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HOUSE BILL 2599

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Ogden, Carlson, Dickerson, Costa, Gardner and Constantine

Read first time 01/16/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to licensing of residential contractors; amending  
2 RCW 18.27.040 and 18.27.114; adding new sections to chapter 18.27 RCW;  
3 adding a new section to chapter 19.27 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout sections 2 through 8 of this act unless the context clearly  
7 requires otherwise.

8 (1) "Board" means the state residential construction contractors  
9 board.

10 (2) "Residential contractor" means a general contractor who  
11 performs work in connection with residential structures and the  
12 appurtenances thereto. "Residential contractor" includes, but is not  
13 limited to, a person who purchases or owns property and constructs or  
14 for compensation arranges for the construction of one or more  
15 residential structures with the intent of selling the residential  
16 structure or structures.

17 (3) "Residential structure" means a residence, including a site-  
18 built home, a modular home constructed off-site, a condominium, a  
19 duplex, or multifamily residential building.

1        NEW SECTION.    **Sec. 2.**    (1) The state residential construction  
2 contractors board is established, consisting of nine members appointed  
3 by the governor with the advice of the director of the department. The  
4 members of the board shall be selected and appointed as follows: Three  
5 members shall be contractors who primarily work on residential  
6 structures; one member shall be a contractor engaged primarily in the  
7 business of residential remodeling; two members shall represent the  
8 public; two members shall be elected representatives of governing  
9 bodies of local government, one shall represent the governing body of  
10 a county; and one member shall be a general contractor who primarily  
11 works on nonresidential structures.

12        (2) The members shall serve four-year terms. Of the initial  
13 members, two must be appointed for a one-year term, three must be  
14 appointed for a two-year term, three must be appointed for a three-year  
15 term, and the remainder must be appointed for four-year terms.  
16 Thereafter, members must be appointed for four-year terms. A member is  
17 eligible for reappointment. If there is a vacancy for any cause, the  
18 governor shall make an appointment immediately effective for the  
19 unexpired term.

20        (3) In order to be eligible for board membership, the contractor  
21 members of the board shall be registered under this chapter and shall  
22 maintain their registration in good standing during their terms on the  
23 board.

24        (4) The board at its first meeting shall select from its membership  
25 a chairperson and a vice-chairperson with such duties and powers  
26 necessary for the performance of their duties as the board determines.

27        (5) Meetings of the board shall be held at least quarterly in  
28 accordance with a schedule established by the board. A majority of the  
29 members of the board constitutes a quorum for the transaction of  
30 business. Each member of the board shall receive compensation in  
31 accordance with RCW 43.03.240 and shall be reimbursed for travel  
32 expenses in accordance with RCW 43.03.050 and 43.03.060 which shall be  
33 paid out of the contractor license fund, upon forms approved by the  
34 director of the department.

35        (6) The department shall provide administrative and clerical  
36 assistance to the board.

37        NEW SECTION.    **Sec. 3.**    (1) It is unlawful for any person, firm,  
38 partnership, corporation, or other entity to engage in, conduct, or

1 carry on the business of a residential contractor, without having an  
2 unrevoked, unsuspended, and unexpired residential contractor license,  
3 issued by the department in accordance with sections 1 through 8 of  
4 this act.

5 (2) The department may issue a residential contractor license for  
6 a period of twenty-four months after the date of issuance unless the  
7 license is revoked or suspended as set forth in this chapter. It may  
8 be renewed by the same procedure and period provided for an original  
9 registration upon application and furnishing of any supplemental  
10 information as the department may require by rule.

11 (3) An application for a residential contractor license shall be  
12 made in writing to the department, accompanied by the required fee.  
13 The application shall contain the information pertaining to the  
14 applicant required in RCW 18.27.030.

