
SENATE BILL 5278

State of Washington

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2021 Regular Session

By Senators Stanford, Kuderer, Conway, Das, Hasegawa, Lovelett, Nguyen, Nobles, Saldaña, and Wilson, C.

Read first time 01/19/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to the protection of construction worker wages
2 and benefits; adding new sections to chapter 49.48 RCW; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The purpose of this act is to:

6 (1) Protect construction employees and their families by ensuring
7 that employment obligations of wage and benefit contribution payments
8 are made for their work on privately funded construction projects;

9 (2) Protect construction employers who are put at a competitive
10 disadvantage by others that fail to pay wages and benefit
11 contributions;

12 (3) Encourage self-policing in the construction industry, where
13 subcontractors fail to comply with employment obligations or where
14 subcontracting is used to evade employment obligations, by making
15 direct contractors liable for the wage and benefit contributions not
16 paid by subcontractors; and

17 (4) Give direct contractors the means to monitor the wage and
18 benefit contribution payments of subcontractors, as is similarly
19 required on publicly funded construction projects.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48

2 RCW to read as follows:

3 (1) (a) A direct contractor entering into a contract in the state
4 for the erection, construction, alteration, or repair of a building,
5 structure, or other private work, shall assume, and is liable for,
6 any debt owed to an employee or third party owed fringe or other
7 benefit payments or contributions on a wage claimant's behalf,
8 incurred by a subcontractor at any tier, acting under, by, or for the
9 direct contractor for the employee's performance of labor included in
10 the subject of the contract between the direct contractor and the
11 owner.

12 (b) The direct contractor's liability under this section extends
13 only to any unpaid wages, including interest, and any fringe or other
14 benefit payments or contributions. The liability under this section
15 may not extend to any penalties or other damages.

16 (c) A direct contractor or any other person may not evade or
17 commit any act that negates the requirements of this section.
18 However, this section does not prohibit a direct contractor or
19 subcontractor at any tier from establishing by contract or enforcing
20 any otherwise lawful remedies against a subcontractor it hires for
21 liability created under this section.

22 (2) (a) The department may enforce liability for unpaid wages
23 against a direct contractor under subsection (1) of this section when
24 there is a citation and notice of assessment issued to an employer
25 under RCW 49.48.083. In addition, upon complaint of an interested
26 party, the department may investigate a direct contractor for
27 liability for unpaid wages following procedures under RCW 49.48.083.
28 A direct contractor may appeal a citation and notice of assessment
29 under RCW 49.48.084 and the department may collect wages and interest
30 owed under RCW 49.48.086. Alternatively, the department may file a
31 civil action against the direct contractor to enforce the liability
32 under this subsection. For either an administrative action or civil
33 cause of action under this subsection (2), the direct contractor's
34 liability does not extend beyond wages and interest. The time limits
35 under subsection (6) of this section apply to administrative actions
36 against direct contractors for liability for unpaid wages and
37 interest. Upon completing an investigation that results in a finding
38 of noncompliance with the requirements of this chapter, the
39 department may issue a citation and notice of assessment.

1 (b) (i) Subject to (b) (ii) of this subsection, a third party owed
2 fringe or other benefit payments or contributions on a wage
3 claimant's behalf may bring a civil action against a direct
4 contractor to enforce the liability created by subsection (1) of this
5 section. In such an action, the court shall award a prevailing
6 plaintiff the plaintiff's reasonable: (A) Attorneys' fees; (B) costs;
7 and (C) expert witness fees.

8 (ii) A third-party trust may only bring a civil action against a
9 direct contractor for any unpaid trust contributions or benefits owed
10 by a subcontractor, if the subcontractor that owes the contributions
11 or benefits has declared bankruptcy.

