

HOUSE BILL REPORT

HB 1843

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to the regulation of construction contractors.

Brief Description: Modifying provisions regulating contractors.

Sponsors: Representatives Conway, Condotta, Chandler and Moeller; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Commerce & Labor: 2/9/07, 2/23/07 [DPS].

Brief Summary of Substitute Bill

- Makes numerous changes to the Contractor Registration Act, including changes relating to definitions, registration, exemptions, bonds, disclosure statements, collections, investigations, civil infractions, and criminal violations.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Green, Moeller and Williams.

Staff: Jill Reinmuth (786-7134).

Background:

The Contractor Registration Act (Act) requires general and specialty contractors to register with the Department of Labor and Industries (Department). In addition to registering contractors, the Department administers and enforces other provisions of the Act.

Definitions

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

"Contractor" is defined as meaning any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another any building or other structure. "General contractor" is defined as a contractor whose business operations require the use of more than two unrelated building trades or crafts. "Specialty contractor" is defined as a contractor whose operations do not fall within the definition of "general contractor."

Registration Requirement

The Department must deny an application if the applicant has an unsatisfied final judgment against him or her in an action based on the Act, was a principal or an officer of a partnership, corporation or other entity with an unsatisfied final judgment in an action based on work that is subject to the Act, or owes the Department penalties or fees.

The Department must suspend a registration if the registrant is a sole proprietor or a principal or officer of a registered contractor that has an unsatisfied final judgment against it for work that is subject to the Act.

Bond Requirement

An applicant for registration or renewal must submit a bond. The amount of the bond must be \$12,000 for a general contractor, and \$6,000 for a specialty contractor. The Director of the Department (Director) may require an applicant to file a bond of up to three times the normal amount if the applicant has had in the past five years a total of six final judgments involving single-family dwellings on two or more different structures. In lieu of a surety bond, a contractor may file a deposit consisting of cash or other security acceptable to the Department.

The bond must be conditioned such that the applicant will pay all persons performing labor for the contractor, all taxes and contributions due to the state, and all persons furnishing labor or material or renting or supplying equipment to the contractor, as well as all amounts that may be adjudged against the contractor by reason of breach of contract including negligent or improper work.

The amounts paid on the bond to claimants other than residential homeowners must not exceed one-half of the general contractor bond and \$4,000 or one-half of a specialty contractor bond, whichever is greater. A residential homeowner may bring an action against the bond for breach of contract within two years of the date work is substantially completed or abandoned. If a final judgment impairs the full amount of the bond, the contractor's registration is automatically suspended.

Exemptions

Certain activities and persons are exempt from the registration requirement. They include:

- the sale or installation of finished products, materials, or merchandise that are not actually fabricated into and that do not become a permanent fixed part of a structure;
- an owner who contracts with a registered contractor;

- any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not, but not to a person otherwise covered by the Act who constructs an improvement on his or her own property with the intention and the purpose of selling the improved property; and
- owners of commercial properties who use their own employees to do maintenance work on their properties.

Disclosure Statement

A contractor must provide a customer with a disclosure statement that includes registration and bonding information. In addition, the disclosure statement must say that the bond might not be sufficient to pay the customer's claim, the customer's property can be liened, and the customer may retain a portion of the contract or request original lien release documents for greater protection.

Collections

A contractor may not bring an action to collect compensation for work for which registration is required without proving that he was in compliance with the registration requirements of the Act. A court may not find that the contractor was in substantial compliance unless the court finds that the contractor has a current bond or other security and current insurance.

Investigations

The Director may inspect and investigate job sites to determine whether a contractor is registered or whether the contractor has violated the Act.

Civil Infractions

A notice of infraction must be personally served on the contractor or service can be made by certified mail to the contractor. If a notice is personally served on an employee of a firm or corporation, the Department must within four days send a copy of the notice by certified mail to the contractor if the Department is able to obtain the contractor's address.

The notice of infraction must be dismissed if the defendant establishes that, at the time the work was performed, the defendant was registered or was exempt from registration.

The prevailing party in an action against the contractor and the contractor's bond or deposit is entitled to costs, interests, and reasonable attorneys' fees.

Criminal Violations

It is a misdemeanor for a contractor to advertise without being registered, use a false or expired registration number in purchasing an advertisement, or transfer a valid registration to an unregistered contractor. It is also a misdemeanor for a contractor to willfully violate the written promise to respond to a notice of infraction.

Summary of Substitute Bill:

The Contractor Registration Act (Act) is modified. Requirements relating to definitions, registration, exemptions, bonds, disclosure statements, collections, investigations, civil infractions, and criminal violations are changed.

Definitions

"Contractor" is defined as including any person who undertakes to construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building or other structure. Examples of contractor activities include performing tree removal services and installing cabinets. "Contractor" includes persons who perform constructing consulting activities, and persons who offer to sell their property without occupying or using the structure for more than one year. "General contractor" is defined as a person whose business operations require the use of more than one building trade or craft upon a single job or project or under a single building permit.

Registration

The Department of Labor and Industries (Department) must deny an application if the applicant has an unsatisfied final judgment against him or her in an action based on "work performed subject to" the Act, if the applicant was an "owner," principal, or officer of a partnership, corporation or other entity with an unsatisfied final judgment in an action based on work performed subject to the Act, or if the applicant owes the Department penalties or fees.

The Department must suspend an active registration if the registrant has an unsatisfied final judgment against it for work within the scope of the Act. The Department also must suspend a registration if the registrant is a sole proprietor or an "owner," principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of the Act.