15 (4) In addition to the requirements of subsection (3) of this  
16 section, the application for a residential contractor license shall be  
17 accompanied by a surety bond issued by a surety insurer who meets the  
18 requirements of chapter 48.28 RCW in the amounts required in section 4  
19 of this act. If a valid bond is not already on file with the  
20 department at the time the application is filed, a bond must accompany  
21 the application for a license.

22 (5) Except for the amount of the surety bond as required in section  
23 4 of this act, the surety bond must meet the requirements of RCW  
24 18.27.040.

25 NEW SECTION. **Sec. 4.** (1) The surety bond required for residential  
26 contractors shall be determined based on the volume of work as follows:

27 (a) If the estimated annual volume of residential construction work  
28 of the applicant is ten million dollars or more, the applicant shall  
29 furnish a surety bond of one hundred thousand dollars;

30 (b) If the estimated annual volume of residential construction work  
31 of the applicant is more than five million dollars and less than ten  
32 million dollars, the applicant shall furnish a surety bond of seventy-  
33 five thousand dollars;

34 (c) If the estimated annual volume of residential construction work  
35 of the applicant is more than one million dollars and less than five  
36 million dollars, the applicant shall furnish a surety bond of fifty  
37 thousand dollars;

1 (d) If the estimated annual volume of residential construction work  
2 of the applicant is more than five hundred thousand dollars and less  
3 than one million dollars, the applicant shall furnish a surety bond of  
4 twenty-five thousand dollars; and

5 (e) If the estimated annual volume of residential construction work  
6 of the applicant is less than five hundred thousand dollars, the  
7 applicant shall furnish a surety bond of fifteen thousand dollars.

8 (2) Applicants for a residential contractor license shall also  
9 provide proof of meeting the insurance or financial responsibility  
10 requirements of RCW 18.27.050.

11 NEW SECTION. **Sec. 5.** (1) It is the purpose and function of the  
12 board to establish a residential contractor license. In addition, it  
13 is the purpose and function of the board to establish and administer a  
14 written examination for residential contractors.

15 (2) Examinations for an initial license shall be designed to  
16 reasonably insure that residential contractors are competent to engage  
17 in and supervise the work covered by sections 1 through 8 of this act.  
18 The examination shall include questions from the following categories  
19 to assure proper safety and protection for the general public: (a)  
20 Safety; (b) state building code; and (c) business practices that affect  
21 residential contractors.

22 (3) Examinations for renewing a license shall be designed to  
23 reasonably insure that residential contractors have kept updated on  
24 residential construction techniques and business practices. As part of  
25 the requirement for renewing a residential contractor license, the  
26 board shall require by rule that residential contractors provide  
27 evidence of completion of up to twelve hours of education in subjects  
28 relating to business practices and laws that affect residential  
29 contractors.

30 (4) The department with consent of the board may enter into a  
31 contract with a professional testing agency to develop, administer, and  
32 score the examinations. The fee for the examination may be set by the  
33 department in its contract with the professional testing agency. The  
34 department may direct that the applicant pay the fee to the  
35 professional testing agency. The fee shall cover but not exceed the  
36 costs of preparing and administering the examination.

1        NEW SECTION.    **Sec. 6.**    The residential contractor's license account  
2 is created in the state treasury. All receipts from application fees,  
3 the issuance or renewal of residential contractor licenses, or other  
4 sources must be deposited into the account. Moneys in the account may  
5 be spent only after appropriation. Expenditures from the account may  
6 be used only for the purposes of sections 1 through 8 of this act.

