

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1138**

Chapter 219, Laws of 2001

57th Legislature  
2001 Regular Session

PREVAILING WAGE CIVIL PENALTIES

EFFECTIVE DATE: 7/22/01

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

FRANK CHOPP

**Speaker of the House of Representatives**

CLYDE BALLARD

**Speaker of the House of Representatives**

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

BRAD OWEN

**President of the Senate**

Approved May 9, 2001.

GARY LOCKE

**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.

TIMOTHY A. MARTIN

**Chief Clerk**

CYNTHIA ZEHNDER

**Chief Clerk**

FILED

May 9, 2001 - 8:41 a.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 1138

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

18 To the extent that a contractor or subcontractor has not paid wages  
19 at the rate due pursuant to RCW 39.12.020, and a finding to that effect

1 has been made as provided by this subsection, such unpaid wages shall  
2 constitute a lien against the bonds and retainage as provided in RCW  
3 18.27.040, (~~(19.28.120)~~) 19.28.041, 39.08.010, and 60.28.010.

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

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

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

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

28 A complaint concerning nonpayment of the prevailing rate of wage  
29 shall be filed with the department of labor and industries no later  
30 than thirty days from the acceptance date of the public works project.  
31 The failure to timely file such a complaint shall not prohibit a  
32 claimant from pursuing a private right of action against a contractor  
33 or subcontractor for unpaid prevailing wages. The remedy provided by  
34 this section is not exclusive and is concurrent with any other remedy  
35 provided by law.

36 (2) To the extent that a contractor or subcontractor has not paid  
37 the prevailing rate of wage under a determination issued as provided in  
38 subsection (1) of this section, the director shall notify the agency

1 awarding the public works contract of the amount of the violation  
2 found, and the awarding agency shall withhold, or in the case of a  
3 bond, the director shall proceed against the bond in accordance with  
4 the applicable statute to recover, such amount from the following  
5 sources in the following order of priority until the total of such  
6 amount is withheld:

7 (a) The retainage or bond in lieu of retainage as provided in RCW  
8 60.28.010;

9 (b) If the claimant was employed by the contractor or subcontractor  
10 on the public works project, the bond filed by the contractor or  
11 subcontractor with the department of labor and industries as provided  
12 in RCW 18.27.040 and (~~19.28.120~~) 19.28.041;

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

16 (d) That portion of the progress payments which is properly  
17 allocable to the contractor or subcontractor who is found to be in  
18 violation of this chapter. Under no circumstances shall any portion of  
19 the progress payments be withheld that are properly allocable to a  
20 contractor, subcontractor, or supplier, that is not found to be in  
21 violation of this chapter.

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

24 (3) A contractor or subcontractor that is found, in accordance with  
25 subsection (1) of this section, to have violated the requirement to pay  
26 the prevailing rate of wage shall be subject to a civil penalty of not  
27 less than one thousand dollars or an amount equal to twenty percent of  
28 the total prevailing wage violation found on the contract, whichever is  
29 greater, and shall not be permitted to bid, or have a bid considered,  
30 on any public works contract until such civil penalty has been paid in  
31 full to the director. If a contractor or subcontractor is found to  
32 have participated in a violation of the requirement to pay the  
33 prevailing rate of wage for a second time within a five-year period,  
34 the contractor or subcontractor shall be subject to the sanctions  
35 prescribed in this subsection and as an additional sanction shall not  
36 be allowed to bid on any public works contract for two years. Civil  
37 penalties shall be deposited in the public works administration  
38 account. If a previous or subsequent violation of a requirement to pay  
39 a prevailing rate of wage under federal or other state law is found

1 against the contractor or subcontractor within five years from a  
2 violation under this section, the contractor or subcontractor shall not  
3 be allowed to bid on any public works contract for two years. A  
4 contractor or subcontractor shall not be barred from bidding on any  
5 public works contract if the contractor or subcontractor relied upon  
6 written information from the department to pay a prevailing rate of  
7 wage that is later determined to be in violation of this chapter. The  
8 civil penalty and sanctions under this subsection shall not apply to a  
9 violation determined by the director to be an inadvertent filing or  
10 reporting error. To the extent that a contractor or subcontractor has  
11 not paid the prevailing wage rate under a determination issued as  
12 provided in subsection (1) of this section, the unpaid wages shall  
13 constitute a lien against the bonds and retainage as provided herein  
14 and in RCW 18.27.040, (~~19.28.120~~) 19.28.041, 39.08.010, and  
15 60.28.010.

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

18 The public works administration account is created in the state  
19 treasury. The department of labor and industries shall deposit in the  
20 account all moneys received from fees or civil penalties collected  
21 under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the  
22 account, not including moneys transferred to the general fund pursuant  
23 to RCW 39.12.070, may be made only for the purposes of administration  
24 of this chapter, including, but not limited to, the performance of  
25 adequate wage surveys, and for the investigation and enforcement of all  
26 alleged violations of this chapter as provided for in this chapter and  
27 chapters 49.48 and 49.52 RCW.

Passed the House March 13, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.