

SHB 1555 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

OUT OF ORDER 04/16/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 18.27 RCW
4 to read as follows:

5 A contractor must maintain and have available for inspection by the
6 department a list of all direct subcontractors and a copy of their
7 certificate of registration.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
9 to read as follows:

10 A city that issues a business license to a person required to be
11 registered under chapter 18.27 RCW may verify that the person is
12 registered under chapter 18.27 RCW and report violations to the
13 department of labor and industries. The department of licensing shall
14 conduct the verification for cities that participate in the master
15 license system.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.21 RCW
17 to read as follows:

18 A city that issues a business license to a person required to be
19 registered under chapter 18.27 RCW may verify that the person is
20 registered under chapter 18.27 RCW and report violations to the
21 department of labor and industries. The department of licensing shall
22 conduct the verification for cities that participate in the master
23 license system.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.01 RCW
25 to read as follows:

26 A county that issues a business license to a person required to be

1 registered under chapter 18.27 RCW may verify that the person is
2 registered under chapter 18.27 RCW and report violations to the
3 department of labor and industries.

4 **Sec. 5.** RCW 60.28.011 and 2007 c 494 s 504 and 2007 c 218 s 92 are
5 each reenacted and amended to read as follows:

6 (1) Public improvement contracts shall provide, and public bodies
7 shall reserve, a contract retainage not to exceed five percent of the
8 moneys earned by the contractor as a trust fund for the protection and
9 payment of: (a) The claims of any person arising under the contract;
10 and (b) the state with respect to taxes imposed pursuant to Titles 50,
11 51, and 82 RCW which may be due from such contractor.

12 (2) Every person performing labor or furnishing supplies toward the
13 completion of a public improvement contract shall have a lien upon
14 moneys reserved by a public body under the provisions of a public
15 improvement contract. However, the notice of the lien of the claimant
16 shall be given within forty-five days of completion of the contract
17 work, and in the manner provided in RCW 39.08.030.

18 (3) The contractor at any time may request the contract retainage
19 be reduced to one hundred percent of the value of the work remaining on
20 the project.

21 (a) After completion of all contract work other than landscaping,
22 the contractor may request that the public body release and pay in full
23 the amounts retained during the performance of the contract, and sixty
24 days thereafter the public body must release and pay in full the
25 amounts retained (other than continuing retention of five percent of
26 the moneys earned for landscaping) subject to the provisions of
27 chapters 39.12 and 60.28 RCW.

28 (b) Sixty days after completion of all contract work the public
29 body must release and pay in full the amounts retained during the
30 performance of the contract subject to the provisions of chapters 39.12
31 and 60.28 RCW.

32 (4) The moneys reserved by a public body under the provisions of a
33 public improvement contract, at the option of the contractor, shall be:

34 (a) Retained in a fund by the public body;

35 (b) Deposited by the public body in an interest bearing account in
36 a bank, mutual savings bank, or savings and loan association. Interest

1 on moneys reserved by a public body under the provision of a public
2 improvement contract shall be paid to the contractor;

3 (c) Placed in escrow with a bank or trust company by the public
4 body. When the moneys reserved are placed in escrow, the public body
5 shall issue a check representing the sum of the moneys reserved payable
6 to the bank or trust company and the contractor jointly. This check
7 shall be converted into bonds and securities chosen by the contractor
8 and approved by the public body and the bonds and securities shall be
9 held in escrow. Interest on the bonds and securities shall be paid to
10 the contractor as the interest accrues.

11 (5) The contractor or subcontractor may withhold payment of not
12 more than five percent from the moneys earned by any subcontractor or
13 sub-subcontractor or supplier contracted with by the contractor to
14 provide labor, materials, or equipment to the public project. Whenever
15 the contractor or subcontractor reserves funds earned by a
16 subcontractor or sub-subcontractor or supplier, the contractor or
17 subcontractor shall pay interest to the subcontractor or sub-
18 subcontractor or supplier at a rate equal to that received by the
19 contractor or subcontractor from reserved funds.

