

SENATE BILL REPORT

SB 6271

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 21, 1994

Brief Description: Protecting residents against unfair construction services.

SPONSORS: Senators Sutherland, Amondson, Moore, Erwin, Hargrove, Winsley and Quigley

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6271 be substituted therefor, and the substitute bill do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Fraser, McAuliffe, Pelz, Sutherland and Wojahn.

Staff: Dave Cheal (786-7576)

Hearing Dates: January 26, 1994; February 3, 1994

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6271 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Gaspard, Hargrove, Ludwig, McDonald, Moyer, Pelz, Roach, Snyder, Spanel, Sutherland, Talmadge and West.

Staff: Martin Chaw (786-7711)

Hearing Dates: February 7, 1994; February 21, 1994

BACKGROUND:

During the interim between the 1993 and 1994 legislative sessions, the committee conducted a study on how to increase protection for consumers from unfair and deceptive practices of construction contractors. The primary target was residential repair, remodel and new construction.

The study consisted of a task force composed of consumers, state and local regulators, home builders, bond issuers, subcontractors, and one prosecuting attorney's office. Senator Sutherland chaired the six task force meetings.

Protection for purchasers of residential construction services in this state is provided by the Consumer Protection Act, and by a system of contractor registration. All general and specialty contractors must register before offering their services to the public and must renew that registration annually. Registration requires the purchasing of liability

insurance and providing a security fund to cover contract claims either in the form of a surety bond or an assigned savings account. The amount of the surety bond or assigned account is \$6,000 for a general contractor and \$4,000 for a specialty contractor.

The registration and renewal fee of \$40 goes to the general fund. An appropriation for the compliance activities of the Department of Labor and Industries has historically equaled approximately two-thirds of the amount collected in fees. The department currently has about 17 compliance officers statewide. They also provide inspection services for factory-assembled structures (mobile homes and modular homes).

Contractors, local building officials, and department staff believe that a great many unregistered contractors are operating in this state.

SUMMARY:

The directors of the Departments of Revenue, Licensing, Labor and Industries, and Employment Security are directed to develop a plan for coordination of enforcement activities.

The Department of Labor and Industries is directed to establish a toll-free phone number for receiving information regarding violations of the registration requirements.

Retail building material vendors are required to display a poster describing registration requirements of the law.

The Department of Labor and Industries is required to prepare a pamphlet on how to make a claim against the surety bond or deposit that registered contractors must maintain. The pamphlet must be offered by the department and surety bond issuers to anyone who requests information about making a claim.

Advertising vendors who provide advertising for contractors must require basic identification information about anyone who purchases advertising and make that information available to the department on request. The penalty for failing to register when required is increased from a misdemeanor to a gross misdemeanor.

The level of the surety bond is increased to \$10,000 for general contractors and \$6,500 for specialty contractors, unless the estimated annual volume of work expected by the applicant is in excess of \$400,000; then, the amounts are \$15,000 for a general contractor and \$10,000 for a specialty contractor. Applicants with two prior convictions for violations of the registration act are required to pay twice the amounts required of other applicants.

Claims against the bond must be made within one year following the expiration of the certificate of registration which was in force at the time the claim accrued. Abandonment of the work

by the contractor is added to those events that trigger the beginning of the statute of limitation.

The statute of limitation does not begin to run in the case of defects which cannot reasonably be discovered until one year after they are discovered or should have been discovered.

Reasonable attorney's fees are to be awarded to successful claimants, but the amount for both damages and attorney's fees is only the face amount of the bond.

All trade creditors, such as material suppliers, laborers, and subcontractors, may only make claims against the bond for an aggregate amount of \$6,000 in the case of a general contractor and \$4,000 for a specialty contractor. Parties to the contract may claim for the full amount of the bond.

Sellers of residential real property must disclose work done on the property done under the homeowner's exception to the registration requirement which was completed within the three years prior to the sale. The exception to registration for a person hired as an employee of a homeowner is limited to instances where wages totaled no more than \$500.

Notices to customers which contractors must provide are amended to reflect new bond levels. It also includes a statement that they must file a lawsuit to recover any money on the bond and that other claimants may be entitled to a portion or all of the bond.

A special account is created in the Office of the Treasurer. Registration fees and factory-assembled structure inspection fees are deposited in the account, which can only be used for the administration of contractor registration and factory-assembled structure inspection programs. Any expenditure requires appropriation.

The existing property tax increase exemption for certain residential remodeling is amended to require the registration number of the contractor the taxpayer employs, or a statement that they are doing all the work under the homeowner exemption provision.

The department is given the authority following a hearing to revoke, suspend, or refuse to issue or renew a certificate of registration for certain stated offenses.

EFFECT OF PROPOSED SUBSTITUTE:

The intent section is removed.

The criminal penalty for failing to register is returned to the current level of misdemeanor.

The priority list for bond proceeds now explicitly include subcontractors.

The notice to consumers includes information on performance bonds for greater protection.

The homeowner exemption disclosure to repair/remodel requirement is limited and tightened.

The list of offenses which can lead to suspension or revocation of a contractor's certificate of registration is reduced.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

The sections establishing the construction industry administration account and internal references thereto are deleted.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR (Labor & Commerce):

The bill is the product of a task force and will add significant protections for consumers and equity for contractors who run legal and reputable businesses.

The task force was balanced and included representatives of several different interests.

Several technical amendments are needed.

TESTIMONY AGAINST (Labor & Commerce):

The bill allows for continuation certificates rather than new bonds for each registration period. This substantially reduces funds available to claimants and provides a windfall to surety companies.

Material supplier's remedies are weakened, which will cause them to file more lien claims against homeowners.

TESTIFIED (Labor & Commerce): PRO: John Bell, King County Prosecutor's Office; Joe Brewer, L&I; Bill Huyette, Dale Layton, Bob Blaydon, Brian Minnich, BIAW; Jeff Yusen, attorney; Ivan Dellings, Western Building Material Assn.; Doug Bohlke, CBIC; CON: Bryan Lee, attorney

TESTIMONY FOR (Ways & Means): None

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): No one