

- (1) Sullivan Realty, Inc., payment of judgment in State v. Black, Superior Court for Spokane County, Cause No. 247104 ..... \$ 28,346.54
- (2) Hege Co., Inc., payment of judgment in State v. Black, Superior Court for Spokane County, Cause No. 247104 ..... \$ 28,346.54
- (3) Tupper Realty, Inc., payment of judgment in State v. Black, Superior Court for Spokane County, Cause No. 247104 ..... \$ 64,474.00

NEW SECTION. Sec. 604. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 605. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 25, 1985.

Passed the Senate March 20, 1985.

Approved by the Governor April 2, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 2, 1985.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 502(5)(g), En-grossed Substitute House Bill No. 386 entitled:

"AN ACT Relating to state agencies."

The section I have vetoed was designed to correct a specific problem in one school district. Since legislative action on ESHB 386, it has come to my attention that the language may do more than intended.

The vetoed language involves complex contracting situations. Retaining the language could cause confusion among local bargaining units and administrators.

I believe the problem raised by this issue deserves a solution. I will work with the Legislature during the interim to find an appropriate one."

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CHAPTER 15

[Substitute House Bill No. 16]

PREVAILING WAGE—COMPLAINTS—INTERESTED PARTY—  
VIOLATIONS

AN ACT Relating to prevailing wage rates; amending RCW 39.12.010 and 39.12.050; and adding a new section to chapter 39.12 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 63, Laws of 1945 as amended by section 1, chapter 133, Laws of 1965 ex. sess. and RCW 39.12.010 are each amended to read as follows:

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workmen, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workmen or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workmen or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workmen, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workmen, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

**NEW SECTION.** Sec. 2. A new section is added to chapter 39.12 RCW to read as follows:

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a

hearing shall be held in accordance with chapter 34.04 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.04 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.010;

(b) The bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.120;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a

determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

Sec. 3. Section 5, chapter 63, Laws of 1945 as last amended by section 1, chapter 71, Laws of 1977 ex. sess. and RCW 39.12.050 are each amended to read as follows:

(1) Any contractor or subcontractor who ~~((shall upon oath verify any statement required to be filed under this chapter which is known by said person to be false, or is made without knowledge and in reckless disregard of the truth, shall, after a finding to that effect in a hearing held by the director of the department of labor and industries, subject to the provisions of chapter 34.04 RCW, be subject to a civil penalty not to exceed five thousand dollars, and shall not be permitted to bid on any contract covered by the provisions of this chapter until such fine has been paid in full to the director and until all wages due pursuant to the prevailing wage requirements of RCW 39.12.020 have been paid))~~ files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.04 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien ~~((of the first priority))~~ against ~~((such contractor's or subcontractor's bond according to the provisions of RCW 18.27.040))~~ the bonds and retainage as provided in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second ~~((or subsequent))~~ time within a five year period, ~~((said))~~ the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall~~((, at the discretion of the director of the department of labor and industries, be prohibited from bidding on any contract covered by the provisions of this chapter for a period of one year from the date of notice by the director of his findings that said contractor or subcontractor has violated the provisions of subsection (1) of this section for a second or subsequent time within a five year period, or during the period of any appeal thereof, in which event))~~ not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the

director's determination, the one year period shall commence from the date of the final determination ((~~from any appeal taken of the director's findings; but in no event shall any contractor or subcontractor be allowed to bid on any contract covered by the provisions of this chapter until the fine prescribed by subsection (1) of this section has been paid to the director and until all wages due pursuant to the prevailing wage requirement of RCW 39.12.020 have been paid~~) of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.04 RCW.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House February 20, 1985.

Passed the Senate March 27, 1985.

Approved by the Governor April 9, 1985.

Filed in Office of Secretary of State April 9, 1985.

## CHAPTER 16

[House Bill No. 312]

### PRIVATE SCHOOLS—SCHOOL YEAR MINIMUM OF ONE HUNDRED EIGHTY DAYS

AN ACT Relating to private schools; and amending RCW 28A.02.201.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 92, Laws of 1974 ex. sess. as last amended by section 1, chapter 56, Laws of 1983 and RCW 28A 02.201 are each amended to read as follows:

The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional