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**SUBSTITUTE SENATE BILL 5067**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Keiser, Kohl-Welles, Conway, and Chase; by request of Department of Labor & Industries)

READ FIRST TIME 01/25/11.

1       AN ACT Relating to changing the certified and registered mail  
2 requirements of the department of labor and industries and employment  
3 security department; and amending RCW 18.27.060, 18.27.230, 18.106.100,  
4 18.106.180, 19.28.131, 19.28.271, 19.28.341, 19.28.490, 43.22.435,  
5 43.22A.080, 43.22A.130, 49.17.140, 49.26.110, 49.40.060, 49.48.083,  
6 50.20.190, 50.24.070, 50.24.110, 50.24.115, 70.79.320, 70.87.125,  
7 70.87.185, and 70.87.205.

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

9       **Sec. 1.** RCW 18.27.060 and 2006 c 185 s 14 are each amended to read  
10 as follows:

11       (1) A certificate of registration shall be valid for two years and  
12 shall be renewed on or before the expiration date. The department  
13 shall issue to the applicant a certificate of registration upon  
14 compliance with the registration requirements of this chapter.

15       (2) If the department approves an application, it shall issue a  
16 certificate of registration to the applicant.

17       (3) If a contractor's surety bond or other security has an  
18 unsatisfied judgment against it or is canceled, or if the contractor's  
19 insurance policy is canceled, the contractor's registration shall be

1 automatically suspended on the effective date of the impairment or  
2 cancellation. The department shall mail notice of the suspension to  
3 the contractor's address on the certificate of registration (~~by~~  
4 ~~certified and by first class mail~~) within two days after suspension  
5 using a method by which the mailing can be tracked or the delivery can  
6 be confirmed.

7 (4) Renewal of registration is valid on the date the department  
8 receives the required fee and proof of bond and liability insurance, if  
9 sent by certified mail or other means requiring proof of delivery. The  
10 receipt or proof of delivery shall serve as the contractor's proof of  
11 renewed registration until he or she receives verification from the  
12 department.

13 (5) The department shall immediately suspend the certificate of  
14 registration of a contractor who has been certified by the department  
15 of social and health services as a person who is not in compliance with  
16 a support order or a visitation order as provided in RCW 74.20A.320.  
17 The certificate of registration shall not be reissued or renewed unless  
18 the person provides to the department a release from the department of  
19 social and health services stating that he or she is in compliance with  
20 the order and the person has continued to meet all other requirements  
21 for certification during the suspension.

22 (6) For a contractor who employs plumbers, as described in RCW  
23 18.106.010(10)(c), and is also required to be licensed as an electrical  
24 contractor as required in RCW 19.28.041, while doing pump and  
25 irrigation or domestic pump work described in rule as authorized by RCW  
26 19.28.251, the department shall establish a single  
27 registration/licensing document for those who qualify for both general  
28 contractor registration as defined by this chapter and an electrical  
29 contractor license as defined by chapter 19.28 RCW.

30 **Sec. 2.** RCW 18.27.230 and 2007 c 436 s 12 are each amended to read  
31 as follows:

32 The department may issue a notice of infraction if the department  
33 reasonably believes that the contractor has committed an infraction  
34 under this chapter. A notice of infraction issued under this section  
35 shall be personally served on the contractor named in the notice by the  
36 department's compliance inspectors or service can be made (~~by~~  
37 ~~certified mail~~) using a method by which the mailing can be tracked or

1 the delivery can be confirmed directed to the contractor named in the  
2 notice of infraction at the contractor's last known address of record.  
3 If the contractor named in the notice of infraction is a firm or  
4 corporation, the notice may be personally served on any employee of the  
5 firm or corporation. If a notice of infraction is personally served  
6 upon an employee of a firm or corporation, the department shall send a  
7 copy of the notice (~~((by mail, return receipt requested,))~~) using a  
8 method by which the mailing can be tracked or the delivery can be  
9 confirmed to the contractor if the department is able to obtain the  
10 contractor's address.

11 **Sec. 3.** RCW 18.106.100 and 1996 c 147 s 3 are each amended to read  
12 as follows:

13 (1) The department may revoke or suspend a certificate of  
14 competency for any of the following reasons:

15 (a) The certificate was obtained through error or fraud;

16 (b) The certificate holder is judged to be incompetent to carry on  
17 the trade of plumbing as a journeyman plumber or specialty plumber;

18 (c) The certificate holder has violated any provision of this  
19 chapter or any rule adopted under this chapter.

20 (2) Before a certificate of competency is revoked or suspended, the  
21 department shall send written notice (~~((by registered mail with return~~  
22 ~~receipt requested))~~) using a method by which the mailing can be tracked  
23 or the delivery can be confirmed to the certificate holder's last known  
24 address. The notice must list the allegations against the certificate  
25 holder and give him or her the opportunity to request a hearing before  
26 the advisory board. At the hearing, the department and the certificate  
27 holder have opportunity to produce witnesses and give testimony. The  
28 hearing must be conducted in accordance with chapter 34.05 RCW. The  
29 board shall render its decision based upon the testimony and evidence  
30 presented and shall notify the parties immediately upon reaching its  
31 decision. A majority of the board is necessary to render a decision.

32 (3) The department may deny renewal of a certificate of competency  
33 issued under this chapter if the applicant owes outstanding penalties  
34 for a final judgment under this chapter. The department shall notify  
35 the applicant of the denial (~~((by registered mail, return receipt~~  
36 ~~requested,))~~) using a method by which the mailing can be tracked or the  
37 delivery can be confirmed to the address on the application. The

1 applicant may appeal the denial within twenty days by filing a notice  
2 of appeal with the department accompanied by a certified check for two  
3 hundred dollars which shall be returned to the applicant if the  
4 decision of the department is not upheld by the hearings officer. The  
5 office of administrative hearings shall conduct the hearing under  
6 chapter 34.05 RCW. If the hearings officer sustains the decision of  
7 the department, the two hundred dollars must be applied to the cost of  
8 the hearing.

9 **Sec. 4.** RCW 18.106.180 and 2002 c 82 s 3 are each amended to read  
10 as follows:

11 (1) An authorized representative of the department may issue a  
12 notice of infraction as specified in RCW 18.106.020 if:

13 (a) A person who is doing plumbing work or who is offering to do  
14 plumbing work fails to produce evidence of:

15 (i) Having a certificate or permit issued by the department in  
16 accordance with this chapter, or being supervised by a person who has  
17 such a certificate or permit; and

18 (ii) Being registered as a contractor as required under chapter  
19 18.27 RCW or this chapter, or being employed by a person who is  
20 registered as a contractor;

21 (b) A person who employs anyone, or offers or advertises to employ  
22 anyone, to do plumbing work fails to produce evidence of being  
23 registered as a contractor as required under chapter 18.27 RCW or this  
24 chapter; or

25 (c) A contractor violates RCW 18.106.320.

26 (2) A notice of infraction issued under this section shall be  
27 personally served on the person named in the notice by an authorized  
28 representative of the department or sent (~~by certified mail~~) using a  
29 method by which the mailing can be tracked or the delivery can be  
30 confirmed to the last known address provided to the department of the  
31 person named in the notice.

32 **Sec. 5.** RCW 19.28.131 and 2006 c 185 s 13 are each amended to read  
33 as follows:

34 Until July 1, 2007, the department shall issue a written warning to  
35 any specialty contractor, performing the scope of work defined by rule  
36 for the pump and irrigation or domestic pump specialties, not having a

1 valid electrical contractor license. The warning will state that the  
2 contractor must be qualified for and apply for a specialty electrical  
3 contractor license under the requirements in RCW 19.28.041 within  
4 thirty calendar days of the warning. Only one warning will be issued  
5 to any contractor. If the contractor fails to comply with this  
6 section, the department shall issue a penalty or penalties as  
7 authorized in this section to the contractor. Any person, firm,  
8 partnership, corporation, or other entity violating any of the  
9 provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through  
10 19.28.361 shall be assessed a penalty of not less than fifty dollars or  
11 more than ten thousand dollars. The department shall set by rule a  
12 schedule of penalties for violating RCW 19.28.010 through 19.28.141 and  
13 19.28.311 through 19.28.361. The department shall notify the person,  
14 firm, partnership, corporation, or other entity violating any of the  
15 provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through  
16 19.28.361 of the amount of the penalty and of the specific violation  
17 (~~by certified mail, return receipt requested,~~) using a method by  
18 which the mailing can be tracked or the delivery can be confirmed sent  
19 to the last known address of the assessed party. Any penalty is  
20 subject to review by an appeal to the board. The filing of an appeal  
21 stays the effect of the penalty until the board makes its decision.  
22 The appeal shall be filed within twenty days after notice of the  
23 penalty is given to the assessed party (~~by certified mail, return~~  
24 ~~receipt requested~~) using a method by which the mailing can be tracked  
25 or the delivery can be confirmed, sent to the last known address of the  
26 assessed party and shall be made by filing a written notice of appeal  
27 with the department. The notice shall be accompanied by a certified  
28 check for two hundred dollars, which shall be returned to the assessed  
29 party if the decision of the department is not sustained by the board.  
30 If the board sustains the decision of the department, the two hundred  
31 dollars shall be applied by the department to the payment of the per  
32 diem and expenses of the members of the board incurred in the matter,  
33 and any balance remaining after payment of per diem and expenses shall  
34 be paid into the electrical license fund. The hearing and review  
35 procedures shall be conducted in accordance with chapter 34.05 RCW.  
36 The board shall assign its hearings to an administrative law judge to  
37 conduct the hearing and issue a proposed decision and order. The board

1 shall be allowed a minimum of twenty days to review a proposed decision  
2 and shall issue its decision no later than the next regularly scheduled  
3 board meeting.

4 **Sec. 6.** RCW 19.28.271 and 2009 c 36 s 6 are each amended to read  
5 as follows:

6 (1) It is unlawful for any person, firm, partnership, corporation,  
7 or other entity to employ an individual for purposes of RCW 19.28.161  
8 through 19.28.271 who has not been issued a certificate of competency,  
9 a temporary permit, or a training certificate. It is unlawful for any  
10 individual to engage in the electrical construction trade or to  
11 maintain or install any electrical equipment or conductors without  
12 having in his or her possession a certificate of competency, a  
13 temporary permit, or a training certificate under RCW 19.28.161 through  
14 19.28.271, and photo identification. The department may establish by  
15 rule a requirement that the individual also wear and visibly display  
16 his or her certificate or permit.

17 (2) Any person, firm, partnership, corporation, or other entity  
18 found in violation of RCW 19.28.161 through 19.28.271 shall be assessed  
19 a penalty of not less than fifty dollars or more than five hundred  
20 dollars. The department shall set by rule a schedule of penalties for  
21 violating RCW 19.28.161 through 19.28.271. An appeal may be made to  
22 the board as is provided in RCW 19.28.131. The appeal shall be filed  
23 within twenty days after the notice of the penalty is given to the  
24 assessed party (~~by certified mail, return receipt requested~~) using a  
25 method by which the mailing can be tracked or the delivery can be  
26 confirmed, sent to the last known address of the assessed party and  
27 shall be made by filing a written notice of appeal with the department.  
28 Any equipment maintained or installed by any person who does not  
29 possess a certificate of competency under RCW 19.28.161 through  
30 19.28.271 shall not receive an electrical work permit and electrical  
31 service shall not be connected or maintained to operate the equipment.  
32 Each day that a person, firm, partnership, corporation, or other entity  
33 violates RCW 19.28.161 through 19.28.271 is a separate violation.

34 (3) A civil penalty shall be collected in a civil action brought by  
35 the attorney general in the county wherein the alleged violation arose  
36 at the request of the department if any of RCW 19.28.161 through

1 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271  
2 are violated.

3 **Sec. 7.** RCW 19.28.341 and 2000 c 238 s 4 are each amended to read  
4 as follows:

5 (1) The department has the power, in case of serious noncompliance  
6 with the provisions of this chapter, to revoke or suspend for such a  
7 period as it determines, any electrical or telecommunications  
8 contractor license or electrical or telecommunications contractor  
9 administrator certificate issued under this chapter. The department  
10 shall notify the holder of the license or certificate of the revocation  
11 or suspension (~~(by certified mail)~~) using a method by which the mailing  
12 can be tracked or the delivery can be confirmed. A revocation or  
13 suspension is effective twenty days after the holder receives the  
14 notice. Any revocation or suspension is subject to review by an appeal  
15 to the board. The filing of an appeal stays the effect of a revocation  
16 or suspension until the board makes its decision. The appeal shall be  
17 filed within twenty days after notice of the revocation or suspension  
18 is given (~~(by certified mail)~~) using a method by which the mailing can  
19 be tracked or the delivery can be confirmed sent to the address of the  
20 holder of the license or certificate as shown on the application for  
21 the license or certificate, and shall be effected by filing a written  
22 notice of appeal with the department, accompanied by a certified check  
23 for two hundred dollars, which shall be returned to the holder of the  
24 license or certificate if the decision of the department is not  
25 sustained by the board. The hearing shall be conducted in accordance  
26 with chapter 34.05 RCW. If the board sustains the decision of the  
27 department, the two hundred dollars shall be applied by the department  
28 to the payment of the per diem and expenses of the members of the board  
29 incurred in the matter, and any balance remaining after payment of per  
30 diem and expenses shall be paid into the electrical license fund.

31 (2) The department shall immediately suspend the license or  
32 certificate of a person who has been certified pursuant to RCW  
33 74.20A.320 by the department of social and health services as a person  
34 who is not in compliance with a support order. If the person has  
35 continued to meet all other requirements for reinstatement during the  
36 suspension, reissuance of the license or certificate shall be automatic

1 upon the department's receipt of a release issued by the department of  
2 social and health services stating that the licensee is in compliance  
3 with the order.

4 **Sec. 8.** RCW 19.28.490 and 2000 c 238 s 213 are each amended to  
5 read as follows:

6 Any person, firm, partnership, corporation, or other entity  
7 violating any of the provisions of this chapter may be assessed a  
8 penalty of not less than one hundred dollars or more than ten thousand  
9 dollars per violation. The department, after consulting with the board  
10 and receiving the board's recommendations, shall set by rule a schedule  
11 of penalties for violating this chapter. The department shall notify  
12 the person, firm, partnership, corporation, or other entity violating  
13 any of these provisions of the amount of the penalty and of the  
14 specific violation. The notice shall be sent (~~by certified mail,~~  
15 ~~return receipt requested,~~) using a method by which the mailing can be  
16 tracked or the delivery can be confirmed to the last known address of  
17 the assessed party. Penalties are subject to review by an appeal to  
18 the board. The filing of an appeal stays the effect of the penalty  
19 until the board makes its decision. The appeal shall be filed within  
20 twenty days after notice of the penalty is given to the assessed party,  
21 and shall be made by filing a written notice of appeal with the  
22 department. The notice shall be accompanied by a certified check for  
23 two hundred dollars, that shall be returned to the assessed party if  
24 the decision of the department is not sustained by the board. If the  
25 board sustains the decision of the department, the two hundred dollars  
26 shall be applied by the department to the payment of the per diem and  
27 expenses of the members of the board incurred in the matter, and any  
28 balance remaining after payment of per diem and expenses shall be paid  
29 into the electrical license fund. The hearing and review procedures  
30 shall be conducted in accordance with chapter 34.05 RCW. The board  
31 shall assign its hearings to an administrative law judge to conduct the  
32 hearing and issue a proposed decision and order. The board shall be  
33 allowed a minimum of twenty days to review a proposed decision and  
34 shall issue its decision no later than the next regularly scheduled  
35 board meeting.

1       **Sec. 9.** RCW 43.22.435 and 2002 c 268 s 4 are each amended to read  
2 as follows:

3       (1)(a) In addition to or in lieu of any other penalty applicable  
4 under this chapter, and except as provided in (b) of this subsection,  
5 the department may assess a civil penalty of not more than one thousand  
6 dollars against a contractor, firm, partnership, or corporation, that  
7 fails to obtain a permit before altering a mobile or manufactured home  
8 as required under this chapter or rules adopted under this chapter.  
9 Each day on which a violation occurs constitutes a separate violation.  
10 However, the cumulative penalty for the same occurrence may not exceed  
11 five thousand dollars.

12       (b) The department must adopt a schedule of civil penalties giving  
13 due consideration to the appropriateness of the penalty with respect to  
14 the gravity of the violation and the history of previous violations.  
15 Penalties for subsequent violations, not constituting the same  
16 occurrence, committed within two years of a prior violation by the same  
17 party or entity, or by an individual who was a principal or officer of  
18 the same entity, must be double the amount of the penalty for the prior  
19 violation or one thousand dollars, whichever is greater.

20       (2)(a) The department may issue a notice of correction before  
21 issuing a civil penalty assessment. The notice must include:

22       (i) A description of the violation;

23       (ii) A statement of what is required to correct the violation;

24       (iii) The date by which the department requires correction to be  
25 achieved; and

26       (iv) Notice of the individual or department office that must be  
27 contacted to obtain a permit or other compliance information.

28       (b) A notice of correction is not a formal enforcement action, is  
29 not subject to appeal, and is a public record.

30       (c) If the department issues a notice of correction, it shall not  
31 issue a civil penalty for the violation identified in the notice of  
32 correction unless the responsible person fails to comply with the  
33 notice.

34       (3)(a) The department must issue written notices of civil penalties  
35 imposed under this section, with the reasons for the penalty, (~~by~~  
36 ~~certified mail~~) using a method by which the mailing can be tracked or  
37 the delivery can be confirmed to the last known address of the party  
38 named in the notice.

1 (b) If a party desires to contest a notice of civil penalty issued  
2 under this section, the party must file a notice of appeal with the  
3 department within twenty days of the department's mailing of the notice  
4 of civil penalty. An administrative law judge of the office of  
5 administrative hearings will hear and determine the appeal. Appeal  
6 proceedings must be conducted pursuant to chapter 34.05 RCW. An appeal  
7 of the administrative law judge's determination or order shall be to  
8 the superior court. The superior court's decision is subject only to  
9 discretionary review under the rules of appellate procedure.

10 **Sec. 10.** RCW 43.22A.080 and 1994 c 284 s 21 are each amended to  
11 read as follows:

12 (1) The department may revoke a certificate of manufactured home  
13 installation upon the following grounds:

- 14 (a) The certificate was obtained through error or fraud;
- 15 (b) The holder of the certificate is judged to be incompetent as a  
16 result of multiple infractions of the state installation code, WAC 296-  
17 150B-200 through 296-150B-255; or
- 18 (c) The holder has violated a provision of this chapter or a rule  
19 adopted to implement this chapter.

20 (2) Before a certificate of manufactured home installation is  
21 revoked, the holder must be given written notice of the department's  
22 intention to revoke the certificate, sent (~~by registered mail, return  
23 receipt requested,~~) using a method by which the mailing can be tracked  
24 or the delivery can be confirmed to the holder's last known address.  
25 The notice shall enumerate the allegations against the holder, and  
26 shall give the holder the opportunity to request a hearing. At the  
27 hearing, the department and the holder may produce witnesses and give  
28 testimony. The hearing shall be conducted in accordance with the  
29 provisions of chapter 34.05 RCW.

