
SENATE BILL 6618

State of Washington 58th Legislature 2004 Regular Session

By Senators Prentice, Winsley and Regala

Read first time 01/27/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to contractor surety bonds; and amending RCW
2 18.27.040.

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

4 **Sec. 1.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read
5 as follows:

6 (1)(a) Each applicant shall file with the department a surety bond
7 issued by a surety insurer who meets the requirements of chapter 48.28
8 RCW in the sum of at least twelve thousand dollars if the applicant is
9 a general contractor and at least six thousand dollars if the applicant
10 is a specialty contractor.

11 (b) If no valid bond is already on file with the department at the
12 time the application is filed, a bond must accompany the registration
13 application.

14 (c) The amount of the bond required upon the renewal of an
15 applicant's registration shall be the equivalent of:

16 (i) The sum of two thousand dollars times the number of contracts
17 to which RCW 18.27.114 applies that the applicant entered into during
18 the twelve months immediately preceding the expiration of the

1 applicant's registration, plus twelve thousand dollars, if the
2 applicant is a general contractor; or

3 (ii) The sum of one thousand dollars times the number of projects
4 to which RCW 18.27.114 applies that the applicant contracted to work on
5 during the twelve months immediately preceding the expiration of the
6 applicant's registration, plus six thousand dollars, if the applicant
7 is a specialty contractor.

8 (d) The bond shall have the state of Washington named as obligee
9 with good and sufficient surety in a form to be approved by the
10 department. The bond shall be continuous and may be canceled by the
11 surety upon the surety giving written notice to the director. A
12 cancellation or revocation of the bond or withdrawal of the surety from
13 the bond automatically suspends the registration issued to the
14 registrant until a new bond or reinstatement notice has been filed and
15 approved as provided in this section. The bond shall be conditioned
16 that the applicant will pay all persons performing labor, including
17 employee benefits, for the contractor, will pay all taxes and
18 contributions due to the state of Washington, and will pay all persons
19 furnishing labor or material or renting or supplying equipment to the
20 contractor and will pay all amounts that may be adjudged against the
21 contractor by reason of breach of contract including negligent or
22 improper work in the conduct of the contracting business.

23 (e) A change in the name of a business or a change in the type of
24 business entity shall not impair a bond for the purposes of this
25 section so long as one of the original applicants for such bond
26 maintains partial ownership in the business covered by the bond.

27 (2) At the time of initial registration or renewal, the contractor
28 shall provide a bond or other security deposit as required by this
29 chapter and comply with all of the other provisions of this chapter
30 before the department shall issue or renew the contractor's certificate
31 of registration. Any contractor registered as of July 1, 2001, who
32 maintains that registration in accordance with this chapter is in
33 compliance with this chapter until the next renewal of the contractor's
34 certificate of registration.

35 (3) Any person, firm, or corporation having a claim against the
36 contractor for any of the items referred to in this section may bring
37 suit upon the bond or deposit in the superior court of the county in
38 which the work was done or of any county in which jurisdiction of the

1 contractor may be had. The surety issuing the bond shall be named as
2 a party to any suit upon the bond. Action upon the bond or deposit
3 brought by a residential homeowner for breach of contract by a party to
4 the construction contract shall be commenced by filing the summons and
5 complaint with the clerk of the appropriate superior court within two
6 years from the date the claimed contract work was substantially
7 completed or abandoned. Action upon the bond or deposit brought by any
8 other authorized party shall be commenced by filing the summons and
9 complaint with the clerk of the appropriate superior court within one
10 year from the date the claimed labor was performed and benefits
11 accrued, taxes and contributions owing the state of Washington became
12 due, materials and equipment were furnished, or the claimed contract
13 work was substantially completed or abandoned. Service of process in
14 an action against the contractor, the contractor's bond, or the deposit
15 shall be exclusively by service upon the department. Three copies of
16 the summons and complaint and a fee adopted by rule of not less than
17 twenty dollars to cover the costs shall be served by registered or
18 certified mail, or other delivery service requiring notice of receipt,
19 upon the department at the time suit is started and the department
20 shall maintain a record, available for public inspection, of all suits
21 so commenced. Service is not complete until the department receives
22 the fee and three copies of the summons and complaint. The service
23 shall constitute service on the registrant and the surety for suit upon
24 the bond or deposit and the department shall transmit the summons and
25 complaint or a copy thereof to the registrant at the address listed in
26 the registrant's application and to the surety within two days after it
27 shall have been received.