12 (c) A joint committee or other interested party may bring a civil
13 action against a direct contractor or subcontractor at any tier for
14 unpaid wages owed to an employee by the direct contractor or
15 subcontractor, including unpaid wages owed by the direct contractor,
16 under subsection (1) of this section. The court shall award a
17 prevailing plaintiff in such an action the plaintiff's reasonable:
18 (i) Attorneys' fees; (ii) costs; and (iii) expert witness fees.
19 Before filing an action under this subsection, a joint committee or
20 other interested party must provide the direct contractor and
21 subcontractor that employed the employee at least 30 days' notice by
22 first-class mail. The notice need only describe the general nature of
23 the claim and does not limit the liability of the direct contractor
24 or preclude subsequent amendments of any action to encompass
25 additional employees employed by the contractor.

26 (d) No party other than those stated in this section may bring an
27 action against a direct contractor to enforce the liability created
28 by subsection (1) of this section.

29 (3) This section does not apply to work entered into by the state
30 or any political subdivision of the state.

31 (4) (a) Upon request by a direct contractor to a subcontractor,
32 the subcontractor and any lower tier subcontractors under contract to
33 the subcontractor must provide:

34 (i) Payroll records that contain the information required under
35 chapters 49.12 and 49.46 RCW, and any rules promulgated under those
36 chapters, and showing only the last four digits of the employees'
37 social security number. The records must also contain sufficient
38 information to apprise the requesting party of the subcontractor's
39 payment status in making fringe or other benefit payments or
40 contributions to a third party on the employee's behalf; and

1 (ii) Award information that includes the project name, name and
2 address of the subcontractor, contractor with whom the subcontractor
3 is under contract, anticipated start date, duration, and estimated
4 journey level and apprentice hours, and contact information for its
5 subcontractors on the project.

6 (b) A direct contractor may withhold as disputed all sums owed if
7 a subcontractor does not timely provide the information required
8 under (a) of this subsection within 10 business days of the request,
9 until that information is provided.

10 (c) A subcontractor's failure to comply with (a) of this
11 subsection may not relieve a direct contractor from any of the
12 obligations of this section.

13 (5) The obligations and remedies in this section are in addition
14 to any obligations and remedies otherwise provided in law. This
15 section does not impose liability on a direct contractor for anything
16 other than unpaid wages and fringe or other benefit payments or
17 contributions including interest owed.

18 (6) A civil action authorized by this section must be commenced
19 within one year from the date the claimed labor was performed or the
20 claimed contract work was substantially completed or abandoned,
21 whichever occurred first. This time is tolled in accordance with RCW
22 49.48.083(5) in the event of an administrative investigation of wage
23 complaints of the direct contractor liability for unpaid wages
24 created by subsection (1) of this section.

25 (7) The provisions of this section only apply to projects, or an
26 aggregate of projects under one construction contract, of a value
27 greater than \$500,000.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.48
29 RCW to read as follows:

30 The definitions in this section apply throughout sections 1 and 2
31 of this act unless the context clearly requires otherwise.

32 (1) "Department" means the department of labor and industries.

33 (2) "Direct contractor" means a contractor that has a direct
34 contractual relationship with an owner.

35 (3) "Fringe or other benefit payments or contributions" means
36 payments made by an employer on behalf of employees for group life
37 insurance, health insurance, disability insurance, sick leave, annual
38 leave, educational benefits, and pensions.

1 (4) "Interested party" means a contractor, subcontractor, an
2 employee of a direct contractor or subcontractor, an organization
3 whose members' wages, benefits, and conditions of employment are
4 affected by section 2 of this act, and the director of labor and
5 industries or the director's designee.

6 (5) "Joint committee" means a joint labor-management cooperation
7 committee established pursuant to 29 U.S.C. Sec. 175a of the federal
8 labor management cooperation act of 1978.

9 (6) "Owner" means the person who causes the erection,
10 construction, alteration, or repair of a building, structure, or
11 other private work.

12 (7) "Subcontractor" means a contractor that does not have a
13 direct contractual relationship with an owner. "Subcontractor"
14 includes a contractor that has a contractual relationship with a
15 direct contractor or with another subcontractor.

16 (8) "Wages" has the same meaning as "wage" in RCW 49.46.010.

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