

# HOUSE BILL ANALYSIS

## HB 1903

**Brief Description:** Regulating the registration of contractors.

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**Sponsors:** Representatives Cairnes, Linville, Conway, Honeyford, and Clements

Hearing: February 24, 1997

### BACKGROUND:

*The Department of Labor and Industries administers and enforces the contractor registration statute. Under the statute, general and speciality contractors are required to register with the Department. A person wishing to perform construction services must meet certain requirements established by the statute relating to registration, bonding and insurance, and notice to customers. Penalties for violating the statute are established.*

**Statement of purpose.** *The purpose of the contractor registration statute is to protect the public, including firms, and corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors.*

**Definition of a contractor.** A contractor includes any person covered by the definition. There is no definition of an unregistered contractor.

**Substantial compliance.** A contractor may not maintain a suit for monies owed or breach of contract unless he or she is a registered contractor.

For purposes of determining whether a contractor may sue for monies owed or breach of contract, a court may not find a contractor in substantial compliance with the registration requirements unless the department has on file the statutory registration information from the contractor, the contractor has a current bond or other security, and current insurance. The court must take into consideration the length of time the contractor was not validly registered in determining whether the contractor is in substantial compliance.

**Application for registration as a contractor.** An applicant must submit certain documents, including his or her social security number, identification numbers for various taxes, and information on the type of contracting activity. If the applicant is a firm, partnership, or corporation, the names and addresses of the principals or officers must be submitted.

The Department of Labor and Industries must deny an application for registration if an applicant was previously registered as a sole proprietor, partnership, or corporation, and was a principal or officer of the corporation, and the applicant has an unsatisfied final judgment arising from a previous registration.

**Bond.** A bond of \$6,000 for general contractors, and \$4,000 for speciality contractors must be submitted by applicants for registration, or renewal of a registration. The surety on a bond is not liable in an aggregate amount beyond the amount named in the bond nor for any monetary penalty assessed for an infraction. The surety's liability does not cumulate where the bond has been renewed or extended.

**Renewal of registration.** *Registration is valid for one year and must be renewed on or before the expiration date.*

*The department may suspend a registration, after notice, if a final judgment impairs the bond or the bond is canceled, or the contractor's insurance is canceled.*

**Contractor advertising.** *All advertisements must show a contractor's registered name or address, and current registration number. A contractor's registration number is not required if the contractor's name, address, and telephone number are listed in an alphabetized telephone book or directory. Advertisements on radio and television are not required to show the contractor's registration number if the person who sold the advertisement received the contractor's current registration number from the contractor.*

**Infractions.** *It is an infraction for a contractor to advertise, offer to do work, submit a bid, or perform work without being registered, when his or her registration is suspended, to transfer a valid registration to an unregistered contractor, or to unlawfully advertise for work. Each day and work site on which a contractor works without being registered, works when his or her registration is suspended, or works under a false registration is a separate infraction.*

*Infractions are subject to penalties of \$200 to \$3,000.*

**Misdemeanors.** *It is a misdemeanor for a contractor to advertise, offer to do work, submit a bid, or perform any work without being registered, while his or her registration is suspended, to use a false or expired registration number when purchasing advertising, or to transfer a valid license to an unregistered contractor.*

**Mandatory coverage of employment for industrial insurance.** *There is an exemption from mandatory coverage under industrial insurance for maintenance, repair, remodeling, or similar work in or about the private home of an employer.*

## SUMMARY OF BILL:

**Statement of purpose.** *The purposes are to protect the general welfare of the residents of the state who purchase construction services and the general economic welfare of contractors in compliance with the registration requirements of the statute, to enhance state revenue collections, and to promote compliance and enforcement by providing swift and meaningful remedies for individuals who fail to register as required.*

**Substantial compliance.** *The doctrine of substantial compliance is not to be used by the department in applying or construing the contractor registration statute. A person engaged in contractor activities is presumed to know the registration requirements.*

**Definition of a contractor.** *A contractor includes any person who is covered by the definition, whether registered or not. An "unregistered contractor" is anyone doing work as a contractor without being registered, including contractors whose registration is suspended or expired for more than 30 days beyond the renewal date.*

**Application for registration as a contractor.** *The denial of a registration to a person who was registered when he or she was a principal or officer of a previously registered corporation is deleted.*

*The department has a duty to check for an applicant's past noncompliance with the registration requirements, including evidence of violations, suspended or revoked registrations, or misdemeanors or infractions related to the registration requirements. Multiple instances of past noncompliance may be grounds for denial of an application.*

**Bond.** *The bond must accompany an application for registration, and be continuous. The bond may be canceled by the surety on written notice to the director. The bond is one continuous obligation, whether renewed or otherwise extended, and the surety is not liable in an aggregate or cumulative amount exceeding the penal sum of the bond. The penal sum of the bond from two points in time may not be added to decide the surety's liability. The prevailing party in a bond claim action against the contractor and contractor's bond is entitled to costs and reasonable attorneys' fees.*

**Renewal of registration.** *A registration is considered validly renewed on the date the department receives the required fee and proof of bond and insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery is proof of renewed registration until the contractor receives verification from the department.*

**Consumer education.** *A provision is added requiring fees to cover consumer education activities. No less than 20 percent of yearly revenues must be committed to consumer education.*

**Contractor advertising.** *Language is deleted stating that advertisements on radio and*

*television are not required to show a contractor's registration number if the person who sold the advertisement received the contractor's current registration from the contractor. The Director of the Department of Labor and Industries is authorized to issue a subpoena to a seller of advertisements for the name, address, and telephone number of the person who bought the advertisement. If a seller has the requested information on file, the seller must return the completed form to the department within a reasonable time. A seller's good-faith compliance with the department's request is a complete defense to any civil or criminal action brought against a seller.*

*The subpoena must be issued within 48 hours after the expiration of the issue or publication or broadcast of the advertisement. The subpoena requirements apply to advertisements by airwave or electronic transmission.*

***Violations.*** *A contractor found to have committed an infraction for failure to register is subject to a fine between \$1,000 and \$5,000. The director may reduce the penalty to \$500 if the person registers within 10 days of the notice of infraction and it is a first offense. If a contractor who is issued a notice of infraction is a contractor who has failed to register, the contractor is subject to a penalty of \$1,000 per infraction. Each day the contractor works without becoming registered is a separate infraction.*

*It is a separate misdemeanor each day beyond the date of a citation, and each work site at which a person works without being registered, while a person's registration is suspended or revoked, or works under a registration issued to another person.*

*It is a class C felony for each day a person performs work after an administrative law judge's final determination that the person committed an infraction involving failure to register.*

*The authority of an administrative law judge to waive, reduce, or suspend a monetary penalty is deleted.*

*The director of Labor and Industries has a duty to adopt rules establishing a two-year audit and monitoring program for an unregistered contractor who becomes registered after receiving an infraction or conviction. The director has a duty to inform the Departments of Revenue, and Employment Security of the infractions or convictions and coordinate with them over payment of taxes or other monies owed to the state.*

***Mandatory coverage of employment for industrial insurance.*** *The exemption from mandatory coverage under industrial insurance is amended to include only maintenance or repair in or about the private home of the employer. Maintenance– is defined as the work of keeping in proper condition, and repair– is defined as restoring to sound condition after damage. Private home– is defined as a person's place of residence.*

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule-making

powers of an agency.

**FISCAL NOTE:** Not requested.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.