



## CASE REPORT

**PUBLIC CONTRACTING – PREVAILING WAGE REQUIREMENTS – DETERMINATION OF “PUBLIC WORK”.** Private construction projects receiving a majority of their funding from governmental sources are “public works” subject to prevailing wage requirements. Supporters of the Center, Inc. v. Moore, 119 Wn. App. 352, 80 P.3d 618 (2003).

**I. Facts.** Supporters of the Center, Inc. (SOC), a private, nonprofit corporation formed for the purpose of financing, constructing and managing a performing arts center, entered into a long-term lease with the City of Wenatchee to construct this facility on City property. Although SOC itself retained direct contracting authority during the construction process, approximately 52 percent of the center’s funding derived from public sources, and the improved property would revert to City ownership following expiration of the lease.

The Department of Labor and Industries (L&I) subsequently determined that SOC had violated Chapter 39.12 RCW, under which contractors must pay prevailing wages for all “public works.” SOC challenged L&I’s decision in the Superior Court, which concluded that construction of the performing arts center was exempt from prevailing wage requirements due to SOC’s status as a private organization. L&I appealed the Superior Court’s ruling to the Court of Appeals.

**II. Applicable Law and Analysis.** The appellate court ultimately reversed the Superior Court and held SOC’s construction of the performing arts center was subject to prevailing wage requirements. Specifically at issue on appeal was the extent to which the center had been “executed at the cost of the state” as defined under RCW 39.12.010. Although the court acknowledged that “there is no bright-line definition of when a project is executed at the cost of the state”, it concluded that SOC’s performing arts center met this standard. Central to the appellate court’s reasoning was the fact that (1) over half of the center’s funding derived from governmental sources, (2) the center was constructed on real property owned by and leased from the City of Wenatchee, (3) the language of SOC’s capital contract characterized the center as belonging to the City. As a result of this “close, ongoing relationship” between the City and SOC, the court concluded that the performing arts center was “executed at the cost of the state” and thus constituted a public work for which contractors were required to pay prevailing wages.

**III. Conclusion.** The *SOC* case continues a growing judicial trend of broadly construing the statutory definition of “public work”, and underscores the deference courts grant to L&I interpretations of that term. Cities are advised to consult with legal counsel as early as possible in determining whether a particular public/private project is subject to prevailing wage requirements.