

SENATE BILL REPORT

SHB 1843

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, March 27, 2007

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

Brief Description: Modifying provisions regulating contractors.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Chandler and Moeller; by request of Department of Labor & Industries).

Brief History: Passed House: 3/12/07, 98-0.

Committee Activity: Labor, Commerce, Research & Development: 3/27/07 [DP-WM].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Hewitt, Holmquist, Murray and Prentice.

Staff: Jennifer Strus (786-7316)

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

Registration Requirement: L&I 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 L&I penalties or fees. L&I 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 L&I 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 L&I.

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

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.

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.

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, L&I must within four days send a copy of the notice by certified mail to the contractor if L&I 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: L&I 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 L&I penalties or fees. L&I must suspend an active registration if the registrant has an unsatisfied final judgment against it for work within the scope of the Act. L&I 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 him or her for work within the scope of the Act. L&I 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 L&I. 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.

L&I 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 L&I 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: L&I 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 L&I has reason to believe there has been a violation, then L&I 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, L&I must send a copy of the notice to the contractor if L&I 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 L&I's decision is not sustained, the check is returned. If L&I's decision is sustained, L&I 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The changes contained in the bill will do more to protect consumers who have come to rely more on L&I to identify the problematic contractors. This bill will assist L&I in doing a better job of that. The bill will also help address the continuing problem of the underground economy in the construction field.

Persons Testifying: PRO: Gary Smith, Independent Business Association; Amy Brackenbury, Building Industry Association of Washington; Patrick Woods, L&I.