28 (4) The surety upon the bond shall not be liable in an aggregate
29 amount in excess of the amount named in the bond nor for any monetary
30 penalty assessed pursuant to this chapter for an infraction. The
31 liability of the surety shall not cumulate where the bond has been
32 renewed, continued, reinstated, reissued or otherwise extended. The
33 surety upon the bond may, upon notice to the department and the
34 parties, tender to the clerk of the court having jurisdiction of the
35 action an amount equal to the claims thereunder or the amount of the
36 bond less the amount of judgments, if any, previously satisfied
37 therefrom and to the extent of such tender the surety upon the bond

1 shall be exonerated but if the actions commenced and pending at any one
2 time exceed the amount of the bond then unimpaired, claims shall be
3 satisfied from the bond in the following order:

4 (a) Employee labor and claims of laborers, including employee
5 benefits;

6 (b) Claims for breach of contract by a party to the construction
7 contract;

8 (c) Registered or licensed subcontractors, material, and equipment;

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

10 (e) Any court costs, interest, and (~~attorney's~~ [attorneys'])
11 attorneys' fees plaintiff may be entitled to recover. The surety is
12 not liable for any amount in excess of the penal limit of its bond.

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

15 (5) The total amount paid from a bond or deposit required of a
16 general contractor by this section to claimants other than residential
17 homeowners must not exceed one-half of the bond amount. The total
18 amount paid from a bond or deposit required of a specialty contractor
19 by this section to claimants other than residential homeowners must not
20 exceed one-half of the bond amount or four thousand dollars, whichever
21 is greater.

22 (6) The prevailing party in an action filed under this section
23 against the contractor and contractor's bond or deposit, for breach of
24 contract by a party to a construction contract, is entitled to costs,
25 interest, and reasonable attorneys' fees. The surety upon the bond is
26 not liable in an aggregate amount in excess of the amount named in the
27 bond nor for any monetary penalty assessed pursuant to this chapter for
28 an infraction.

29 (7) If a final judgment impairs the liability of the surety upon
30 the bond so furnished that there is not in effect a bond in the full
31 amount prescribed in this section, the registration of the contractor
32 is automatically suspended until the bond liability in the required
33 amount unimpaired by unsatisfied judgment claims is furnished.

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

37 (9) Any person having filed and served a summons and complaint as
38 required by this section having an unsatisfied final judgment against

1 the registrant for any items referred to in this section may execute
2 upon the security held by the department by serving a certified copy of
3 the unsatisfied final judgment by registered or certified mail upon the
4 department within one year of the date of entry of such judgment. Upon
5 the receipt of service of such certified copy the department shall pay
6 or order paid from the deposit, through the registry of the superior
7 court which rendered judgment, towards the amount of the unsatisfied
8 judgment. The priority of payment by the department shall be the order
9 of receipt by the department, but the department shall have no
10 liability for payment in excess of the amount of the deposit.

11 (10) The director may require an applicant applying to renew or
12 reinstate a registration or applying for a new registration to file a
13 bond of up to three times the normally required amount, if the director
14 determines that an applicant, or a previous registration of a corporate
15 officer, owner, or partner of a current applicant, has had in the past
16 five years a total of six final judgments in actions under this chapter
17 involving a residential single-family dwelling on two or more different
18 structures.

19 (11) The director may adopt rules necessary for the proper
20 administration of the security.

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