

SENATE BILL REPORT

SHB 1903

As Reported By Senate Committee On:
Commerce & Labor, April 3, 1997

Title: An act relating to registration of contractors.

Brief Description: Regulating the registration of contractors.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Cairnes, Linville, Conway, Honeyford, Hatfield, Clements, Kenney, Blalock, Cody, Cole, Gardner, Cooke and Tokuda).

Brief History:

Committee Activity: Commerce & Labor: 3/28/97, 4/3/97 [DPA, DNPA].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Schow, Chair; Horn, Vice Chair; Franklin, Fraser and Newhouse.

Minority Report: Do not pass as amended.

Signed by Senator Heavey.

Staff: Aurora Almeda (786-7488)

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.

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 or 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 or 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 Amended Bill: Statement of purpose. The purpose of the contractor registration statute is for consumer protection.

Definition of unregistered contractor. An unregistered contractor— means a person, firm, or corporation working as a contractor without being registered in compliance with the contractor registration requirements.

Substantial compliance. The Department of Labor and Industries may not apply the doctrine of substantial compliance in the application and construction of the contractor registration

law. A person engaged in contractor activities is presumed to know the requirements of the contractor registration law.

Bond. The bond must accompany an application for registration and be continuous whether renewed or extended. The bond may be canceled by the surety on written notice to the director.

Claims of laborers and subcontractors are added to the priority list of eligible claims against a bond.

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.

All fees charged for contractor registration are to be used solely for covering the cost of the registration program.

Contractor advertising. The director of the Department of Labor and Industries is authorized to issue a subpoena to a seller of advertisement 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.

Infractions and violations. An unregistered contractor who is issued a notice of infraction is subject to a monetary penalty for every infraction and for each day that he or she works without being registered as provided in the schedule of penalties established by the department. A contractor found to have committed an infraction for failure to register is subject to a fine of \$1,000 to \$5,000. The director may reduce the penalty, but not below \$500, if the person registers within 10 days of the notice of infraction and it is a first offense.

Waiver of penalties is limited to waiver in favor of restitution to a consumer.

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

Application for registration as a contractor. It is lawful for a general contractor to employ an unregistered contractor who was registered at the time he or she contracted with a general contractor, unless the general contractor has been notified by the Department of Labor and Industries that the contractor has become unregistered.

The director of the Department of Labor and Industries must 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 must 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. Persons engaged to do maintenance or repair in or about the private home of an employer are exempt from mandatory coverage under the industrial insurance law. 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.

Reporting requirements to the Legislature. Beginning on December 1, 1997, the department must report annually to the Commerce and Labor Committees of the Senate and House of Representatives, the Ways and Means Committee of the Senate, and the Appropriations Committee of the House of Representatives information on the number of contractors found in violation of the contractor registration law, the number of contractors who were assessed a penalty and the amount of the penalty, the amount of the penalties collected, and the amount of the penalties assessed that was waived.

Amended Bill Compared to Substitute Bill: The chapter's statement of purpose regarding enforcement and compliance is removed. The provision regarding the surety's nonliability for aggregate cumulative amounts exceeding the penal sum of the bond is removed. The provision barring consumer protection claims is removed. Claims of laborers and subcontractors are added to the priority list of eligible claimants to a bond.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Changing the bond requirement to continuous will enable the Department of Labor and Industries to more efficiently process the registration of contractors. There is currently a backlog of registration for contractors since a contractor is responsible for filing several documents. The language relating to continuous bonding enhances current law and does not change the bonding limits or potential claims against bonds. Once a bond falls under the required amount, a contractor must replenish the bond to re-register. Although there was one case in 1988, *Painters Trust*, which decided that separate registration periods constitute separate bonds, no other court has ever cited that decision for authority. All the cases since then have decided differently. The bond amount does not cumulate with each year. The legislative history on the issue reveals that it was never the intention of the Legislature that bond amounts be added with each additional registration year. It does not make sense that a contractor would be exposed to increased liability with each year of experience. The bonding companies are not the parties who are benefitting from this bill; the bonding companies only serve as a "pass-through" for contractors who must ultimately pay back the bonding companies.

Testimony Against: Although the Department of Labor and Industries should have the tools to make the administration of the contractor registration statute more efficient, the manner in which this bill addresses binding requirements does not resolve the problem. There

should be a round table discussion on how to interpret and implement the issues of the bond amount and claims against a bond. Registration periods for contractors constitute separate bonds for which claimants may file against. Court decisions on the state appellate and Supreme Court levels have reasoned that separate registration periods have separate bonds, though the bonds may be considered administratively continuous. Limiting the ability of claimants to file against one continuous bond only hurts consumers. The bill also hurts consumers because it bars consumer protection claims under the contractor registration statute. Consumers have always been able to file a consumer protection complaint under the statute. Changing the purpose of the statute to enforcement instead of consumer protection is also a dramatic change which hurts consumers. Subcontractors and laborer's claims should also be included in the priority of interests against a bond.

Testified: PRO: Kevin Morris, Pete Schmidt, Dept. of Labor and Industries; Larry Stevens, United Subcontractors Association/Contractors Bonding; Bob Gee, Western Bldg. Material (w/concerns); Jeff Yuson, attorney; John York, attorney; Gary Smith, Tony Mienhardt, Independent Business Assoc.; Kathleen Collins, Sheet Metal and Air Conditioning; Rick Slunaker, Associated General Contractors of WA; Bob Blayden, BIAW; Robert Dilger, WA State Bldg Trade; Dan Sexton, United Assoc. Of Plumbers and Pipefitters; Brian Minnich, BIAW; Rowland Thompson, Allied Daily Newspapers of Washington; Cliff Webster, Associated Builders and Contractors; CON: Paula Sellis, Assistant Attorney General; David Morgan, ABR Inc.; Phil Schmuck; Bill Charboneau, Attorney; Lynne Worley, Chansee Siding/Nat'l Assoc. of Credit Managers; Tammy Manz, WA Ceder/Nat'l Assoc. of Credit Managers; Bernadette Somers, Miller's Interior; Nick Angeloff, Southern Insulation, Inc.; Frank Stull, American Pacific Supply.