

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1138

57th Legislature
2001 Regular Session

Passed by the House March 13, 2001
Yeas 94 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 9, 2001
Yeas 43 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1138** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

Secretary of State
State of Washington

HOUSE BILL 1138

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Representatives Cairnes, Conway, Campbell, Dunshee, O'Brien,
Cooper, Simpson, Roach, Kenney, D. Schmidt, Kirby and Keiser

Read first time 01/18/2001. Referred to Committee on Commerce &
Labor.

1 AN ACT Relating to prevailing wage civil penalties; and
2 amending RCW 39.12.050, 39.12.065, and 39.12.080.

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

4 **Sec. 1.** RCW 39.12.050 and 1985 c 15 s 3 are each amended to read
5 as follows:

6 (1) Any contractor or subcontractor who files a false statement
7 or fails to file any statement or record required to be filed
8 under this chapter and the rules adopted under this chapter,
9 shall, after a determination to that effect has been issued by the
10 director after hearing under chapter 34.05 RCW, forfeit as a civil
11 penalty the sum of five hundred dollars for each false filing or
12 failure to file, and shall not be permitted to bid, or have a bid
13 considered, on any public works contract until the penalty has
14 been paid in full to the director. The civil penalty under this
15 subsection shall not apply to a violation determined by the
16 director to be an inadvertent filing or reporting error. Civil
17 penalties shall be deposited in the public works administration
18 account.

1 To the extent that a contractor or subcontractor has not paid
2 wages at the rate due pursuant to RCW 39.12.020, and a finding to
3 that effect has been made as provided by this subsection, such
4 unpaid wages shall constitute a lien against the bonds and
5 retainage as provided in RCW 18.27.040, (~~19.28.120~~) 19.28.041,
6 39.08.010, and 60.28.010.

7 (2) If a contractor or subcontractor is found to have violated
8 the provisions of subsection (1) of this section for a second time
9 within a five year period, the contractor or subcontractor shall
10 be subject to the sanctions prescribed in subsection (1) of this
11 section and shall not be allowed to bid on any public works
12 contract for one year. The one year period shall run from the
13 date of notice by the director of the determination of
14 noncompliance. When an appeal is taken from the director's
15 determination, the one year period shall commence from the date of
16 the final determination of the appeal.

17 The director shall issue his or her findings that a contractor
18 or subcontractor has violated the provisions of this subsection
19 after a hearing held subject to the provisions of chapter 34.05
20 RCW.

21 **Sec. 2.** RCW 39.12.065 and 1994 c 88 s 1 are each amended to read
22 as follows:

23 (1) Upon complaint by an interested party, the director of
24 labor and industries shall cause an investigation to be made to
25 determine whether there has been compliance with this chapter and
26 the rules adopted hereunder, and if the investigation indicates
27 that a violation may have occurred, a hearing shall be held in
28 accordance with chapter 34.05 RCW. The director shall issue a
29 written determination including his or her findings after the
30 hearing. A judicial appeal from the director's determination may
31 be taken in accordance with chapter 34.05 RCW, with the prevailing
32 party entitled to recover reasonable costs and attorneys fees.

33 A complaint concerning nonpayment of the prevailing rate of
34 wage shall be filed with the department of labor and industries no
35 later than thirty days from the acceptance date of the public
36 works project. The failure to timely file such a complaint shall
37 not prohibit a claimant from pursuing a private right of action

1 against a contractor or subcontractor for unpaid prevailing
2 wages. The remedy provided by this section is not exclusive and
3 is concurrent with any other remedy provided by law.

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

13 (a) The retainage or bond in lieu of retainage as provided in
14 RCW 60.28.010;

15 (b) If the claimant was employed by the contractor or
16 subcontractor on the public works project, the bond filed by the
17 contractor or subcontractor with the department of labor and
18 industries as provided in RCW 18.27.040 and (~~19.28.120~~)
19 19.28.041;

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

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

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

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

1 director. If a contractor or subcontractor is found to have
2 participated in a violation of the requirement to pay the
3 prevailing rate of wage for a second time within a five-year
4 period, the contractor or subcontractor shall be subject to the
5 sanctions prescribed in this subsection and as an additional
6 sanction shall not be allowed to bid on any public works contract
7 for two years. Civil penalties shall be deposited in the public
8 works administration account. If a previous or subsequent
9 violation of a requirement to pay a prevailing rate of wage under
10 federal or other state law is found against the contractor or
11 subcontractor within five years from a violation under this
12 section, the contractor or subcontractor shall not be allowed to
13 bid on any public works contract for two years. A contractor or
14 subcontractor shall not be barred from bidding on any public works
15 contract if the contractor or subcontractor relied upon written
16 information from the department to pay a prevailing rate of wage
17 that is later determined to be in violation of this chapter. The
18 civil penalty and sanctions under this subsection shall not apply
19 to a violation determined by the director to be an inadvertent
20 filing or reporting error. To the extent that a contractor or
21 subcontractor has not paid the prevailing wage rate under a
22 determination issued as provided in subsection (1) of this
23 section, the unpaid wages shall constitute a lien against the
24 bonds and retainage as provided herein and in RCW 18.27.040,
25 (~~19.28.120~~) 19.28.041, 39.08.010, and 60.28.010.

26 **Sec. 3.** RCW 39.12.080 and 1993 c 404 s 2 are each amended to read
27 as follows:

28 The public works administration account is created in the state
29 treasury. The department of labor and industries shall deposit in
30 the account all moneys received from fees or civil penalties
31 collected under RCW 39.12.050, 39.12.065, and 39.12.070.
32 Appropriations from the account, not including moneys transferred
33 to the general fund pursuant to RCW 39.12.070, may be made only
34 for the purposes of administration of this chapter, including, but
35 not limited to, the performance of adequate wage surveys, and for
36 the investigation and enforcement of all alleged violations of

1 this chapter as provided for in this chapter and chapters 49.48
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