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**SUBSTITUTE HOUSE BILL 2388**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Energy & Utilities (originally sponsored by Representatives Crouse, Casada, Kessler, Mastin, Hankins, Poulsen, Patterson, Mitchell and Chandler)

Read first time 01/26/96.

1 AN ACT Relating to the satisfaction of unrecorded utility liens at  
2 the time of sale of real property; adding a new chapter to Title 60  
3 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout this  
7 chapter:

8 (1) Except as otherwise provided in this subsection (1), "charges"  
9 include: (a) All lawful charges assessed by a utility operated under  
10 chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW,  
11 but not evidenced by a recorded lien, recorded covenant, recorded  
12 agreement, or special assessment roll filed with the city or county  
13 treasurer or assessor, and not billed and collected with property  
14 taxes; and (b) penalties and interest, and reasonable attorneys' fees  
15 and other costs of foreclosure if foreclosure proceedings have been  
16 commenced.

17 (2) "Closing agent" means an escrow agent as defined in RCW  
18 18.44.010(4) or a person exempt from licensing and registration

1 requirements under RCW 18.44.020, handling the escrow on the sale of  
2 the real property.

3 (3) "Real estate agent" means a real estate broker, real estate  
4 salesperson, associate real estate broker, or person as defined in RCW  
5 18.85.010 (1) through (4).

6 (4) "Business day" means a day the offices of the county or  
7 counties in which the utility in question provides service are open for  
8 business.

9 NEW SECTION. **Sec. 2.** (1) Unless otherwise stated and acknowledged  
10 in writing by the purchaser, the seller of a fee interest in real  
11 property is responsible for satisfying, upon closing, any lien provided  
12 for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150,  
13 56.16.100, 57.08.080, or 87.03.445.

14 (2) No closing agent may refuse a written request by the seller or  
15 purchaser of a fee interest in real property to administer the  
16 disbursement of closing funds necessary to satisfy unpaid charges as  
17 charges are defined in section 1 of this act. Except as otherwise  
18 provided in this subsection (2), a closing agent who refuses such a  
19 written request is liable to the purchaser for unpaid charges for  
20 utility services covered by the request. A closing agent is not liable  
21 if the closing agent's refusal is based on the seller's inaccurate or  
22 incomplete identification of utilities providing service to the  
23 property, or if a utility fails to provide an estimated or actual final  
24 billing, or written extension of the per diem rate, as required by  
25 section 3 of this act, or if disbursement of closing funds necessary to  
26 satisfy the unpaid charges would violate RCW 18.44.070.

27 (3) A closing agent may charge a fee for performing the services  
28 required of the closing agent by this chapter, which fee may be in  
29 addition to other fees or settlement charges collected in the course of  
30 ordinary settlement practices.

31 NEW SECTION. **Sec. 3.** (1) Unless the seller and purchaser waive,  
32 in writing, the services of a closing agent in administering the  
33 disbursement of closing funds necessary to satisfy unpaid charges as  
34 charges are defined in section 1 of this act, the seller shall, as a  
35 provision in a written agreement for the purchase and sale of real  
36 estate, inform the closing agent for the sale of the names and  
37 addresses of all utilities, including special districts, providing

1 service to the property under chapter 35.21, 35.67, 36.36, 36.89,  
2 36.94, 56.16, 57.08, or 87.03 RCW. The provision of the information in  
3 a written agreement for the purchase and sale of real estate  
4 constitutes a written request to the closing agent to administer  
5 disbursement of closing funds necessary to satisfy unpaid charges.

6 Unless the seller and purchaser have waived the services of a  
7 closing agent as provided in this subsection, the closing agent shall  
8 submit a written request for a final billing to each utility identified  
9 by the seller as providing service to the property under chapter 35.21,  
10 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW. Either the  
11 seller or purchaser may submit a written request for a final billing to  
12 each utility identified by the seller as providing service to the  
13 property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08,  
14 or 87.03 RCW.

15 The written request must identify the property by both legal  
16 description and address. The closing agent, seller, or purchaser may  
17 submit a written request to a utility by facsimile. In requesting  
18 final billings for utility services, the closing agent may rely upon  
19 information provided by the seller, and a closing agent or a real  
20 estate agent who is not the seller is not liable for inaccurate or  
21 incomplete information.

