

SENATE BILL REPORT

SB 6638

As Reported By Senate Committee On:
Commerce & Labor, February 5, 1998

Title: An act relating to consumer protection regarding contractors.

Brief Description: Providing consumer protection regarding contractors.

Sponsors: Senators Horn, Schow and Oke.

Brief History:

Committee Activity: Commerce & Labor: 1/26/98, 2/5/98 [DPS].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6638 be substituted therefor, and the substitute bill do pass.

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

Staff: Jack Brummel (786-7428)

Background: Consumer complaints against building contractors are consistently in the top ten of all complaints taken by the Attorney General's office. During the last legislative session, the Legislature addressed the issue of contractor registration and consumer protection by making penalties of unregistered contractors stiffer and more certain and by requiring contractors to get the unified business identifier number of a subcontractor.

During the 1997 interim, the Senate Commerce and Labor Committee conducted a comprehensive study of issues affecting homeowners when they contract for construction of a new home or remodel their home. The study also looked at the effect unregistered contractors have on the construction industry. The perspectives of general contractors, subcontractors, consumers, suppliers, and surety companies was sought in the process. A number of recommendations were made regarding contractors' surety bonds, contractor registration, liens, notice requirements, the prompt payment of construction obligations, contractor licensing, and consumer education.

Currently, general contractors must file a \$6,000 surety bond and specialty contractors must file a \$4,000 surety bond with the Department of Labor and Industries when applying for registration. The department denies an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A contractor must give notice to a customer at the start of a construction project about the availability of the bond.

When contractors or subcontractors go into bankruptcy, if they have not paid their subcontractors or suppliers for work done on a construction project, they may discharge their

obligations through bankruptcy proceedings, typically at a fraction of their full amount. There is currently no statutory obligation to pay contractors, subcontractors, or suppliers in a timely fashion for work performed on or material supplied to a construction project and they may file a lien against the property if they have not been paid. Notice on the right to claim a lien must be given in certain circumstances.

The maximum penalty for violation of statutory registration, advertising, identification and solicitation requirements is \$5,000.

The department is prohibited from charging a contractors' registration fee of more than \$50.

Summary of Substitute Bill: The Department of Labor and Industries must deny a contractor's application for registration and suspend an active registration if the applicant or registrant was a major participant in a contracting company with an unsatisfied final judgment.

The amount of the surety bond required is increased to \$10,000 for contractors with gross revenue under \$2 million per year; to \$25,000 for contractors with gross revenue between \$2 million and \$7.5 million; and to \$50,000 for contractors with gross revenue over \$7.5 million per year. The bond amounts must be adjusted every other year for inflation. One-half of the bond must be reserved for claims by residential homeowners.

The amount of insurance required of a contractor is increased to \$50,000 for property damage; to \$100,000 for personal injury or death of one person; and to \$200,000 for personal injury or death of more than one person.

Moneys received for a residential homeowner's construction project is to be held in trust, which has the effect of removing any claim against it from being satisfied through bankruptcy. It is a violation of law to use construction trust moneys for any purpose other than to make payments for labor, material, equipment or services connected to the construction project for which it was received. Trust moneys need not be kept in a separate account and up to 10 percent may be withheld until project completion.

Owners, prime contractors, and subcontractors must pay moneys due in connection with a residential homeowner's construction project within 30 days. In the event of a dispute over moneys due, up to 150 percent of the amount in dispute may be withheld.

The penalty is increased from \$5,000 to \$10,000 maximum for violation of registration, advertising, identification, and solicitation requirements of the contractors' registration code. Money from penalties is to be kept by the department for administration and enforcement of contractor registration requirements.

The notice that a contractor must give to a customer about the contractor's bond is to include bold statements that: (1) the bond may not be sufficient to cover a claim; (2) the consumer can request a performance bond; (3) the consumer's property may be liened; and (4) joint checks and lien releases will provide additional protection.

The Professional Contractors' Board is established with five industry representatives, four public members, one labor representative, and one local official. At least three of the board members must be general contractors and at least one must be a specialty contractor. The board appoints a registrar of contractors. The new board examines and makes recommendations to the Legislature on licensing of contractors, and reviews enforcement, and consumer and industry education practices. It also must establish a recovery account, devise alternative dispute resolution mechanisms, manage a complaint process, recommend rules and make reports. The board is terminated in 2003, after a sunset review.

With the exception of lien claims by laborers, the right to claim a lien on residential property may not be exercised if the prime contractor is not registered.

Owners of new single family residences must receive notice of right to claim a lien from all who do not contract directly with the owner. The notice includes a bold statement that it is intended to provide information necessary to manage the owners construction project.

Substitute Bill Compared to Original Bill: The substitute revises the definition of residential homeowner, eliminates a provision for attorneys' fees, adjusts prompt pay provisions from 10 days to 30 days, clarifies that the board has no authority to start a licensing process, and restores the \$50 cap on registration fees, which the original bill removed.

Appropriation: None.

Fiscal Note: Requested on January 23, 1998.

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

Testimony For: The trust provisions will help consumers. It is time to increase the bonding requirements. Since 1990 the Attorney General's Office has had over 9,000 complaints against contractors; 1,300 last year alone. We need a system of disincentives for unregistered contractors. The contractor's board would allow a thoughtful approach to ongoing problems. The prompt pay provisions will keep the money flowing and will prevent liens from being filed. Contractors should be licensed.

Testimony Against: The administration of the bond reserved for the homeowners will be difficult to administer. The attorney's fees provision should be for the prevailing party. The contractor's board will create problems because of competing interests. Lien rights should not be limited. Some of the provisions of the bill will drive more contractors underground. There should be more emphasis on enforcement.

Testified: PRO: Nancy Lillard; Nancy Douglas; Ann Arnold; Louise Morgan; Hal and Pam Newhouse; Mark and Patricia Lynch; George Avilaur; Ken Wyffels; Patricia Pinkham; Bob Gee, Western Building Material Association; Paula Selis, Attorney General's Office; Larry Stevens, National Electrical Contractors Association, Contractors Bonding and Insurance Co., Mechanical Contractors Association.; Gary Smith, Independent Business Association; Tammy Manz, Janis Lucas, Deborah O'Keefe, National Association of Credit Management; Robert Dilger, WA Bldg. Trades Council; Dan Sexton, WA Association. of Plumbers & Pipefitters; Kevin Morris, L&I; Roger Boatwright, Rebound. CON: Jeff

Yusen; Brian Minnick, Jack Tenhulzen, Dick Ducharme, Bob Blayden, BIAW; Larry Stevens, National Electrical Contractors Association, Contractors Bonding and Insurance Co., Mechanical Contractors Association.; Larry Byers, CBIC; Gary Smith, Independent Business Association; Rick Slunaker, AGC;