

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2388**

53rd Legislature  
1994 Regular Session

Passed by the House February 9, 1994  
Yeas 90 Nays 4

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**Speaker of the  
House of Representatives**

Passed by the Senate February 28, 1994  
Yeas 33 Nays 15

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2388** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 2388**

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Passed Legislature - 1994 Regular Session

**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**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)

Read first time 02/02/94.

1       AN ACT Relating to penalties for multiple failures by a contractor  
2 or subcontractor to pay the prevailing rate of wage; amending RCW  
3 39.12.065; and prescribing penalties.

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

5       **Sec. 1.** RCW 39.12.065 and 1985 c 15 s 2 are each amended to read  
6 as follows:

7       (1) Upon complaint by an interested party, the director of labor  
8 and industries shall cause an investigation to be made to determine  
9 whether there has been compliance with this chapter and the rules  
10 adopted hereunder, and if the investigation indicates that a violation  
11 may have occurred, a hearing shall be held in accordance with chapter  
12 34.05 RCW. The director shall issue a written determination including  
13 his or her findings after the hearing. A judicial appeal from the  
14 director's determination may be taken in accordance with chapter 34.05  
15 RCW, with the prevailing party entitled to recover reasonable costs and  
16 attorneys fees.

17       A complaint concerning nonpayment of the prevailing rate of wage  
18 shall be filed with the department of labor and industries no later  
19 than thirty days from the acceptance date of the public works project.

1 The failure to timely file such a complaint shall not prohibit a  
2 claimant from pursuing a private right of action against a contractor  
3 or subcontractor for unpaid prevailing wages. The remedy provided by  
4 this section is not exclusive and is concurrent with any other remedy  
5 provided by law.

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

15 (a) The retainage or bond in lieu of retainage as provided in RCW  
16 60.28.010;

17 (b) If the claimant was employed by the contractor or subcontractor  
18 on the public works project, the bond filed by the contractor or  
19 subcontractor with the department of labor and industries as provided  
20 in RCW 18.27.040 and 19.28.120;

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

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

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

32 (3) A contractor or subcontractor that is found, in accordance with  
33 subsection (1) of this section, to have violated the requirement to pay  
34 the prevailing rate of wage shall be subject to a civil penalty of not  
35 less than one thousand dollars or an amount equal to twenty percent of  
36 the total prevailing wage violation found on the contract, whichever is  
37 greater, and shall not be permitted to bid, or have a bid considered,  
38 on any public works contract until such civil penalty has been paid in  
39 full to the director. If a contractor or subcontractor is found to

1 have participated in a violation of the requirement to pay the  
2 prevailing rate of wage for a second time within a five-year period,  
3 the contractor or subcontractor shall be subject to the sanctions  
4 prescribed in this subsection and as an additional sanction shall not  
5 be allowed to bid on any public works contract for two years. If a  
6 previous or subsequent violation of a requirement to pay a prevailing  
7 rate of wage under federal or other state law is found against the  
8 contractor or subcontractor within five years from a violation under  
9 this section, the contractor or subcontractor shall not be allowed to  
10 bid on any public works contract for two years. A contractor or  
11 subcontractor shall not be barred from bidding on any public works  
12 contract if the contractor or subcontractor relied upon written  
13 information from the department to pay a prevailing rate of wage that  
14 is later determined to be in violation of this chapter. The civil  
15 penalty and sanctions under this subsection shall not apply to a  
16 violation determined by the director to be an inadvertent filing or  
17 reporting error. To the extent that a contractor or subcontractor has  
18 not paid the prevailing wage rate under a determination issued as  
19 provided in subsection (1) of this section, the unpaid wages shall  
20 constitute a lien against the bonds and retainage as provided herein  
21 and in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

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