7        NEW SECTION.    **Sec. 7.**    (1) There is established the residential  
8 contractors' recovery fund, to be administered by the department, from  
9 which any person injured by an act, representation, transaction, or  
10 conduct of a licensed residential contractor, that is in violation of  
11 this chapter or rules adopted by the department, may be awarded in the  
12 county where the violation occurred an amount of not more than twenty  
13 thousand dollars for damages sustained by the act, representation,  
14 transaction, or conduct. An award from the fund is limited to the  
15 actual damages suffered by the claimant as a direct result of the  
16 residential contractor's violation but shall not exceed an amount  
17 necessary to complete or repair a residential structure or  
18 appurtenances within residential property lines, except that an award  
19 from the fund shall not be available to persons injured by an act,  
20 representation, transaction, or conduct of a residential contractor  
21 whose license was revoked, expired, canceled, or suspended under this  
22 chapter at the time of the contract. No more than the maximum  
23 individual award from the fund shall be made on any individual  
24 residence or to any injured person. Moneys in the fund shall not be  
25 used to pay attorneys' fees or costs except in contested cases appealed  
26 to the superior court.

27        (2) A person making application for a residential contractor's  
28 license or for renewal of a residential contractor's license shall pay  
29 an assessment of not more than six hundred dollars for deposit into the  
30 fund. If the department does not issue the license, the assessment  
31 shall be returned to the applicant.

32        (3) The department shall, by rule, establish guidelines for  
33 awarding claims from the fund to persons injured by an act,  
34 representation, transaction, or conduct of a residential contractor.

35        (4) As used in this section:

36        (a) "Assessment" means the contribution by a contractor to the  
37 residential contractors' recovery fund;

38        (b) "Fund" means the residential contractors' recovery fund; and

1 (c) "Person injured" means any owner of a residential structure and  
2 which is actually occupied or intended to be occupied by the owner as  
3 a residence including, but not limited to, community property, tenants  
4 in common or joint tenants who are damaged by the failure of a  
5 residential contractor to adequately build or improve a residential  
6 structure or appurtenance on that real property. "Person injured"  
7 includes lessees of residential real property who contract directly  
8 with a residential contractor or a subcontractor of that contractor and  
9 homeowners' or unit owners' association after transfer of control from  
10 the contractor or developer for damages to the common elements within  
11 the complex.

12 NEW SECTION. **Sec. 8.** (1) A contractor agreeing to perform any  
13 contracting project for the repair, alteration, or construction of a  
14 residential structure when the bid or contract price totals one  
15 thousand dollars or more, shall provide the customer with the following  
16 disclosure statement prior to starting work on the project:

17 "NOTICE TO CUSTOMER

18 This contractor is registered and licensed with the state of  
19 Washington, registration/license no. . . . ., as a  
20 residential contractor and has posted with the state a bond of  
21 \$. . . . . for the purpose of satisfying claims against the  
22 residential contractor for negligent or improper work or breach  
23 of contract in the conduct of the contractor's business. The  
24 expiration date of this contractor's registration/license is  
25 . . . . . This bond may not be sufficient to cover a claim  
26 which might arise from the work done under your contract. If  
27 any supplier of materials used in your construction project or  
28 any employee of the contractor is not paid by the contractor on  
29 your job, your property may be liened to force payment. If you  
30 wish additional protection, you may request the contractor to  
31 provide you with original "lien release" documents from each  
32 supplier or subcontractor on your project. The contractor is  
33 required to provide you with further information about lien  
34 release documents if you request it. General information is  
35 also available from the department of labor and industries."

36 (2) A residential contractor shall notify any consumer to whom  
37 notice is required under subsection (1) of this section if the

1 contractor's license has expired or is revoked or suspended by the  
2 department before completion or other termination of the contract with  
3 the consumer.

4 (3) A residential contractor may not bring or maintain any lien  
5 claim under chapter 60.04 RCW based on any contract to which this  
6 section applies without alleging and proving that the residential  
7 contractor has provided the customer with a copy of the disclosure  
8 statement as required in subsection (1) of this section.

9 (4) Failure to comply with this section constitutes an infraction  
10 under this chapter.

11 (5) The department shall produce model disclosure statements, and  
12 public service announcements detailing the information needed to assist  
13 residential contractors and residential contractors' customers to  
14 comply under this section. As necessary, the department shall  
15 periodically update these education materials.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.27 RCW  
17 to read as follows:

18 (1) The state building code council shall, by January 1, 1999,  
19 prepare a written training course and examination to be administered,  
20 at no cost to the local government, to all local government building  
21 inspectors that inspect single or multifamily residential buildings.