The Department may suspend a registration if an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

Bond Requirement

In lieu of a bond, a contractor may file an assigned savings account, upon forms provided by the Department.

The bond must be conditioned that the applicant will pay all persons performing labor for the contractor, all taxes and contributions due to the state, and all persons furnishing material or renting or supplying equipment to the contractor, as well as all amounts that may be adjudged against the contractor by reason of breach of contract including improper work.

An action upon the bond or deposit brought by a residential homeowner for breach of contract must be commenced within two years from the date the claimed contractor work was substantially completed or abandoned, whichever occurred first. An action by another party must be commenced within one year of the date the claimed labor was performed, taxes and contributions became due, materials and equipment were furnished, or the contract was substantially completed or abandoned, whichever occurred first.

The Director may require an applicant to file a bond of up to three times the normal amount if the applicant has had in the past five years a total of three final judgments involving single-family dwellings on two or more different structures.

Exemptions

The activities and persons that are exempt from the registration requirement are modified. They include:

- the sale of finished products, materials, or merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures;
- an owner who contracts with a registered contractor, but not if the owner performs the activities of a contractor for the purpose of leasing or selling improved property owned for less than 12 months;
- any person working on his or her own property or residence, but not if the person performs the activities of a contractor for the purpose of selling, demolishing, or leasing the property; and
- an owner who performs maintenance work on his or her own properties, or who uses his or her own employees to do such work.

Disclosure Statements

A contractor must retain signed copies of disclosure statements for three years, and produce copies for the Department upon request.

Collections

A contractor may not bring an action to collect compensation for work for which registration is required without proving that he was in compliance with the registration requirements. A court may not find that the contractor was in substantial compliance unless the contractor has "at all times had in force" a current bond or other security as well as current insurance.

Investigations

The Director may apply for and a court may issue a search warrant authorizing access to any job site at which a contractor is working. The costs of obtaining the search warrant are added to the penalty if the violation becomes final.

If the Director has reason to believe there has been a violation, the Director may issue subpoenas for documents concerning business transactions between a contractor and the contractor's customers, subcontractors, and suppliers. These subpoenas may be issued only if the contractor fails to provide the documents when requested. The superior court has the power to enforce these subpoenas.

Civil Infractions

A notice of infraction must be personally served on the contractor or service can be made by certified mail to the contractor at the contractor's last known address. If a notice is personally served on an employee of a firm or corporation, the Department must send a copy of the notice to the contractor if the Department is able to obtain the contractor's address.

The notice of infraction must be dismissed if the appellant establishes that, at the time the advertising occurred, offer or bid was made, or work was performed, the appellant was registered or was exempt from registration.

An appeal of a notice of infraction must be accompanied by a certified check for \$200. If the Department's decision is not sustained, the check is returned. If the Department's decision is sustained, the Department must apply the sum to the payment of appeal expenses.

The prevailing party in an action, for breach of contract by a party to the construction contract involving a residential homeowner, is entitled to costs, interests, and reasonable attorneys' fees.

Criminal Violations

It is a gross misdemeanor to advertise without being registered, use a false or expired registration number in purchasing an advertisement, transfer a valid registration to an unregistered contractor, or subcontract to or employ an unregistered contractor. It is also a gross misdemeanor to willfully violate the written promise to respond to a notice of infraction is increased to a gross misdemeanor.

Substitute Bill Compared to Original Bill:

Definitions are added (e.g., "notice of infraction," "service," and "unsatisfied final judgment") and modified (e.g., "contractor" excludes developers and consultants unless acting as contractors). Certain penalties are made permissive. Bonding requirements are modified (e.g., the amount of the bond may be increased to up to three times in specified circumstances, and the amount reserved for residential homeowner claims may not be used to pay other claims). Exemptions are modified, including ones for owners performing certain work on their own properties. The subpoena authority of the Director of the Department of Labor and Industries is limited to circumstances in which the director believes there has been a violation of the Contractor Registration Act. The burden of proof of a violation remains the Department's burden. Other technical changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is intended to address consumer issues. All of the changes to existing law are aimed at that goal.

This is very good legislation. It increases penalties for unregistered contractors. It allows the Department of Labor and Industries to increase bonding requirements for contractors with multiple judgments. It will minimize the number of unregistered contractors.

One concern not addressed by the substitute is in section 4 of the bill. As originally enacted, this section of law was crafted to keep costs down. As amended, however, this section would allow non-homeowner claimants to come back and access the homeowner portion of the bond. It could cause underwriting standards and costs to increase.

(In support of substitute) The proposed substitute addresses our concerns with the original bill. It is nearly perfect. There are just a few little things left to deal with.

(In support with modifications) The Department of Labor and Industries did a great job putting this together. The comeback provision should be deleted.

(Opposed) The bill takes out the pro se exception. There are a couple of simple fixes to this change.

Persons Testifying: (In support) Patrick Woods and Pete Schmidt, Department of Labor and Industries; Amy Brackenbury, Building Industry Association of Washington; and Jeff Yusen, Yusen & Friedrich.

(In support of substitute) Larry Stevens, National Electrical Contractors Association and Mechanical Contractors Association; Michael Transue, Associated General Contractors; and Gary Smith, Independent Business Association.

(In support with modifications) Kerry Lawrence, Lawrence & Finkelstein.

(Opposed) Chris Benis, Rental Housing Association.

Persons Signed In To Testify But Not Testifying: None.