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**SUBSTITUTE HOUSE BILL 1555**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy, and Wood)

READ FIRST TIME 02/23/09.

1            AN ACT Relating to the recommendations of the joint legislative  
2 task force on the underground economy in the construction industry;  
3 amending RCW 60.28.021, 60.28.040, 60.28.051, 60.28.060, and 50.12.070;  
4 reenacting and amending RCW 60.28.011; adding new sections to chapter  
5 18.27 RCW; adding a new section to chapter 35.21 RCW; adding a new  
6 section to chapter 35A.21 RCW; adding a new section to chapter 36.01  
7 RCW; adding a new section to chapter 19.02 RCW; adding a new section to  
8 chapter 51.04 RCW; adding a new chapter to Title 43 RCW; prescribing  
9 penalties; and providing an effective date.

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

11            NEW SECTION.    **Sec. 1.** A new section is added to chapter 18.27 RCW  
12 to read as follows:

13            A contractor must maintain and have available for inspection by the  
14 department a list of all direct subcontractors and a copy of their  
15 certificate of registration.

16            NEW SECTION.    **Sec. 2.** A new section is added to chapter 18.27 RCW  
17 to read as follows:

18            A city, town, or county shall not approve or issue a business

1 license to a person required to be registered under this chapter  
2 without verifying that the person is registered under this chapter.  
3 The department of licensing shall conduct the verification for cities  
4 that participate in the master license system.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.21 RCW  
6 to read as follows:

7 A city shall not approve or issue a business license to a person  
8 required to be registered under chapter 18.27 RCW without verifying  
9 that the person is registered under chapter 18.27 RCW. The department  
10 of licensing shall conduct the verification for cities that participate  
11 in the master license system.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 35A.21 RCW  
13 to read as follows:

14 A city shall not approve or issue a business license to a person  
15 required to be registered under chapter 18.27 RCW without verifying  
16 that the person is registered under chapter 18.27 RCW. The department  
17 of licensing shall conduct the verification for cities that participate  
18 in the master license system.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.01 RCW  
20 to read as follows:

21 A county shall not issue a business license to a person required to  
22 be registered under chapter 18.27 RCW without verifying that the person  
23 is registered under chapter 18.27 RCW.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.02 RCW  
25 to read as follows:

26 The department of licensing shall verify contractor registration as  
27 provided under section 2 of this act for local governments that  
28 participate in the master license system.

29 **Sec. 7.** RCW 60.28.011 and 2007 c 494 s 504 and 2007 c 218 s 92 are  
30 each reenacted and amended to read as follows:

31 (1) Public improvement contracts shall provide, and public bodies  
32 shall reserve, a contract retainage not to exceed five percent of the  
33 moneys earned by the contractor as a trust fund for the protection and

1 payment of: (a) The claims of any person arising under the contract;  
2 and (b) the state with respect to taxes imposed pursuant to Titles 50,  
3 51, and 82 RCW which may be due from such contractor.

4 (2) Every person performing labor or furnishing supplies toward the  
5 completion of a public improvement contract shall have a lien upon  
6 moneys reserved by a public body under the provisions of a public  
7 improvement contract. However, the notice of the lien of the claimant  
8 shall be given within forty-five days of completion of the contract  
9 work, and in the manner provided in RCW 39.08.030.

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

13 (a) After completion of all contract work other than landscaping,  
14 the contractor may request that the public body release and pay in full  
15 the amounts retained during the performance of the contract, and sixty  
16 days thereafter the public body must release and pay in full the  
17 amounts retained (other than continuing retention of five percent of  
18 the moneys earned for landscaping) subject to the provisions of  
19 chapters 39.12 and 60.28 RCW.

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

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

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

27 (b) Deposited by the public body in an interest bearing account in  
28 a bank, mutual savings bank, or savings and loan association. Interest  
29 on moneys reserved by a public body under the provision of a public  
30 improvement contract shall be paid to the contractor;

31 (c) Placed in escrow with a bank or trust company by the public  
32 body. When the moneys reserved are placed in escrow, the public body  
33 shall issue a check representing the sum of the moneys reserved payable  
34 to the bank or trust company and the contractor jointly. This check  
35 shall be converted into bonds and securities chosen by the contractor  
36 and approved by the public body and the bonds and securities shall be  
37 held in escrow. Interest on the bonds and securities shall be paid to  
38 the contractor as the interest accrues.

