
HOUSE BILL 1970

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Haigh and Dammeier

Read first time 02/15/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to waiving certain requirements for public works
2 projects costing less than five thousand dollars; amending RCW
3 39.12.040; and adding a new section to chapter 39.04 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW
6 to read as follows:

7 (1) A state agency or municipality may waive the payment and
8 performance bond requirements under chapter 39.08 RCW and the retainage
9 requirements of chapter 60.28 RCW for public works projects with a
10 total contract amount of five thousand dollars or less, exclusive of
11 sales tax.

12 (2) A state agency or municipality electing to waive payment and
13 performance bonds under subsection (1) of this section assumes the
14 liability for the contractor's and their subcontractors' nonpayment of
15 laborers, mechanics, subcontractors, materialpersons, and suppliers.
16 The state agency or municipality shall have the right of recovery
17 against the contractor for any payments made on the contractor's or
18 subcontractors' behalf.

1 (3) A state agency or municipality electing to waive the retainage
2 requirements under subsection (1) of this section assumes the liability
3 for the contractor's or subcontractors' nonpayment of laborers,
4 mechanics, subcontractors, materialpersons, suppliers, and taxes
5 imposed under Titles 50, 51, and 82 RCW. The state agency or
6 municipality shall have the right of recovery against the contractor
7 for any payments made on the contractor's or subcontractors' behalf.

8 (4) A state agency or municipality electing to waive payment and
9 performance bonds and retainage under this section must establish and
10 adopt procedures implementing the requirements of this section.

11 **Sec. 2.** RCW 39.12.040 and 2009 c 219 s 2 are each amended to read
12 as follows:

13 (1) Except as provided in subsection (2) of this section, before
14 payment is made by or on behalf of the state, or any county,
15 municipality, or political subdivision created by its laws, of any sum
16 or sums due on account of a public works contract, it shall be the duty
17 of the officer or person charged with the custody and disbursement of
18 public funds to require the contractor and each and every subcontractor
19 from the contractor or a subcontractor to submit to such officer a
20 "Statement of Intent to Pay Prevailing Wages". For a contract in
21 excess of ten thousand dollars, the statement of intent to pay
22 prevailing wages shall include:

23 (a) The contractor's registration certificate number; and

24 (b) The prevailing rate of wage for each classification of workers
25 entitled to prevailing wages under RCW 39.12.020 and the estimated
26 number of workers in each classification.

27 Each statement of intent to pay prevailing wages must be approved
28 by the industrial statistician of the department of labor and
29 industries before it is submitted to said officer. Unless otherwise
30 authorized by the department of labor and industries, each voucher
31 claim submitted by a contractor for payment on a project estimate shall
32 state that the prevailing wages have been paid in accordance with the
33 prefiled statement or statements of intent to pay prevailing wages on
34 file with the public agency. Following the final acceptance of a
35 public works project, it shall be the duty of the officer charged with
36 the disbursement of public funds, to require the contractor and each
37 and every subcontractor from the contractor or a subcontractor to

1 submit to such officer an "Affidavit of Wages Paid" before the funds
2 retained according to the provisions of RCW 60.28.011 are released to
3 the contractor. Each affidavit of wages paid must be certified by the
4 industrial statistician of the department of labor and industries
5 before it is submitted to said officer.

6 (2) As an alternate to the procedures provided for in subsection
7 (1) of this section, for public works projects of (~~two thousand five~~
8 ~~hundred~~) five thousand dollars or less (~~and~~), exclusive of sales
9 tax, or for projects where the limited public works process under RCW
10 39.04.155(3) is followed:

11 (a) An awarding agency may authorize the contractor or
12 subcontractor to submit the statement of intent to pay prevailing wages
13 directly to the officer or person charged with the custody or
14 disbursement of public funds in the awarding agency without approval by
15 the industrial statistician of the department of labor and industries.
16 The awarding agency shall retain such statement of intent to pay
17 prevailing wages for a period of not less than three years.

18 (b) Upon final acceptance of the public works project, the awarding
19 agency shall require the contractor or subcontractor to submit an
20 affidavit of wages paid. Upon receipt of the affidavit of wages paid,
21 the awarding agency may pay the contractor or subcontractor in full,
22 including funds that would otherwise be retained according to the
23 provisions of RCW 60.28.011. Within thirty days of receipt of the
24 affidavit of wages paid, the awarding agency shall submit the affidavit
25 of wages paid to the industrial statistician of the department of labor
26 and industries for approval.

27 (c) A statement of intent to pay prevailing wages and an affidavit
28 of wages paid shall be on forms approved by the department of labor and
29 industries.

30 (d) In the event of a wage claim and a finding for the claimant by
31 the department of labor and industries where the awarding agency has
32 used the alternative process provided for in this subsection (2) (~~of~~
33 ~~this section~~), the awarding agency shall pay the wages due directly to
34 the claimant. If the contractor or subcontractor did not pay the wages
35 stated in the affidavit of wages paid, the awarding agency may take
36 action at law to seek reimbursement from the contractor or
37 subcontractor of wages paid to the claimant, and may prohibit the

1 contractor or subcontractor from bidding on any public works contract
2 of the awarding agency for up to one year.

3 (e) Nothing in this section shall be interpreted to allow an
4 awarding agency to subdivide any public works project of more than
5 (~~two thousand five hundred~~) five thousand dollars for the purpose of
6 circumventing the procedures required by (~~RCW 39.12.040(1)~~)
7 subsection (1) of this section.

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