20 (6) A contractor may submit a bond for all or any portion of the
21 contract retainage in a form acceptable to the public body and from a
22 bonding company meeting standards established by the public body. The
23 public body shall accept a bond meeting these requirements unless the
24 public body can demonstrate good cause for refusing to accept it. This
25 bond and any proceeds therefrom are subject to all claims and liens and
26 in the same manner and priority as set forth for retained percentages
27 in this chapter. The public body shall release the bonded portion of
28 the retained funds to the contractor within thirty days of accepting
29 the bond from the contractor. Whenever a public body accepts a bond in
30 lieu of retained funds from a contractor, the contractor shall accept
31 like bonds from any subcontractors or suppliers from which the
32 contractor has retained funds. The contractor shall then release the
33 funds retained from the subcontractor or supplier to the subcontractor
34 or supplier within thirty days of accepting the bond from the
35 subcontractor or supplier.

36 (7) If the public body administering a contract, after a
37 substantial portion of the work has been completed, finds that an
38 unreasonable delay will occur in the completion of the remaining

1 portion of the contract for any reason not the result of a breach
2 thereof, it may, if the contractor agrees, delete from the contract the
3 remaining work and accept as final the improvement at the stage of
4 completion then attained and make payment in proportion to the amount
5 of the work accomplished and in this case any amounts retained and
6 accumulated under this section shall be held for a period of sixty days
7 following the completion. In the event that the work is terminated
8 before final completion as provided in this section, the public body
9 may thereafter enter into a new contract with the same contractor to
10 perform the remaining work or improvement for an amount equal to or
11 less than the cost of the remaining work as was provided for in the
12 original contract without advertisement or bid. The provisions of this
13 chapter are exclusive and shall supersede all provisions and
14 regulations in conflict herewith.

15 (8) Whenever the department of transportation has contracted for
16 the construction of two or more ferry vessels, sixty days after
17 completion of all contract work on each ferry vessel, the department
18 must release and pay in full the amounts retained in connection with
19 the construction of the vessel subject to the provisions of RCW
20 60.28.020 and chapter 39.12 RCW. However, the department of
21 transportation may at its discretion condition the release of funds
22 retained in connection with the completed ferry upon the contractor
23 delivering a good and sufficient bond with two or more sureties, or
24 with a surety company, in the amount of the retained funds to be
25 released to the contractor, conditioned that no taxes shall be
26 certified or claims filed for work on the ferry after a period of sixty
27 days following completion of the ferry; and if taxes are certified or
28 claims filed, recovery may be had on the bond by the department of
29 revenue, the employment security department, the department of labor
30 and industries, and the material suppliers and laborers filing claims.

31 (9) Except as provided in subsection (1) of this section,
32 reservation by a public body for any purpose from the moneys earned by
33 a contractor by fulfilling its responsibilities under public
34 improvement contracts is prohibited.

35 (10) Contracts on projects funded in whole or in part by farmers
36 home administration and subject to farmers home administration
37 regulations are not subject to subsections (1) through (9) of this
38 section.

1 (11) This subsection applies only to a public body that has
2 contracted for the construction of a facility using the general
3 contractor/construction manager procedure, as defined under RCW
4 39.10.210. If the work performed by a subcontractor on the project has
5 been completed within the first half of the time provided in the
6 general contractor/construction manager contract for completing the
7 work, the public body may accept the completion of the subcontract.
8 The public body must give public notice of this acceptance. After a
9 forty-five day period for giving notice of liens, and compliance with
10 the retainage release procedures in RCW 60.28.021, the public body may
11 release that portion of the retained funds associated with the
12 subcontract. Claims against the retained funds after the forty-five
13 day period are not valid.

14 (12) Unless the context clearly requires otherwise, the definitions
15 in this subsection apply throughout this section.

16 (a) "Contract retainage" means an amount reserved by a public body
17 from the moneys earned by a person under a public improvement contract.

18 (b) "Person" means a person or persons, mechanic, subcontractor, or
19 materialperson who performs labor or provides materials for a public
20 improvement contract, and any other person who supplies the person with
21 provisions or supplies for the carrying on of a public improvement
22 contract.

23 (c) "Public body" means the state, or a county, city, town,
24 district, board, or other public body.

25 (d) "Public improvement contract" means a contract for public
26 improvements or work, other than for professional services, or a work
27 order as defined in RCW 39.10.210.