1 (5) The contractor or subcontractor may withhold payment of not  
2 more than five percent from the moneys earned by any subcontractor or  
3 sub-subcontractor or supplier contracted with by the contractor to  
4 provide labor, materials, or equipment to the public project. Whenever  
5 the contractor or subcontractor reserves funds earned by a  
6 subcontractor or sub-subcontractor or supplier, the contractor or  
7 subcontractor shall pay interest to the subcontractor or sub-  
8 subcontractor or supplier at a rate equal to that received by the  
9 contractor or subcontractor from reserved funds.

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

26 (7) If the public body administering a contract, after a  
27 substantial portion of the work has been completed, finds that an  
28 unreasonable delay will occur in the completion of the remaining  
29 portion of the contract for any reason not the result of a breach  
30 thereof, it may, if the contractor agrees, delete from the contract the  
31 remaining work and accept as final the improvement at the stage of  
32 completion then attained and make payment in proportion to the amount  
33 of the work accomplished and in this case any amounts retained and  
34 accumulated under this section shall be held for a period of sixty days  
35 following the completion. In the event that the work is terminated  
36 before final completion as provided in this section, the public body  
37 may thereafter enter into a new contract with the same contractor to  
38 perform the remaining work or improvement for an amount equal to or

1 less than the cost of the remaining work as was provided for in the  
2 original contract without advertisement or bid. The provisions of this  
3 chapter are exclusive and shall supersede all provisions and  
4 regulations in conflict herewith.

5 (8) Whenever the department of transportation has contracted for  
6 the construction of two or more ferry vessels, sixty days after  
7 completion of all contract work on each ferry vessel, the department  
8 must release and pay in full the amounts retained in connection with  
9 the construction of the vessel subject to the provisions of RCW  
10 60.28.020 and chapter 39.12 RCW. However, the department of  
11 transportation may at its discretion condition the release of funds  
12 retained in connection with the completed ferry upon the contractor  
13 delivering a good and sufficient bond with two or more sureties, or  
14 with a surety company, in the amount of the retained funds to be  
15 released to the contractor, conditioned that no taxes shall be  
16 certified or claims filed for work on the ferry after a period of sixty  
17 days following completion of the ferry; and if taxes are certified or  
18 claims filed, recovery may be had on the bond by the department of  
19 revenue, the employment security department, the department of labor  
20 and industries, and the material suppliers and laborers filing claims.

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

25 (10) Contracts on projects funded in whole or in part by farmers  
26 home administration and subject to farmers home administration  
27 regulations are not subject to subsections (1) through (9) of this  
28 section.

29 (11) This subsection applies only to a public body that has  
30 contracted for the construction of a facility using the general  
31 contractor/construction manager procedure, as defined under RCW  
32 39.10.210. If the work performed by a subcontractor on the project has  
33 been completed within the first half of the time provided in the  
34 general contractor/construction manager contract for completing the  
35 work, the public body may accept the completion of the subcontract.  
36 The public body must give public notice of this acceptance. After a  
37 forty-five day period for giving notice of liens, and compliance with  
38 the retainage release procedures in RCW 60.28.021, the public body may

1 release that portion of the retained funds associated with the  
2 subcontract. Claims against the retained funds after the forty-five  
3 day period are not valid.

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

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

8 (b) "Person" means a person or persons, mechanic, subcontractor, or  
9 materialperson who performs labor or provides materials for a public  
10 improvement contract, and any other person who supplies the person with  
11 provisions or supplies for the carrying on of a public improvement  
12 contract.

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

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

18 **Sec. 8.** RCW 60.28.021 and 2007 c 218 s 94 are each amended to read  
19 as follows:

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

35 If such taxes have not been discharged or the claims, expenses, and  
36 fees have not been paid, the public body shall either retain in its  
37 fund, or in an interest bearing account, or retain in escrow, at the

1 option of the contractor, an amount equal to such unpaid taxes and  
2 unpaid claims together with a sum sufficient to defray the costs and  
3 attorney fees incurred in foreclosing the lien of such claims, and  
4 shall pay, or release from escrow, the remainder to the contractor.

