 5 percent of money due the contractor for a public improvement or work until completion and/or acceptance of the contract. This is known as retainage, and retainage money is to be set aside as a trust fund for the protection and payment of anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor. Anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor must file a notice of lien

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.

against retainage within 45 days of the completion of all contract work. After completion of all contract work, the contractor may request that the public agency release the retainage. The agency is to release these funds within 60 days of this request.

The public agency administering the contract may not release final retainage until all contractors have submitted an affidavit form that has been certified by the industrial statistician at L&I.

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

Summary of Bill (Recommended Substitute): A contractor or subcontractor may file an intent or affidavit on behalf of a subcontractor who performed work on the project but failed to submit the forms. Intents and affidavits can only be filed on behalf of another subcontractor when the contractor or subcontractor filing the forms had a contractual relationship for the project, and the subcontractor ceased operations or failed to file as required. Intents and affidavits cannot be accepted sooner than 31 days after acceptance of the public works project. The contractor filing on behalf of a subcontractor accepts responsibility for payment of unpaid prevailing wages on the project.

Intentionally filing a false affidavit on behalf of another subcontractor subjects the filer to a civil fine of \$500.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute as Passed Committee): The substitute adds a statutory citation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:
PRO: There is one statute reference that should be corrected. This bill puts in statute that somebody is responsible for the payment of workers wages. The bill also allows release of retainage, which will help contractors. This legislation corrects a catch-22 that currently exists. One contractor who doesn't file the affidavits can hold up retainage for every contractor. Filing on behalf of another can't happen until the claim window for wages has closed. There are protections in the legislation for subcontractors.

CON: The bill is unacceptable. General contractors could put provisions in their contracts to enforce intent and affidavit requirements. Contractors who don't file intents do so because they have a trick up their sleeves. This bill is a way to get around laws so contractors can cheat the system. Some teeth should be put into the legislation.

OTHER: The prevailing wage program has currently adopted policies to try and address these situations, and this bill puts language into statute and gives legal authority to do so. There is a small language change that should be considered.

Persons Testifying: PRO: David Johnson, Washington State Building Trades; Rick Slunaker, Associated General Contractors.

CON: Don DeMulling, Ironworkers 86.

OTHER: Steve McLain, Department of Labor and Industries.