30 **Sec. 11.** RCW 43.22A.130 and 1994 c 284 s 25 are each amended to  
31 read as follows:

32 An authorized representative of the department may issue a notice  
33 of infraction if the person supervising the manufactured home  
34 installation work fails to produce evidence of having a certificate  
35 issued by the department in accordance with this chapter. A notice of  
36 infraction issued under this chapter shall be personally served on or

1 sent (~~by certified mail~~) using a method by which the mailing can be  
2 tracked or the delivery can be confirmed to the person named in the  
3 notice by the authorized representative.

4 **Sec. 12.** RCW 49.17.140 and 1994 c 61 s 1 are each amended to read  
5 as follows:

6 (1) If after an inspection or investigation the director or the  
7 director's authorized representative issues a citation under the  
8 authority of RCW 49.17.120 or 49.17.130, the department, within a  
9 reasonable time after the termination of such inspection or  
10 investigation, shall notify the employer (~~by certified mail~~) using a  
11 method by which the mailing can be tracked or the delivery can be  
12 confirmed of the penalty to be assessed under the authority of RCW  
13 49.17.180 and shall state that the employer has fifteen working days  
14 within which to notify the director that the employer wishes to appeal  
15 the citation or assessment of penalty. If, within fifteen working days  
16 from the communication of the notice issued by the director the  
17 employer fails to notify the director that the employer intends to  
18 appeal the citation or assessment penalty, and no notice is filed by  
19 any employee or representative of employees under subsection (3) of  
20 this section within such time, the citation and the assessment shall be  
21 deemed a final order of the department and not subject to review by any  
22 court or agency.

23 (2) If the director has reason to believe that an employer has  
24 failed to correct a violation for which a citation has been issued  
25 within the period permitted in the citation for its correction, which  
26 period shall not begin to run until the entry of a final order in the  
27 case of any appeal proceedings under this section initiated by the  
28 employer in good faith and not solely for delay or avoidance of  
29 penalties, the director shall notify the employer (~~by certified mail~~)  
30 using a method by which the mailing can be tracked or the delivery can  
31 be confirmed of such failure to correct the violation and of the  
32 penalty to be assessed under RCW 49.17.180 by reason of such failure,  
33 and shall state that the employer has fifteen working days from the  
34 communication of such notification and assessment of penalty to notify  
35 the director that the employer wishes to appeal the director's  
36 notification of the assessment of penalty. If, within fifteen working  
37 days from the receipt of notification issued by the director the

1 employer fails to notify the director that the employer intends to  
2 appeal the notification of assessment of penalty, the notification and  
3 assessment of penalty shall be deemed a final order of the department  
4 and not subject to review by any court or agency.

5 (3) If any employer notifies the director that the employer intends  
6 to appeal the citation issued under either RCW 49.17.120 or 49.17.130  
7 or notification of the assessment of a penalty issued under subsections  
8 (1) or (2) of this section, or if, within fifteen working days from the  
9 issuance of a citation under either RCW 49.17.120 or 49.17.130 any  
10 employee or representative of employees files a notice with the  
11 director alleging that the period of time fixed in the citation for the  
12 abatement of the violation is unreasonable, the director may reassume  
13 jurisdiction over the entire matter, or any portion thereof upon which  
14 notice of intention to appeal has been filed with the director pursuant  
15 to this subsection. If the director reassumes jurisdiction of all or  
16 any portion of the matter upon which notice of appeal has been filed  
17 with the director, any redetermination shall be completed and  
18 corrective notices of assessment of penalty, citations, or revised  
19 periods of abatement completed within a period of thirty working days.  
20 The thirty-working-day redetermination period may be extended up to  
21 fifteen additional working days upon agreement of all parties to the  
22 appeal. The redetermination shall then become final subject to direct  
23 appeal to the board of industrial insurance appeals within fifteen  
24 working days of such redetermination with service of notice of appeal  
25 upon the director. In the event that the director does not reassume  
26 jurisdiction as provided in this subsection, the director shall  
27 promptly notify the state board of industrial insurance appeals of all  
28 notifications of intention to appeal any such citations, any such  
29 notices of assessment of penalty and any employee or representative of  
30 employees notice of intention to appeal the period of time fixed for  
31 abatement of a violation and in addition certify a full copy of the  
32 record in such appeal matters to the board. The director shall adopt  
33 rules of procedure for the reassumption of jurisdiction under this  
34 subsection affording employers, employees, and employee representatives  
35 notice of the reassumption of jurisdiction by the director, and an  
36 opportunity to object or support the reassumption of jurisdiction,  
37 either in writing or orally at an informal conference to be held prior  
38 to the expiration of the redetermination period. A notice of appeal

1 filed under this section shall stay the effectiveness of any citation  
2 or notice of the assessment of a penalty pending review by the board of  
3 industrial insurance appeals, but such appeal shall not stay the  
4 effectiveness of any order of immediate restraint issued by the  
5 director under the authority of RCW 49.17.130. The board of industrial  
6 insurance appeals shall afford an opportunity for a hearing in the case  
7 of each such appellant and the department shall be represented in such  
8 hearing by the attorney general and the board shall in addition provide  
9 affected employees or authorized representatives of affected employees  
10 an opportunity to participate as parties to hearings under this  
11 subsection. The board shall thereafter make disposition of the issues  
12 in accordance with procedures relative to contested cases appealed to  
13 the state board of industrial insurance appeals.

14 Upon application by an employer showing that a good faith effort to  
15 comply with the abatement requirements of a citation has been made and  
16 that the abatement has not been completed because of factors beyond the  
17 employer's control, the director after affording an opportunity for a  
18 hearing shall issue an order affirming or modifying the abatement  
19 requirements in such citation.

20 **Sec. 13.** RCW 49.26.110 and 1995 c 218 s 4 are each amended to read  
21 as follows:

22 (1) No employee or other individual is eligible to do work governed  
23 by this chapter unless issued a certificate by the department.

24 (2) To qualify for a certificate:

25 (a) Certified asbestos workers must have successfully completed a  
26 four-day training course. Certified asbestos supervisors must have  
27 completed a five-day training course. Training courses shall be  
28 provided or approved by the department; shall cover such topics as the  
29 health and safety aspects of the removal and encapsulation of asbestos,  
30 including but not limited to the federal and state standards regarding  
31 protective clothing, respirator use, disposal, air monitoring,  
32 cleaning, and decontamination; and shall meet such additional  
33 qualifications as may be established by the department by rule for the  
34 type of certification sought. The department may require the  
35 successful completion of annual refresher courses provided or approved  
36 by the department for continued certification as an asbestos worker or  
37 supervisor. However, the authority of the director to adopt rules

1 implementing this section is limited to rules that are specifically  
2 required, and only to the extent specifically required, for the  
3 standards to be as stringent as the applicable federal laws governing  
4 work subject to this chapter; and

5 (b) All applicants for certification as asbestos workers or  
6 supervisors must pass an examination in the type of certification  
7 sought which shall be provided or approved by the department.

8 These requirements are intended to represent the minimum  
9 requirements for certification and shall not preclude contractors or  
10 employers from providing additional education or training.

11 (3) The department shall provide for the reciprocal certification  
12 of any individual trained to engage in asbestos projects in another  
13 state when the prior training is shown to be substantially similar to  
14 the training required by the department. Nothing shall prevent the  
15 department from requiring such individuals to take an examination or  
16 refresher course before certification.

17 (4) The department may deny, suspend, or revoke a certificate, as  
18 provided under RCW 49.26.140, for failure of the holder to comply with  
19 any requirement of this chapter or chapter 49.17 RCW, or any rule  
20 adopted under those chapters, or applicable health and safety standards  
21 and regulations. In addition to any penalty imposed under RCW  
22 49.26.016, the department may suspend or revoke any certificate issued  
23 under this chapter for a period of not less than six months upon the  
24 following grounds:

- 25 (a) The certificate was obtained through error or fraud; or
- 26 (b) The holder thereof is judged to be incompetent to carry out the  
27 work for which the certificate was issued.

28 Before any certificate may be denied, suspended, or revoked, the  
29 holder thereof shall be given written notice of the department's  
30 intention to do so, mailed (~~by registered mail, return receipt  
31 requested,~~) using a method by which the mailing can be tracked or the  
32 delivery can be confirmed to the holder's last known address. The  
33 notice shall enumerate the allegations against such holder, and shall  
34 give him or her the opportunity to request a hearing before the  
35 department. At such hearing, the department and the holder shall have  
36 opportunity to produce witnesses and give testimony.

37 (5) A denial, suspension, or revocation order may be appealed to  
38 the board of industrial insurance appeals within fifteen working days

1 after the denial, suspension, or revocation order is entered. The  
2 notice of appeal may be filed with the department or the board of  
3 industrial insurance appeals. The board of industrial insurance  
4 appeals shall hold the hearing in accordance with procedures  
5 established in RCW 49.17.140. Any party aggrieved by an order of the  
6 board of industrial insurance appeals may obtain superior court review  
7 in the manner provided in RCW 49.17.150.

8 (6) Each person certified under this chapter shall display, upon  
9 the request of an authorized representative of the department, valid  
10 identification issued by the department.

11 **Sec. 14.** RCW 49.40.060 and 2010 c 8 s 12035 are each amended to  
12 read as follows:

13 The director of labor and industries, or his or her deputy holding  
14 the hearing shall, after such hearing, determine the amount due from  
15 the employer to the employee, and shall make findings of fact and an  
16 award in accordance therewith, which findings and award shall be filed  
17 in the office of the director and a copy thereof served upon the  
18 employer and upon the employee (~~by registered mail~~) using a method by  
19 which the mailing can be tracked or the delivery can be confirmed  
20 directed to their last known post office address.

21 **Sec. 15.** RCW 49.48.083 and 2010 c 42 s 2 are each amended to read  
22 as follows:

23 (1) If an employee files a wage complaint with the department, the  
24 department shall investigate the wage complaint. Unless otherwise  
25 resolved, the department shall issue either a citation and notice of  
26 assessment or a determination of compliance no later than sixty days  
27 after the date on which the department received the wage complaint.  
28 The department may extend the time period by providing advance written  
29 notice to the employee and the employer setting forth good cause for an  
30 extension of the time period and specifying the duration of the  
31 extension. The department may not investigate any alleged violation of  
32 a wage payment requirement that occurred more than three years before  
33 the date that the employee filed the wage complaint. The department  
34 shall send the citation and notice of assessment or the determination  
35 of compliance to both the employer and the employee by service of

1 process or (~~certified mail~~) using a method by which the mailing can  
2 be tracked or the delivery can be confirmed to their last known  
3 addresses.

4 (2) If the department determines that an employer has violated a  
5 wage payment requirement and issues to the employer a citation and  
6 notice of assessment, the department may order the employer to pay  
7 employees all wages owed, including interest of one percent per month  
8 on all wages owed, to the employee. The wages and interest owed must  
9 be calculated from the first date wages were owed to the employee,  
10 except that the department may not order the employer to pay any wages  
11 and interest that were owed more than three years before the date the  
12 wage complaint was filed with the department.

13 (3) If the department determines that the violation of the wage  
14 payment requirement was a willful violation, the department also may  
15 order the employer to pay the department a civil penalty as specified  
16 in (a) of this subsection.

17 (a) A civil penalty for a willful violation of a wage payment  
18 requirement shall be not less than one thousand dollars or an amount  
19 equal to ten percent of the total amount of unpaid wages, whichever is  
20 greater. The maximum civil penalty for a willful violation of a wage  
21 payment requirement shall be twenty thousand dollars.

22 (b) The department may not assess a civil penalty if the employer  
23 reasonably relied on: (i) A rule related to any wage payment  
24 requirement; (ii) a written order, ruling, approval, opinion, advice,  
25 determination, or interpretation of the director; or (iii) an  
26 interpretive or administrative policy issued by the department and  
27 filed with the office of the code reviser. In accordance with the  
28 department's retention schedule obligations under chapter 40.14 RCW,  
29 the department shall maintain a complete and accurate record of all  
30 written orders, rulings, approvals, opinions, advice, determinations,  
31 and interpretations for purposes of determining whether an employer is  
32 immune from civil penalties under (b)(ii) of this subsection.

33 (c) The department shall waive any civil penalty assessed against  
34 an employer under this section if the employer is not a repeat willful  
35 violator, and the director determines that the employer has provided  
36 payment to the employee of all wages that the department determined  
37 that the employer owed to the employee, including interest, within ten

1 business days of the employer's receipt of the citation and notice of  
2 assessment from the department.

3 (d) The department may waive or reduce at any time a civil penalty  
4 assessed under this section if the director determines that the  
5 employer paid all wages and interest owed to an employee.

6 (e) The department shall deposit civil penalties paid under this  
7 section in the supplemental pension fund established under RCW  
8 51.44.033.

9 (4) Upon payment by an employer, and acceptance by an employee, of  
10 all wages and interest assessed by the department in a citation and  
11 notice of assessment issued to the employer, the fact of such payment  
12 by the employer, and of such acceptance by the employee, shall: (a)  
13 Constitute a full and complete satisfaction by the employer of all  
14 specific wage payment requirements addressed in the citation and notice  
15 of assessment; and (b) bar the employee from initiating or pursuing any  
16 court action or other judicial or administrative proceeding based on  
17 the specific wage payment requirements addressed in the citation and  
18 notice of assessment. The citation and notice of assessment shall  
19 include a notification and summary of the specific requirements of this  
20 subsection.

21 (5) The applicable statute of limitations for civil actions is  
22 tolled during the department's investigation of an employee's wage  
23 complaint against an employer. For the purposes of this subsection,  
24 the department's investigation begins on the date the employee files  
25 the wage complaint with the department and ends when: (a) The wage  
26 complaint is finally determined through a final and binding citation  
27 and notice of assessment or determination of compliance; or (b) the  
28 department notifies the employer and the employee in writing that the  
29 wage complaint has been otherwise resolved or that the employee has  
30 elected to terminate the department's administrative action under RCW  
31 49.48.085.

32 **Sec. 16.** RCW 50.20.190 and 2007 c 327 s 1 are each amended to read  
33 as follows:

34 (1) An individual who is paid any amount as benefits under this  
35 title to which he or she is not entitled shall, unless otherwise  
36 relieved pursuant to this section, be liable for repayment of the  
37 amount overpaid. The department shall issue an overpayment assessment

1 setting forth the reasons for and the amount of the overpayment. The  
2 amount assessed, to the extent not collected, may be deducted from any  
3 future benefits payable to the individual: PROVIDED, That in the  
4 absence of a back pay award, a settlement affecting the allowance of  
5 benefits, fraud, misrepresentation, or willful nondisclosure, every  
6 determination of liability shall be mailed or personally served not  
7 later than two years after the close of or final payment made on the  
8 individual's applicable benefit year for which the purported  
9 overpayment was made, whichever is later, unless the merits of the  
10 claim are subjected to administrative or judicial review in which event  
11 the period for serving the determination of liability shall be extended  
12 to allow service of the determination of liability during the six-month  
13 period following the final decision affecting the claim.

14 (2) The commissioner may waive an overpayment if the commissioner  
15 finds that the overpayment was not the result of fraud,  
16 misrepresentation, willful nondisclosure, or fault attributable to the  
17 individual and that the recovery thereof would be against equity and  
18 good conscience: PROVIDED, HOWEVER, That the overpayment so waived  
19 shall be charged against the individual's applicable entitlement for  
20 the eligibility period containing the weeks to which the overpayment  
21 was attributed as though such benefits had been properly paid.

22 (3) Any assessment herein provided shall constitute a determination  
23 of liability from which an appeal may be had in the same manner and to  
24 the same extent as provided for appeals relating to determinations in  
25 respect to claims for benefits: PROVIDED, That an appeal from any  
26 determination covering overpayment only shall be deemed to be an appeal  
27 from the determination which was the basis for establishing the  
28 overpayment unless the merits involved in the issue set forth in such  
29 determination have already been heard and passed upon by the appeal  
30 tribunal. If no such appeal is taken to the appeal tribunal by the  
31 individual within thirty days of the delivery of the notice of  
32 determination of liability, or within thirty days of the mailing of the  
33 notice of determination, whichever is the earlier, the determination of  
34 liability shall be deemed conclusive and final. Whenever any such  
35 notice of determination of liability becomes conclusive and final, the  
36 commissioner, upon giving at least twenty days notice (~~by certified  
37 mail return receipt requested to the individual's last known address of  
38 the intended action~~), using a method by which the mailing can be

1 tracked or the delivery can be confirmed, may file with the superior  
2 court clerk of any county within the state a warrant in the amount of  
3 the notice of determination of liability plus a filing fee under RCW  
4 36.18.012(10). The clerk of the county where the warrant is filed  
5 shall immediately designate a superior court cause number for the  
6 warrant, and the clerk shall cause to be entered in the judgment docket  
7 under the superior court cause number assigned to the warrant, the name  
8 of the person(s) mentioned in the warrant, the amount of the notice of  
9 determination of liability, and the date when the warrant was filed.  
10 The amount of the warrant as docketed shall become a lien upon the  
11 title to, and any interest in, all real and personal property of the  
12 person(s) against whom the warrant is issued, the same as a judgment in  
13 a civil case duly docketed in the office of such clerk. A warrant so  
14 docketed shall be sufficient to support the issuance of writs of  
15 execution and writs of garnishment in favor of the state in the manner  
16 provided by law for a civil judgment. A copy of the warrant shall be  
17 mailed within five days of its filing with the clerk to the person(s)  
18 mentioned in the warrant (~~by certified mail to the person's last known~~  
19 ~~address within five days of its filing with the clerk~~) using a method  
20 by which the mailing can be tracked or the delivery can be confirmed.

21 (4) On request of any agency which administers an employment  
22 security law of another state, the United States, or a foreign  
23 government and which has found in accordance with the provisions of  
24 such law that a claimant is liable to repay benefits received under  
25 such law, the commissioner may collect the amount of such benefits from  
26 the claimant to be refunded to the agency. In any case in which under  
27 this section a claimant is liable to repay any amount to the agency of  
28 another state, the United States, or a foreign government, such amounts  
29 may be collected without interest by civil action in the name of the  
30 commissioner acting as agent for such agency if the other state, the  
31 United States, or the foreign government extends such collection rights  
32 to the employment security department of the state of Washington, and  
33 provided that the court costs be paid by the governmental agency  
34 benefiting from such collection.

35 (5) Any employer who is a party to a back pay award or settlement  
36 due to loss of wages shall, within thirty days of the award or  
37 settlement, report to the department the amount of the award or  
38 settlement, the name and social security number of the recipient of the

1 award or settlement, and the period for which it is awarded. When an  
2 individual has been awarded or receives back pay, for benefit purposes  
3 the amount of the back pay shall constitute wages paid in the period  
4 for which it was awarded. For contribution purposes, the back pay  
5 award or settlement shall constitute wages paid in the period in which  
6 it was actually paid. The following requirements shall also apply:

7 (a) The employer shall reduce the amount of the back pay award or  
8 settlement by an amount determined by the department based upon the  
9 amount of unemployment benefits received by the recipient of the award  
10 or settlement during the period for which the back pay award or  
11 settlement was awarded;

12 (b) The employer shall pay to the unemployment compensation fund,  
13 in a manner specified by the commissioner, an amount equal to the  
14 amount of such reduction;

15 (c) The employer shall also pay to the department any taxes due for  
16 unemployment insurance purposes on the entire amount of the back pay  
17 award or settlement notwithstanding any reduction made pursuant to (a)  
18 of this subsection;

19 (d) If the employer fails to reduce the amount of the back pay  
20 award or settlement as required in (a) of this subsection, the  
21 department shall issue an overpayment assessment against the recipient  
22 of the award or settlement in the amount that the back pay award or  
23 settlement should have been reduced; and

24 (e) If the employer fails to pay to the department an amount equal  
25 to the reduction as required in (b) of this subsection, the department  
26 shall issue an assessment of liability against the employer which shall  
27 be collected pursuant to the procedures for collection of assessments  
28 provided herein and in RCW 50.24.110.

29 (6) When an individual fails to repay an overpayment assessment  
30 that is due and fails to arrange for satisfactory repayment terms, the  
31 commissioner shall impose an interest penalty of one percent per month  
32 of the outstanding balance. Interest shall accrue immediately on  
33 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
34 when the assessment becomes final. For any other overpayment, interest  
35 shall accrue when the individual has missed two or more of the  
36 individual's monthly payments either partially or in full.

37 (7) The department shall: (a) Conduct social security number  
38 cross-match audits or engage in other more effective activities that

1 ensure that individuals are entitled to all amounts of benefits that  
2 they are paid; and (b) engage in other detection and recovery of  
3 overpayment and collection activities.

4 **Sec. 17.** RCW 50.24.070 and 1987 c 111 s 4 are each amended to read  
5 as follows:

6 At any time after the commissioner shall find that any  
7 contributions, interest, or penalties have become delinquent, the  
8 commissioner may issue an order and notice of assessment specifying the  
9 amount due, which order and notice of assessment shall be served upon  
10 the delinquent employer in the manner prescribed for the service of a  
11 summons in a civil action, or ~~((by certified mail to the last known  
12 address of the employer as shown by the records of the department))~~  
13 using a method by which the mailing can be tracked or the delivery can  
14 be confirmed. Failure of the employer to receive such notice or order  
15 whether served or mailed shall not release the employer from any tax,  
16 or any interest or penalties thereon.

17 **Sec. 18.** RCW 50.24.110 and 1990 c 245 s 6 are each amended to read  
18 as follows:

19 The commissioner is hereby authorized to issue to any person, firm,  
20 corporation, political subdivision, or department of the state, a  
21 notice and order to withhold and deliver property of any kind  
22 whatsoever when the commissioner has reason to believe that there is in  
23 the possession of such person, firm, corporation, political  
24 subdivision, or department, property which is due, owing, or belonging  
25 to any person, firm, or corporation upon whom the department has served  
26 a benefit overpayment assessment or a notice and order of assessment  
27 for unemployment compensation contributions, interest, or penalties.  
28 The effect of a notice to withhold and deliver shall be continuous from  
29 the date such notice and order to withhold and deliver is first made  
30 until the liability is satisfied or becomes unenforceable because of a  
31 lapse of time.

32 The notice and order to withhold and deliver shall be served by the  
33 sheriff or the sheriff's deputy of the county wherein the service is  
34 made, ~~((by certified mail, return receipt requested))~~ using a method by  
35 which the mailing can be tracked or the delivery can be confirmed, or  
36 by any duly authorized representative of the commissioner. Any person,

1 firm, corporation, political subdivision, or department upon whom  
2 service has been made is hereby required to answer the notice within  
3 twenty days exclusive of the day of service, under oath and in writing,  
4 and shall make true answers to the matters inquired of in the notice.

5 In the event there is in the possession of any such person, firm,  
6 corporation, political subdivision, or department, any property which  
7 may be subject to the claim of the employment security department of  
8 the state, such property shall be delivered forthwith to the  
9 commissioner or the commissioner's duly authorized representative upon  
10 demand to be held in trust by the commissioner for application on the  
11 indebtedness involved or for return, without interest, in accordance  
12 with final determination of liability or nonliability, or in the  
13 alternative, there shall be furnished a good and sufficient bond  
14 satisfactory to the commissioner conditioned upon final determination  
15 of liability.

16 Should any person, firm, or corporation fail to make answer to an  
17 order to withhold and deliver within the time prescribed herein, it  
18 shall be lawful for the court, after the time to answer such order has  
19 expired, to render judgment by default against such person, firm, or  
20 corporation for the full amount claimed by the commissioner in the  
21 notice to withhold and deliver, together with costs.

22 **Sec. 19.** RCW 50.24.115 and 2010 c 8 s 13032 are each amended to  
23 read as follows:

24 Whenever any order and notice of assessment or jeopardy assessment  
25 shall have become final in accordance with the provisions of this title  
26 the commissioner may file with the clerk of any county within the state  
27 a warrant in the amount of the notice of assessment plus interest,  
28 penalties, and a filing fee under RCW 36.18.012(10). The clerk of the  
29 county wherein the warrant is filed shall immediately designate a  
30 superior court cause number for such warrant, and the clerk shall cause  
31 to be entered in the judgment docket under the superior court cause  
32 number assigned to the warrant, the name of the employer mentioned in  
33 the warrant, the amount of the tax, interest, penalties, and filing fee  
34 and the date when such warrant was filed. The aggregate amount of such  
35 warrant as docketed shall become a lien upon the title to, and interest  
36 in all real and personal property of the employer against whom the  
37 warrant is issued, the same as a judgment in a civil case duly docketed

1 in the office of such clerk. Such warrant so docketed shall be  
2 sufficient to support the issuance of writs of execution and writs of  
3 garnishment in favor of the state in the manner provided by law in the  
4 case of civil judgment, wholly or partially unsatisfied. The clerk of  
5 the court shall be entitled to a filing fee under RCW 36.18.012(10),  
6 which shall be added to the amount of the warrant, and charged by the  
7 commissioner to the employer or employing unit. A copy of the warrant  
8 shall be mailed to the employer or employing unit (~~by certified mail~~  
9 ~~to his or her last known address~~) using a method by which the mailing  
10 can be tracked or the delivery can be confirmed within five days of  
11 filing with the clerk.

12 **Sec. 20.** RCW 70.79.320 and 2005 c 22 s 6 are each amended to read  
13 as follows:

14 (1) It shall be unlawful for any person, firm, partnership, or  
15 corporation to operate under pressure in this state a boiler or unfired  
16 pressure vessel, to which this chapter applies, without a valid  
17 inspection certificate as provided for in this chapter.

18 (2) The department may assess a penalty against a person violating  
19 a provision of this chapter. The penalty shall be not more than five  
20 hundred dollars. Each day that the violation continues is a separate  
21 violation and is subject to a separate penalty.

22 (3) The department may not assess a penalty until it adopts rules  
23 describing the method it will use to calculate penalties for various  
24 violations.

25 (4) The department shall notify the violator of its action, and the  
26 reasons for its action, in writing. The department shall send the  
27 notice (~~by certified mail~~) using a method by which the mailing can be  
28 tracked or the delivery can be confirmed to the violator that a hearing  
29 may be requested under RCW 70.79.361. The hearing shall not stay the  
30 effect of the penalty.

31 **Sec. 21.** RCW 70.87.125 and 2003 c 143 s 16 are each amended to  
32 read as follows:

33 (1) A license issued under this chapter may be suspended, revoked,  
34 or subject to civil penalty by the department upon verification that  
35 any one or more of the following reasons exist:

36 (a) Any false statement as to a material matter in the application;

1 (b) Fraud, misrepresentation, or bribery in securing a license;

2 (c) Failure to notify the department and the owner or lessee of a  
3 conveyance or related mechanisms of any condition not in compliance  
4 with this chapter;

5 (d) A violation of any provisions of this chapter; and

6 (e) If the elevator contractor does not employ an individual  
7 designated as the primary point of contact with the department and who  
8 has successfully completed the elevator contractor examination. In the  
9 case of a separation of employment, termination of this relationship or  
10 designation, or death of the designated individual, the elevator  
11 contractor must, within ninety days, designate a new individual who has  
12 successfully completed the elevator contractor examination.

13 (2) The department may suspend or revoke a permit if:

14 (a) The permit was obtained through fraud or by error if, in the  
15 absence of error, the department would not have issued the permit;

16 (b) The conveyance for which the permit was issued has not been  
17 worked on in accordance with this chapter; or

18 (c) The conveyance has become unsafe.

19 (3) The department shall suspend any license issued under this  
20 chapter promptly after receiving notice from the department of social  
21 and health services that the holder of the license has been certified  
22 pursuant to RCW 74.20A.320 as a person who is not in compliance with a  
23 support order. If the person has continued to meet all other license  
24 requirements during the suspension, reissuance of the license shall be  
25 automatic upon the department's receipt of a release issued by the  
26 department of social and health services stating that the person is in  
27 compliance with the order.

28 (4) The department shall notify in writing the owner, licensee, or  
29 person performing conveyance work, of its action and the reason for the  
30 action. The department shall send the notice (~~by certified mail~~)  
31 using a method by which the mailing can be tracked or the delivery can  
32 be confirmed to the last known address of the owner or person. The  
33 notice shall inform the owner or person that a hearing may be requested  
34 pursuant to RCW 70.87.170.

35 (5)(a) If the department has suspended or revoked a permit or  
36 license because of fraud or error, and a hearing is requested, the  
37 suspension or revocation shall be stayed until the hearing is concluded  
38 and a decision is issued.

1 (b) If the department has revoked or suspended a license because  
2 the licensee performing the work covered by this chapter is working in  
3 a manner that does not effectively prevent injuries or deaths or  
4 protect employees and the public from unsafe conditions as is required  
5 by this chapter, the suspension or revocation is effective immediately  
6 and shall not be stayed by a request for a hearing.

7 (c) If the department has revoked or suspended a permit because the  
8 conveyance is unsafe or the conveyance work is not permitted and  
9 performed in accordance with this chapter, the suspension or revocation  
10 is effective immediately and shall not be stayed by a request for a  
11 hearing.

12 (6) The department must remove a suspension or reinstate a revoked  
13 license if the licensee pays all the assessed civil penalties and is  
14 able to demonstrate to the department that the licensee has met all the  
15 qualifications established by this chapter.

16 (7) The department shall remove a suspension or reinstate a revoked  
17 permit if a conveyance is repaired or modified to bring it into  
18 compliance with this chapter.

19 **Sec. 22.** RCW 70.87.185 and 1983 c 123 s 18 are each amended to  
20 read as follows:

21 (1) The department may assess a penalty against a person violating  
22 a provision of this chapter. The penalty shall be not more than five  
23 hundred dollars. Each day that the violation continues is a separate  
24 violation and is subject to a separate penalty.

25 (2) The department may not assess a penalty until it adopts rules  
26 describing the method it will use to calculate penalties for various  
27 violations.

28 (3) The department shall notify the violator of its action, and the  
29 reasons for its action, in writing. The department shall send the  
30 notice (~~(by certified mail)~~) using a method by which the mailing can be  
31 tracked or the delivery can be confirmed to the violator's last known  
32 address. The notice shall inform the violator that a hearing may be  
33 requested under RCW 70.87.170. The hearing shall not stay the effect  
34 of the penalty.

35 **Sec. 23.** RCW 70.87.205 and 2005 c 433 s 49 are each amended to  
36 read as follows:

1 (1) Disputes arising under RCW 70.87.200(2) shall be resolved by  
2 arbitration. The request shall be sent (~~by certified mail~~) using a  
3 method by which the mailing can be tracked or the delivery can be  
4 confirmed.

5 (2) The department shall appoint one arbitrator; the municipality  
6 shall appoint one arbitrator; and the arbitrators chosen by the  
7 department and the municipality shall appoint the third arbitrator. If  
8 the two arbitrators cannot agree on the third arbitrator, the presiding  
9 judge of the Thurston county superior court, or his or her designee,  
10 shall appoint the third arbitrator.

11 (3) The arbitration shall be held pursuant to the procedures in  
12 chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply.  
13 The decision of the arbitrators is final and binding on the parties.  
14 Neither party may appeal a decision to any court.

15 (4) A party may petition the Thurston county superior court to  
16 enforce a decision of the arbitrators.

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