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 CHAPTER 177

[House Bill No. 150]

## PUBLIC WORKS—PREVAILING WAGE

AN ACT Relating to public work; and amending section 1, chapter 183, Laws of 1923 and RCW 39.04.010.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 183, Laws of 1923 and RCW 39.04.010 are each amended to read as follows:

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein, but nothing herein shall apply to the construction, alteration, repair, or improvement of any municipal street railway system. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020.

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid.

Cost of superintendence, engineering, clerical and accounting service shall include all expenditures specially incurred for such service, and shall include a proportionate charge for the time of all salaried officers, engineers, clerks, accountants and employees of the state or municipality while engaged in such work or in keeping or preparing the estimates, accounts and records thereof.

Passed the House May 27, 1977.

Passed the Senate May 25, 1977.

Approved by the Governor June 7, 1977.

Filed in Office of Secretary of State June 7, 1977.

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 CHAPTER 178

[House Bill No. 338]

## BANKS AND TRUST COMPANIES—UNLAWFUL, UNSAFE, OR UNSOUND PRACTICES

AN ACT Relating to banks and trust companies; amending section 30.12.040, chapter 33, Laws of 1955 and RCW 30.12.040; adding new sections to chapter 30.04 RCW; adding new sections to chapter 30.12 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Section 1. There is added to chapter 30.04 RCW a new section to read as follows:

(1) The supervisor may issue and serve upon a bank or trust company a notice of charges if in the opinion of the supervisor any bank or trust company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the bank or trust company;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the bank or trust company or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank or trust company. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the bank or trust company.

Unless the bank or trust company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the bank or trust company an order to cease and desist from the violation or practice. The order may require the bank or trust company and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank or trust company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court.

**NEW SECTION.** Sec. 2. There is added to chapter 30.04 RCW a new section to read as follows:

Whenever the supervisor determines that the acts specified in section 1 of this 1977 amendatory act or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the supervisor may also issue a temporary order requiring the bank or trust company to cease and desist from the violation or practice. The order shall become effective upon service on the bank or trust company and shall remain effective unless set aside, limited, or suspended by a court in proceedings under section 3 of this 1977 amendatory act pending the completion of the administrative proceedings under the notice and until such time

as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank or trust company under section 1 of this 1977 amendatory act.

NEW SECTION. Sec. 3. There is added to chapter 30.04 RCW a new section to read as follows:

Within ten days after a bank or trust company has been served with a temporary cease and desist order, the bank or trust company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under section 2 of this 1977 amendatory act.

The superior court shall have jurisdiction to issue the injunction.

NEW SECTION. Sec. 4. There is added to chapter 30.04 RCW a new section to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under section 2 of this 1977 amendatory act, the supervisor may apply to the superior court of the county of the principal place of business of the bank or trust company for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 5. Section 30.12.040, chapter 33, Laws of 1955 and RCW 30.12.040 are each amended to read as follows:

The supervisor may serve upon a director, officer, or employee of any bank or trust company a written notice of the supervisor's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank or trust company, or both, whenever:

(1) In the opinion of the supervisor ((shall find that)) any director, officer, or employee of any bank or trust company ((is dishonest, reckless or incompetent, or fails to perform any duty of his office, or)) has ((consented to or connived at the making of any loan or discount in violation of law or has consented to or connived at)) committed or engaged in:

(a) Any ((other)) violation of law ((by the corporation, he shall notify the board of directors of such corporation in writing of his objections to such director, officer or employee, and such board shall, within twenty days after receiving such notification and upon reasonable notice to the supervisor and to such director, officer or employee of the time and place of the hearing, meet and consider such objections. If the board shall find the objections to be well founded, such director, officer or employee shall be immediately removed.

~~If upon the hearing the director, officer or employee against whom the objections have been filed is not immediately removed, or if the board fail to meet, consider or act upon the objections within twenty days after receiving the same, the supervisor may forthwith or within thirty days thereafter, by an order in writing filed in his office, remove such director, officer or employee from his directorship, office or employment, or may, for a limited time to be stated in the order, suspend such director, officer or employee therefrom. A copy of the order shall be forthwith mailed to the person removed or suspended and to the bank or trust company.~~

~~No director, officer or employee removed upon objections or by the order of the supervisor shall thereafter be elected or appointed to any directorship, office, trust or employment by the same or another bank or trust company without the written consent of the supervisor.~~

~~The order of the supervisor suspending or removing a director, officer or employee shall be final and conclusive unless the person suspended or removed shall appeal to the superior court of Thurston county within the time and in the manner provided by law for appeals from the refusal of the supervisor to approve articles of incorporation. Upon the appeal the controversy shall be tried de novo. The order of the supervisor shall remain in full force and effect pending the appeal unless suspended by order of the court:)) or rule or of a cease and desist order which has become final;~~

~~(b) Any unsafe or unsound practice in connection with the bank or trust company; or~~

~~(c) Any act, omission, or practice which constitutes a breach of his fiduciary duty as director, officer, or employee; and~~

~~(2) The supervisor determines that:~~

~~(a) The bank or trust company has suffered or may suffer substantial financial loss or other damage; or~~

~~(b) The interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and~~

~~(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee.~~

NEW SECTION. Sec. 6. There is added to chapter 30.12 RCW a new section to read as follows:

A notice of an intention to remove a director, officer, or employee from office or to prohibit his participation in the conduct of the affairs of a bank or trust company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the supervisor at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the supervisor finds that any of the grounds specified in the notice have been established, the supervisor may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank or trust company as the supervisor may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the supervisor or a reviewing court.

NEW SECTION. Sec. 7. There is added to chapter 30.12 RCW a new section to read as follows:

If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank or trust company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank or trust company are removed under this chapter, the supervisor shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

NEW SECTION. Sec. 8. There is added to chapter 30.04 RCW a new section to read as follows:

(1) Any administrative hearing provided in sections 1 or 6 of this 1977 amendatory act may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.04 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the supervisor shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with sections 1 or 6 of this 1977 amendatory act, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank or trust company under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as he shall deem proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under sections 1, 2, 4, or 6 of this 1977 amendatory act to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank or trust company within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

(4) Service of any notice or order required to be served under sections 1, 2, 5 or 6 of this 1977 amendatory act shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

NEW SECTION. Sec. 9. There is added to chapter 30.04 RCW a new section to read as follows:

The supervisor may apply to the superior court of the county of the principal place of business of the bank or trust company affected for the enforcement of any effective and outstanding order issued under sections 1, 2, 4, or 6 of this act, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in sections 3 and 8 of this 1977 amendatory act.

NEW SECTION. Sec. 10. There is added to chapter 30.12 RCW a new section to read as follows:

Any present or former director, officer, or employee of a bank or trust company or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank or trust company involved; or who directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the bank or trust company; or who, without the prior approval of the supervisor, votes for a director or serves or acts as a director, officer, employee, or agent of any bank or trust company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended.

NEW SECTION. Sec. 11. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the House March 11, 1977.

Passed the Senate May 27, 1977.

Approved by the Governor June 7, 1977.

Filed in Office of Secretary of State June 7, 1977.

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## CHAPTER 179

[House Bill No. 382]

### SALES AND USE TAX EXEMPTION—PRESCRIPTION DRUG SALE TO PUBLIC BODIES

AN ACT Relating to state sales and use taxes; amending section 82.08.030, chapter 15, Laws of 1961 as last amended by section 10, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.08.030; amending section 82.12.030, chapter 15, Laws of 1961 as last amended by section 11, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.12.030; prescribing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 82.08.030, chapter 15, Laws of 1961 as last amended by section 10, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.08.030 are each amended to read as follows: