Committee Substitute
for
House Bill 2049

BY DELEGATES FOSTER, PORTERFIELD, WAXMAN,
KESSINGER, COWLES, HARDY, FAST AND JENNINGS

[Passed March 9, 2019; in effect ninety days from
passage.]
Committee Substitute

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House Bill 2049

By Delegates Foster, Porterfield, Waxman, Kessinger, Cowles, Hardy, Fast and Jennings

[Passed March 9, 2019; in effect ninety days from passage.]
AN ACT to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating
to a prime contractor’s responsibility for wages and benefits of employees of a
subcontractor; establishing personal and civil liability for the employer and its
shareholders, owners, directors, and officers to the prime contractor for any sums paid
under this section, including attorney’s fees; requiring notice to prime contractor by
certified mail within 100 days of the missing wages becoming payable to the employee;
institution a one-year statute of limitations; requiring the employer of the employee to
whom wages and fringe benefits are owed to whenever feasible provide immediately upon
request by the employee or the prime contractor complete payroll records relating to work
performed under the contract with the prime contractor; requiring when an employee to
whom wages and fringe benefits are due is represented by a union or other plan
administrator that the union or other plan administrator must whenever feasible
immediately upon notice of a claim cooperate with the employee and the prime contractor
to identify and quantify the wages and fringe benefits owed for work performed under the
contract with the prime contractor; providing that if the union or its agents or other plan
administrator become aware that an employer is not timely in the payment of wages and
fringe benefits the union or other plan administrator must immediately notify the affected
employee and the prime contractor for whom the affected employee provided work; and
providing that a prime contractor must notify the owner and the architect prior to the
completion of the contract if any subcontractor has not been paid in full.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-7. Prime contractor’s responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the
performance of any work which the prime contracting person has undertaken to perform for
another, the prime contractor shall become civilly liable to employees engaged in the performance
of work under the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney’s fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of the employee fails to pay the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney’s fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2019.

Governor
PRESENTED TO THE GOVERNOR

Time 12:40 pm