22 (2) After receiving a written request for a final billing for  
23 utility services to real property to be sold, a utility operated under  
24 chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW  
25 shall provide the requesting party with a written estimated or actual  
26 final billing as provided in this section. If the utility is unable to  
27 provide a written estimated or actual final billing or written  
28 extension of the per diem rate, due to insufficient information to  
29 identify the account, the utility shall notify the requesting party in  
30 writing that the information is insufficient to identify the account.

31 The utility shall provide the written estimated or actual final  
32 billing, or statement that the information in the request is  
33 insufficient to identify the account, to the requesting party within  
34 seven business days of receipt of the written request if the request  
35 was mailed to the utility, or within three business days if the request  
36 was sent to the utility by facsimile or delivered to the utility by  
37 messenger. A utility may provide a written estimated or actual final  
38 billing to the requesting party by facsimile.

1 (a) The final billing must include all outstanding charges and, in  
2 addition to the estimated or actual final amount owing as of the stated  
3 closing date, must state the average per diem rate for the utility or  
4 utilities involved, including taxes and other charges, which shall  
5 apply for up to thirty days beyond the stated closing date if the  
6 closing date is delayed.

7 (b) If closing is delayed beyond thirty days, a new estimated or  
8 actual final billing must be requested in writing. In lieu of  
9 furnishing a written revised final billing, the utility may extend, in  
10 writing, the number of days for which the per diem charge applies. The  
11 utility shall respond within seven business days of receipt of the  
12 written request for a new estimated or actual final billing if the  
13 request was mailed to the utility, or within three business days if the  
14 request was sent to the utility by facsimile or delivered to the  
15 utility by messenger.

16 (c) If a utility fails to provide a written estimated or actual  
17 final billing, written extension of the per diem rate, or statement  
18 that the information in the request is insufficient to identify the  
19 account, within seven business days of receipt of a written request if  
20 the request was mailed to the utility, or within three business days if  
21 the request was sent to the utility by facsimile or delivered to the  
22 utility by messenger, an unrecorded lien provided for by RCW 35.21.290,  
23 35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or  
24 87.03.445 for charges incurred prior to the closing date is  
25 extinguished, and the utility may not recover the charges from the  
26 purchaser of the property.

27 (d) A closing agent shall inform the seller and purchaser of all  
28 applicable estimated and actual final billings furnished by utilities.

29 In performing his or her duties under this chapter, a closing agent  
30 may rely upon information provided by utilities and is not liable if  
31 information provided by utilities is inaccurate or incomplete.

32 (3) If closing occurs no later than the last date for which per  
33 diem charges may be applied, full payment of the estimated or actual  
34 final billing plus per diem charges extinguishes a lien of the utility  
35 provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090,  
36 36.94.150, 56.16.100, 57.08.080, or 87.03.445 for charges incurred  
37 prior to the closing date.

38 (4)(a) Except as otherwise provided in this subsection (4)(a), this  
39 section does not limit the right of a utility to recover from the

1 purchaser of the property unpaid utility charges incurred prior to  
2 closing, if the utility did not receive a written request for a final  
3 billing or if the utility complied with subsection (2) of this section.

4 A utility may not recover from a purchaser unpaid utility charges  
5 incurred prior to closing in excess of an estimated final billing.

6 (b) This section does not limit the right of a utility to recover  
7 unpaid utility charges incurred prior to closing, including unpaid  
8 utility charges in excess of an estimated final billing, from the  
9 seller of the property, or from the person or persons who incurred the  
10 charges.

11 (c) If an estimated final billing is in excess of the actual final  
12 billing, unless otherwise directed in writing by the seller and  
13 purchaser, a utility shall refund any overcharge to the seller of the  
14 property by sending the refund in the seller's name to the last address  
15 provided by the seller. A utility shall refund the overcharge within  
16 fourteen business days of the date the utility receives payment for the  
17 final billing, unless a county treasurer acts in an ex officio capacity  
18 as the treasurer of a utility, in which case the utility shall refund  
19 the overcharge within thirty business days of the date the utility  
20 receives payment for the final billing.

21 NEW SECTION. **Sec. 4.** This act shall take effect January 1, 1997.

22 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act shall  
23 constitute a new chapter in Title 60 RCW.

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