

# HOUSE BILL REPORT

## ESHB 2388

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As Passed House  
February 9, 1994

**Title:** An act relating to penalties for multiple failures by a contractor or subcontractor to pay the prevailing rate of wage.

**Brief Description:** Providing penalties for multiple failures by a contractor or subcontractor to pay the prevailing rate of wage.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Heavey, H. Myers, Campbell, King and Anderson; by request of Department of Labor & Industries).

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, February 1, 1994, DPS;  
Passed House, February 9, 1994, 90-4.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer and Veloria.

**Staff:** Jim Kelley (786-7166).

**Background:** Contractors on public works contracts must pay prevailing wages to their employees. Any interested party may bring a complaint to the director of Labor and Industries who will investigate the complaint to determine whether prevailing wages have been paid. If the director determines that a violation may have occurred, a hearing will be conducted.

If prevailing wages have not been paid, the public agency which awarded the contract must withhold the amount of the unpaid wages from the retainage or any contract progress payments allocable to the contractor, and the director may proceed against the contractor's bonds. In addition, the director may assess a civil penalty of \$1,000, or 29 percent

of the total prevailing wage violation, whichever is greater. The civil penalty does not apply to inadvertent filing or reporting errors.

Penalties for violations of the requirement to file certain records regarding prevailing wage payments include a prohibition from bidding on public works projects for one year, when two violations of the filing requirements are found within a five-year period. That penalty does not extend to violations of the requirement to pay prevailing wages.

**Summary of Bill:** If a contractor or subcontractor is found to have participated in violating the requirement to pay prevailing wages for a second time within a five-year period, the contractor or subcontractor is subject to the statutory civil penalties and shall not be allowed to bid on any public works contract for two years. This sanction also applies when one of the violations was a violation of the requirement to pay the prevailing wage under federal or other state law. The bidding sanction does not apply to a contractor who failed to pay the prevailing wage because he or she relied on incorrect written information from the department. In the case of a failure to pay the prevailing wage, the department may only proceed against the contractor's or subcontractor's bond if the contractor or subcontractor was the claimant's employer.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) Currently penalties for failure to pay the minimum wage are limited to recovery of the unpaid wages and a 20 percent monetary penalty. This penalty is not enough. If contractors are prohibited from bidding, it will serve as a strong deterrent.

**Testimony Against:** (Original bill) Contractors are not opposed to punishing intentional prevailing wage violations. However, clarifications are needed in this bill to ensure that paperwork violations do not result in a bidding sanction. Also, it is important that contractors not be penalized for relying on incorrect information from the department.

**Witnesses:** (In favor) Joe Brewer and Greg Mowat, Department of Labor and Industries; Allan Darr, Operating Engineers; (opposed to original bill) Rick Slunaker, Association of General Contractors; and Cliff Webster, Association of Builders and Contractors.