28 **Sec. 6.** RCW 60.28.020 and 2007 c 218 s 93 are each amended to read
29 as follows:

30 After the expiration of the thirty day period, and after receipt of
31 the ~~((department of revenue's certificate))~~ certificates of the
32 department of revenue, the employment security department, and the
33 department of labor and industries, and the public body is satisfied
34 that the taxes certified as due or to become due by the departments
35 ~~((of revenue))~~ are discharged, and the claims of material suppliers and
36 laborers who have filed their claims, together with a sum sufficient to
37 defray the cost of foreclosing the liens of such claims, and to pay

1 attorneys' fees, have been paid, the public body shall pay to the
2 contractor the fund retained by it or release to the contractor the
3 securities and bonds held in escrow.

4 If such taxes have not been discharged or the claims, expenses, and
5 fees have not been paid, the public body shall either retain in its
6 fund, or in an interest bearing account, or retain in escrow, at the
7 option of the contractor, an amount equal to such unpaid taxes and
8 unpaid claims together with a sum sufficient to defray the costs and
9 attorney fees incurred in foreclosing the lien of such claims, and
10 shall pay, or release from escrow, the remainder to the contractor.

11 **Sec. 7.** RCW 60.28.021 and 2007 c 218 s 94 are each amended to read
12 as follows:

13 After the expiration of the forty-five day period for giving notice
14 of lien provided in RCW 60.28.011(2), and after receipt of the
15 ~~((department of revenue's))~~ certificates of the department of revenue,
16 the employment security department, and the department of labor and
17 industries, and the public body is satisfied that the taxes certified
18 as due or to become due by the department of revenue, the employment
19 security department, and the department of labor and industries are
20 discharged, and the claims of material suppliers and laborers who have
21 filed their claims, together with a sum sufficient to defray the cost
22 of foreclosing the liens of such claims, and to pay attorneys' fees,
23 have been paid, the public body may withhold from the remaining
24 retained amounts for claims the public body may have against the
25 contractor and shall pay the balance, if any, to the contractor the
26 fund retained by it or release to the contractor the securities and
27 bonds held in escrow.

28 If such taxes have not been discharged or the claims, expenses, and
29 fees have not been paid, the public body shall either retain in its
30 fund, or in an interest bearing account, or retain in escrow, at the
31 option of the contractor, an amount equal to such unpaid taxes and
32 unpaid claims together with a sum sufficient to defray the costs and
33 attorney fees incurred in foreclosing the lien of such claims, and
34 shall pay, or release from escrow, the remainder to the contractor.

35 **Sec. 8.** RCW 60.28.040 and 1985 c 80 s 1 are each amended to read
36 as follows:

1 (1) Subject to subsection (5) of this section, the amount of all
2 taxes, increases, and penalties due or to become due under Title 82
3 RCW, from a contractor or the contractor's successors or assignees with
4 respect to a public improvement contract wherein the contract price is
5 twenty thousand dollars or more, shall be a lien prior to all other
6 liens upon the amount of the retained percentage withheld by the
7 disbursing officer under such contract(~~(, except that)~~).

8 (2) Subject to subsection (5) of this section, after payment of all
9 taxes, increases, and penalties due or to become due under Title 82
10 RCW, from a contractor or the contractor's successors or assignees with
11 respect to a public improvement contract wherein the contract price is
12 twenty thousand dollars or more, the amount of all other taxes,
13 increases, and penalties under Title 82 RCW, due and owing from the
14 contractor, shall be a lien prior to all other liens upon the amount of
15 the retained percentage withheld by the disbursing officer under such
16 contract.

17 (3) Subject to subsection (5) of this section, after payment of all
18 taxes, increases, and penalties due or to become due under Title 82
19 RCW, the amount of all taxes, increases, and penalties due or to become
20 due under Titles 50 and 51 RCW from the contractor or the contractor's
21 successors or assignees with respect to a public improvement contract
22 wherein the contract price is twenty thousand dollars or more shall be
23 a lien prior to all other liens upon the amount of the retained
24 percentage withheld by the disbursing officer under such contract.