22 (2) The state building code council may use an existing  
23 certification program designed to test local government building  
24 inspectors on their knowledge of the state building code.

25 (3) After January 1, 2000, a local government building inspector  
26 shall not inspect a single or multifamily residential building unless  
27 certified by the state building code council.

28 (4) The state building code council shall adopt necessary rules to  
29 implement this section.

30 **Sec. 10.** RCW 18.27.040 and 1997 c 314 s 5 are each amended to read  
31 as follows:

32 (1) Except as provided in section 3 of this act, each applicant  
33 shall file with the department a surety bond issued by a surety insurer  
34 who meets the requirements of chapter 48.28 RCW in the sum of six  
35 thousand dollars if the applicant is a general contractor and four  
36 thousand dollars if the applicant is a specialty contractor. If no  
37 valid bond is already on file with the department at the time the

1 application is filed, a bond must accompany the registration  
2 application. The bond shall have the state of Washington named as  
3 obligee with good and sufficient surety in a form to be approved by the  
4 department. The bond shall be continuous and may be canceled by the  
5 surety upon the surety giving written notice to the director of its  
6 intent to cancel the bond. A cancellation or revocation of the bond or  
7 withdrawal of the surety from the bond suspends the registration issued  
8 to the registrant until a new bond or reinstatement notice has been  
9 filed and approved as provided in this section. The bond shall be  
10 conditioned that the applicant will pay all persons performing labor,  
11 including employee benefits, for the contractor, will pay all taxes and  
12 contributions due to the state of Washington, and will pay all persons  
13 furnishing labor or material or renting or supplying equipment to the  
14 contractor and will pay all amounts that may be adjudged against the  
15 contractor by reason of breach of contract including negligent or  
16 improper work in the conduct of the contracting business. A change in  
17 the name of a business or a change in the type of business entity shall  
18 not impair a bond for the purposes of this section so long as one of  
19 the original applicants for such bond maintains partial ownership in  
20 the business covered by the bond.

21 (2) Any contractor registered as of July 1, 1997, who maintains  
22 such registration in accordance with this chapter shall be in  
23 compliance with this chapter until the next annual renewal of the  
24 contractor's certificate of registration. At that time, the contractor  
25 shall provide a bond, cash deposit, or other security deposit as  
26 required by this chapter and comply with all of the other provisions of  
27 this chapter before the department shall renew the contractor's  
28 certificate of registration.

29 (3) Any person, firm, or corporation having a claim against the  
30 contractor for any of the items referred to in this section may bring  
31 suit upon the bond or deposit in the superior court of the county in  
32 which the work was done or of any county in which jurisdiction of the  
33 contractor may be had. The surety issuing the bond shall be named as  
34 a party to any suit upon the bond. Action upon the bond or deposit  
35 shall be commenced by filing the summons and complaint with the clerk  
36 of the appropriate superior court within one year from the date of  
37 expiration of the certificate of registration in force at the time the  
38 claimed labor was performed and benefits accrued, taxes and  
39 contributions owing the state of Washington became due, materials and



1 equipment were furnished, or the claimed contract work was completed or  
2 abandoned. Service of process in an action against the contractor, the  
3 contractor's bond, or the deposit shall be exclusively by service upon  
4 the department. Three copies of the summons and complaint and a fee of  
5 ten dollars to cover the handling costs shall be served by registered  
6 or certified mail upon the department at the time suit is started and  
7 the department shall maintain a record, available for public  
8 inspection, of all suits so commenced. Service is not complete until  
9 the department receives the ten-dollar fee and three copies of the  
10 summons and complaint. The service shall constitute service on the  
11 registrant and the surety for suit upon the bond or deposit and the  
12 department shall transmit the summons and complaint or a copy thereof  
13 to the registrant at the address listed in the registrant's application  
14 and to the surety within forty-eight hours after it shall have been  
15 received.

16 (4) The surety upon the bond shall not be liable in an aggregate  
17 amount in excess of the amount named in the bond nor for any monetary  
18 penalty assessed pursuant to this chapter for an infraction. The  
19 liability of the surety shall not cumulate where the bond has been  
20 renewed, continued, reinstated, reissued or otherwise extended. The  
21 surety upon the bond may, upon notice to the department and the  
22 parties, tender to the clerk of the court having jurisdiction of the  
23 action an amount equal to the claims thereunder or the amount of the  
24 bond less the amount of judgments, if any, previously satisfied  
25 therefrom and to the extent of such tender the surety upon the bond  
26 shall be exonerated but if the actions commenced and pending at any one  
27 time exceed the amount of the bond then unimpaired, claims shall be  
28 satisfied from the bond in the following order:

29 (a) Employee labor and claims of laborers, including employee  
30 benefits;

31 (b) Claims for breach of contract by a party to the construction  
32 contract;

33 (c) Subcontractors, material, and equipment;

34 (d) Taxes and contributions due the state of Washington;

35 (e) Any court costs, interest, and attorney's fees plaintiff may be  
36 entitled to recover. The surety is not liable for any amount in excess  
37 of the penal limit of its bond.

38 A payment made by the surety in good faith exonerates the bond to  
39 the extent of any payment made by the surety.

1 (5) If a final judgment impairs the liability of the surety upon  
2 the bond so furnished that there shall not be in effect a bond  
3 undertaking in the full amount prescribed in this section, the  
4 department shall suspend the registration of the contractor until the  
5 bond liability in the required amount unimpaired by unsatisfied  
6 judgment claims is furnished. If the bond becomes fully impaired, a  
7 new bond must be furnished at the rates prescribed by this section.

8 (6) In lieu of the surety bond required by this section the  
9 contractor may file with the department a deposit consisting of cash or  
10 other security acceptable to the department.

11 (7) Any person having filed and served a summons and complaint as  
12 required by this section having an unsatisfied final judgment against  
13 the registrant for any items referred to in this section may execute  
14 upon the security held by the department by serving a certified copy of  
15 the unsatisfied final judgment by registered or certified mail upon the  
16 department within one year of the date of entry of such judgment. Upon  
17 the receipt of service of such certified copy the department shall pay  
18 or order paid from the deposit, through the registry of the superior  
19 court which rendered judgment, towards the amount of the unsatisfied  
20 judgment. The priority of payment by the department shall be the order  
21 of receipt by the department, but the department shall have no  
22 liability for payment in excess of the amount of the deposit.

23 (8) The director may adopt rules necessary for the proper  
24 administration of the security.

25 **Sec. 11.** RCW 18.27.114 and 1997 c 314 s 12 are each amended to  
26 read as follows:

27 (1) Any specialty contractor agreeing to perform any contracting  
28 project: (a) For the repair, alteration, or construction of four or  
29 fewer residential units or accessory structures on such residential  
30 property when the bid or contract price totals one thousand dollars or  
31 more; or (b) for the repair, alteration, or construction of a  
32 commercial building when the bid or contract price totals one thousand  
33 dollars or more but less than sixty thousand dollars, must provide the  
34 customer with the following disclosure statement prior to starting work  
35 on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . ., as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is . . . . . This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

(2) A contractor subject to this section shall notify any consumer to whom notice is required under subsection (1) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(3) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) of this section.

(4) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(5) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(6) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section.

1 As necessary, the department shall periodically update these education  
2 materials.

3 NEW SECTION. **Sec. 12.** Sections 1 through 8 of this act are each  
4 added to chapter 18.27 RCW and codified with the subchapter heading of  
5 "residential contractors."

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