

Marsha Reilly 786-7135  
House Committee on State Government and Tribal Affairs  
January 30, 2011 (2:25 PM)

**Attachment #1**  
**SBTF Report #1 February**

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.

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

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

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

15 (2) A state agency or municipality electing to waive payment and  
16 performance bonds under subsection (1) of this act assumes the  
17 liability for the contractor's nonpayment of laborers, mechanics,  
18 subcontractors, materialpersons, suppliers, and taxes imposed under  
19 Titles 50, 51, and 81 RCW. The state agency or municipality shall

1 have the right of recovery against the contractor for any payments  
2 made on the contractor's behalf.

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

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

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

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

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

24 Each statement of intent to pay prevailing wages must be approved  
25 by the industrial statistician of the department of labor and  
26 industries before it is submitted to said officer. Unless otherwise  
27 authorized by the department of labor and industries, each voucher  
28 claim submitted by a contractor for payment on a project estimate  
29 shall state that the prevailing wages have been paid in accordance  
30 with the prefiled statement or statements of intent to pay prevailing  
31 wages on file with the public agency. Following the final acceptance  
32 of a public works project, it shall be the duty of the officer charged  
33 with the disbursement of public funds, to require the contractor and  
34 each 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~~) or for projects where  
9 the limited public works process under RCW 39.04.155(3) is followed:

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

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

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

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

1 action at law to seek reimbursement from the contractor or  
2 subcontractor of wages paid to the claimant, and may prohibit the  
3 contractor or subcontractor from bidding on any public works contract  
4 of the awarding agency for up to one year.

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

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