25 (4) Subject to subsection (5) of this section, the amount of all
26 other taxes, increases, and penalties due and owing from the contractor
27 shall be a lien upon the balance of such retained percentage remaining
28 in the possession of the disbursing officer after all other statutory
29 lien claims have been paid.

30 (5) The employees of a contractor or the contractor's successors or
31 assignees who have not been paid the prevailing wage under such a
32 public improvement contract shall have a first priority lien against
33 the bond or retainage prior to all other liens. (~~The amount of all~~
34 other taxes, increases and penalties due and owing from the contractor
35 shall be a lien upon the balance of such retained percentage remaining
36 in the possession of the disbursing officer after all other statutory
37 lien claims have been paid.))

1 **Sec. 9.** RCW 60.28.051 and 2007 c 210 s 2 are each amended to read
2 as follows:

3 Upon completion of a contract, the state, county, or other
4 municipal officer charged with the duty of disbursing or authorizing
5 disbursement or payment of such contracts shall forthwith notify the
6 department of revenue, the employment security department, and the
7 department of labor and industries of the completion of contracts over
8 thirty-five thousand dollars. Such officer shall not make any payment
9 from the retained percentage fund or release any retained percentage
10 escrow account to any person, until he or she has received from the
11 department of revenue ~~((a)),~~ the employment security department, and
12 the department of labor and industries certificates that all taxes,
13 increases, and penalties due from the contractor, and all taxes due and
14 to become due with respect to such contract have been paid in full or
15 that they are, in ~~((the))~~ each department's opinion, readily
16 collectible without recourse to the state's lien on the retained
17 percentage.

18 **Sec. 10.** RCW 60.28.060 and 1967 ex.s. c 26 s 25 are each amended
19 to read as follows:

20 If within thirty days after receipt of notice by the department of
21 revenue, the employment security department, and the department of
22 labor and industries of the completion of the contract, the amount of
23 all taxes, increases and penalties due from the contractor or any of
24 his successors or assignees or to become due with respect to such
25 contract have not been paid, the department of revenue, the employment
26 security department, and the department of labor and industries may
27 certify to the disbursing officer the amount of all taxes, increases
28 and penalties due from the contractor, together with the amount of all
29 taxes due and to become due with respect to the contract and may
30 request payment thereof ~~((to the department of revenue))~~ in accordance
31 with the priority provided by this chapter. The disbursing officer
32 shall within ten days after receipt of such certificate and request pay
33 to the department of revenue, the employment security department, and
34 the department of labor and industries the amount of all taxes,
35 increases and penalties certified to be due or to become due ~~((with~~
36 ~~respect to the particular contract, and, after payment of))~~ and all
37 claims which by statute are a lien upon the retained percentage

1 withheld by the disbursing officer(~~(, shall pay to the department of~~
2 ~~revenue the balance, if any, or so much thereof as shall be necessary~~
3 ~~to satisfy the claim of the department of revenue for the balance of~~
4 ~~all taxes, increases or penalties shown to be due by the certificate of~~
5 ~~the department of revenue)) in accordance with the priority provided by
6 this chapter. If the contractor owes no taxes imposed pursuant to
7 Titles 50, 51, and 82 RCW, the department of revenue, the employment
8 security department, and the department of labor and industries shall
9 so certify to the disbursing officer.~~

10 NEW SECTION. **Sec. 11.** A new section is added to chapter 51.04 RCW
11 to read as follows:

12 The department shall conduct education and outreach to employers on
13 workers' compensation requirements and premium responsibilities,
14 including independent contractor issues. The department shall work
15 with new employers on an individual basis and also establish mass
16 education campaigns.

17 **Sec. 12.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read
18 as follows:

19 (1)(a) Each employing unit shall keep true and accurate work
20 records, containing such information as the commissioner may prescribe.
21 Such records shall be open to inspection and be subject to being copied
22 by the commissioner or his or her authorized representatives at any
23 reasonable time and as often as may be necessary. The commissioner may
24 require from any employing unit any sworn or unsworn reports with
25 respect to persons employed by it, which he or she deems necessary for
26 the effective administration of this title.

27 (b) An employer who contracts with another person or entity for
28 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
29 record of the unified business identifier account number for and
30 compensation paid to the person or entity performing the work. In
31 addition to the penalty in subsection (3) of this section, failure to
32 obtain or maintain the record is subject to RCW 39.06.010 ((and to a
33 penalty determined by the commissioner, but not to exceed two hundred
34 fifty dollars, to be collected as provided in RCW 50.24.120)).

35 (2)(a) Each employer shall register with the department and obtain
36 an employment security account number. Registration must include the

1 names and social security numbers of the owners, partners, members, or
2 corporate officers of the business, as well as their mailing addresses
3 and telephone numbers and other information the commissioner may by
4 rule prescribe. Registration of corporations must also include the
5 percentage of stock ownership for each corporate officer, delineated by
6 zero percent, less than ten percent, or ten percent or more. Any
7 changes in the owners, partners, members, or corporate officers of the
8 business, and changes in percentage of ownership of the outstanding
9 shares of stock of the corporation, must be reported to the department
10 at intervals prescribed by the commissioner under (b) of this
11 subsection.

12 (b) Each employer shall make periodic reports at such intervals as
13 the commissioner may by regulation prescribe, setting forth the
14 remuneration paid for employment to workers in its employ, the full
15 names and social security numbers of all such workers, and the total
16 hours worked by each worker and such other information as the
17 commissioner may by regulation prescribe.

18 (c) If the employing unit fails or has failed to report the number
19 of hours in a reporting period for which a worker worked, such number
20 will be computed by the commissioner and given the same force and
21 effect as if it had been reported by the employing unit. In computing
22 the number of such hours worked, the total wages for the reporting
23 period, as reported by the employing unit, shall be divided by the
24 dollar amount of the state's minimum wage in effect for such reporting
25 period and the quotient, disregarding any remainder, shall be credited
26 to the worker: PROVIDED, That although the computation so made will
27 not be subject to appeal by the employing unit, monetary entitlement
28 may be redetermined upon request if the department is provided with
29 credible evidence of the actual hours worked. Benefits paid using
30 computed hours are not considered an overpayment and are not subject to
31 collections when the correction of computed hours results in an invalid
32 or reduced claim; however:

33 (i) A contribution paying employer who fails to report the number
34 of hours worked will have its experience rating account charged for all
35 benefits paid that are based on hours computed under this subsection;
36 and

37 (ii) An employer who reimburses the trust fund for benefits paid to

1 workers and fails to report the number of hours worked shall reimburse
2 the trust fund for all benefits paid that are based on hours computed
3 under this subsection.

4 (3) Any employer who fails to keep and preserve records required by
5 this section shall be subject to a penalty determined by the
6 commissioner but not to exceed two hundred fifty dollars or two hundred
7 percent of the quarterly tax for each offense, whichever is greater.

8 **Sec. 13.** 2008 c 120 s 10 (uncodified) is amended to read as
9 follows:

10 (1) The joint legislative task force on the underground economy
11 (~~(in the Washington state construction industry)~~) is established. For
12 purposes of this section, "underground economy" means (~~(contracting and~~
13 ~~construction)~~) business activities in which payroll is unreported or
14 underreported with consequent nonpayment of payroll taxes to federal
15 and state agencies including nonpayment of workers' compensation and
16 unemployment compensation taxes.

17 (2) The purpose of the task force is to formulate a state policy to
18 establish cohesion and transparency between state agencies so as to
19 increase the oversight and regulation of the underground economy
20 practices (~~(in the construction industry)~~) in this state. To assist
21 the task force in achieving this goal and to determine the extent of
22 and projected costs to the state and workers of the underground economy
23 (~~(in the construction industry)~~), the task force shall contract with
24 the institute for public policy, or, if the institute is unavailable,
25 another entity with expertise capable of providing such assistance.

26 (3)(a) The task force shall consist of the following members:

27 (i) The chair and ranking minority member of the senate labor,
28 commerce, research and development committee;

29 (ii) The chair and ranking minority member of the house of
30 representatives commerce and labor committee;

31 (iii) Four members representing (~~(the construction)~~) business
32 interests, selected from nominations submitted by statewide
33 (~~(construction)~~) business organizations and appointed jointly by the
34 president of the senate and the speaker of the house of
35 representatives;

36 (iv) Four members representing (~~(construction laborers)~~) labor

1 interests, selected from nominations submitted by statewide labor
2 organizations and appointed jointly by the president of the senate and
3 the speaker of the house of representatives;

4 (v) One member representing cities, appointed by an association of
5 cities;

6 (vi) One member representing counties, appointed by an association
7 of counties.

8 (b) In addition, the employment security department, the department
9 of labor and industries, and the department of revenue shall cooperate
10 with the task force and shall each maintain a liaison representative,
11 who is a nonvoting member of the task force. The departments shall
12 cooperate with the task force and the institute for public policy, or
13 other entity as appropriate, and shall provide information and data as
14 the task force or the institute, or other entity as appropriate, may
15 reasonably request.

16 (c) The task force shall choose its chair or cochairs from among
17 its legislative membership. The chairs of the senate labor, commerce,
18 research and development committee and the house of representatives
19 commerce and labor committee shall convene the initial meeting of the
20 task force.

21 (4) In conducting its study in 2009, the task force may consider:

22 (a) Issues previously discussed by the joint legislative task force
23 on the underground economy in the construction industry and whether
24 these issues need to be addressed in nonconstruction industries;

25 (b) The role of local governments in monitoring the underground
26 economy;

27 (c) The need to establish additional benchmarks and measures for
28 purposes of section 14 of this act;

29 (d) Such other items the task force deems necessary.

30 (5)(a) The task force shall use legislative facilities and staff
31 support shall be provided by senate committee services and the house of
32 representatives office of program research. Within available funding,
33 the task force may hire additional staff with specific technical
34 expertise if such expertise is necessary to carry out the mandates of
35 this study.

36 (b) Legislative members of the task force shall be reimbursed for
37 travel expenses in accordance with RCW 44.04.120. Nonlegislative

1 members, except those representing an employer or organization, are
2 entitled to be reimbursed for travel expenses in accordance with RCW
3 43.03.050 and 43.03.060.

4 (c) The expenses of the task force will be paid jointly by the
5 senate and house of representatives. Task force expenditures are
6 subject to approval by the senate facilities and operations committee
7 and the house of representatives executive rules committee, or their
8 successor committees.

9 ~~((+5))~~ (6) The task force shall report its ~~((preliminary))~~
10 findings and recommendations to the legislature by ~~((January 1, 2008,~~
11 ~~and submit a final report to the legislature by))~~ December ~~((31, 2008))~~
12 1, 2009.

13 ~~((+6))~~ (7) This section expires ~~((July 1,))~~ December 15, 2009.

14 NEW SECTION. Sec. 14. The department of labor and industries, the
15 employment security department, and the department of revenue shall
16 coordinate and report to the appropriate committees of the legislature
17 by December 1st of each year on the effectiveness of efforts
18 implemented since July 1, 2008, to address the underground economy.
19 The agencies shall use benchmarks and measures established by the
20 institute for public policy and other measures it determines
21 appropriate.

22 NEW SECTION. Sec. 15. Section 12 of this act takes effect October
23 1, 2009."

SHB 1555 - S COMM AMD
By Committee on Labor, Commerce & Consumer Protection

OUT OF ORDER 04/16/2009

24 On page 1, line 2 of the title, after "industry;" strike the
25 remainder of the title and insert "amending RCW 60.28.020, 60.28.021,
26 60.28.040, 60.28.051, 60.28.060, and 50.12.070; amending 2008 c 120 s
27 10 (uncodified); reenacting and amending RCW 60.28.011; adding a new
28 section to chapter 18.27 RCW; adding a new section to chapter 35.21

1 RCW; adding a new section to chapter 35A.21 RCW; adding a new section
2 to chapter 36.01 RCW; adding a new section to chapter 51.04 RCW;
3 creating a new section; prescribing penalties; providing an effective
4 date; and providing an expiration date."

EFFECT: The local government requirement is made permissive. The advisory committee is removed. The term of the joint legislative task force on the underground economy is extended to December 15, 2009. Language limiting the task force's focus to the construction industry is removed. Local government representatives are added to the task force. Additional sections relating to the retainage provisions are added.

--- END ---