5 **Sec. 9.** RCW 60.28.040 and 1985 c 80 s 1 are each amended to read  
6 as follows:

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

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

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

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

36 (5) The employees of a contractor or the contractor's successors or  
37 assignees who have not been paid the prevailing wage under such a

1 public improvement contract shall have a first priority lien against  
2 the bond or retainage prior to all other liens. (~~The amount of all~~  
3 ~~other taxes, increases and penalties due and owing from the contractor~~  
4 ~~shall be a lien upon the balance of such retained percentage remaining~~  
5 ~~in the possession of the disbursing officer after all other statutory~~  
6 ~~lien claims have been paid.))~~

7 **Sec. 10.** RCW 60.28.051 and 2007 c 210 s 2 are each amended to read  
8 as follows:

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

24 **Sec. 11.** RCW 60.28.060 and 1967 ex.s. c 26 s 25 are each amended  
25 to read as follows:

26 If within thirty days after receipt of notice by the department of  
27 revenue, the employment security department, and the department of  
28 labor and industries of the completion of the contract, the amount of  
29 all taxes, increases and penalties due from the contractor or any of  
30 his successors or assignees or to become due with respect to such  
31 contract have not been paid, the department of revenue, the employment  
32 security department, and the department of labor and industries may  
33 certify to the disbursing officer the amount of all taxes, increases  
34 and penalties due from the contractor, together with the amount of all  
35 taxes due and to become due with respect to the contract and may  
36 request payment thereof (~~to the department of revenue~~) in accordance



1 with the priority provided by this chapter. The disbursing officer  
2 shall within ten days after receipt of such certificate and request pay  
3 to the department of revenue, the employment security department, and  
4 the department of labor and industries the amount of all taxes,  
5 increases and penalties certified to be due or to become due with  
6 respect to the particular contract, and, after payment of all claims  
7 which by statute are a lien upon the retained percentage withheld by  
8 the disbursing officer, shall pay to the departments ~~((of revenue))~~ the  
9 balance, if any, or so much thereof as shall be necessary to satisfy  
10 the claim of the department of revenue for the balance of all taxes,  
11 increases or penalties shown to be due by the certificate of the  
12 department of revenue. If the contractor owes no taxes imposed  
13 pursuant to Titles 50, 51, and 82 RCW, the department of revenue, the  
14 employment security department, and the department of labor and  
15 industries shall so certify to the disbursing officer.

16 NEW SECTION. **Sec. 12.** A new section is added to chapter 51.04 RCW  
17 to read as follows:

18 The department shall conduct education and outreach to employers on  
19 workers' compensation requirements and premium responsibilities,  
20 including independent contractor issues. The department shall work  
21 with new employers on an individual basis and also establish mass  
22 education campaigns.

23 **Sec. 13.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read  
24 as follows:

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

33 (b) An employer who contracts with another person or entity for  
34 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a  
35 record of the unified business identifier account number for and  
36 compensation paid to the person or entity performing the work. In

1 addition to the penalty in subsection (3) of this section, failure to  
2 obtain or maintain the record is subject to RCW 39.06.010 ((and to a  
3 penalty determined by the commissioner, but not to exceed two hundred  
4 fifty dollars, to be collected as provided in RCW 50.24.120)).

5 (2)(a) Each employer shall register with the department and obtain  
6 an employment security account number. Registration must include the  
7 names and social security numbers of the owners, partners, members, or  
8 corporate officers of the business, as well as their mailing addresses  
9 and telephone numbers and other information the commissioner may by  
10 rule prescribe. Registration of corporations must also include the  
11 percentage of stock ownership for each corporate officer, delineated by  
12 zero percent, less than ten percent, or ten percent or more. Any  
13 changes in the owners, partners, members, or corporate officers of the  
14 business, and changes in percentage of ownership of the outstanding  
15 shares of stock of the corporation, must be reported to the department  
16 at intervals prescribed by the commissioner under (b) of this  
17 subsection.

18 (b) Each employer shall make periodic reports at such intervals as  
19 the commissioner may by regulation prescribe, setting forth the  
20 remuneration paid for employment to workers in its employ, the full  
21 names and social security numbers of all such workers, and the total  
22 hours worked by each worker and such other information as the  
23 commissioner may by regulation prescribe.

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

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

5 (ii) An employer who reimburses the trust fund for benefits paid to  
6 workers and fails to report the number of hours worked shall reimburse  
7 the trust fund for all benefits paid that are based on hours computed  
8 under this subsection.

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

13 NEW SECTION. Sec. 14. (1) An interagency advisory committee on  
14 the underground economy is created. The committee shall conduct a  
15 continuing study of the underground economy with the goal of reducing  
16 or eliminating the underground economy in this state.

17 (2) The committee is composed of:

18 (a) One representative each from the department of labor and  
19 industries, the employment security department, and the department of  
20 revenue;

21 (b) One representative of cities, appointed by an association of  
22 cities and one representative of counties, appointed by an association  
23 of counties; and

24 (c) Three representatives each of labor and employers, appointed by  
25 the director of the department of labor and industries.

26 (3) Members shall serve a term of three years beginning on  
27 September 1, 2009, except that the terms of the members representing  
28 labor and employers shall be staggered so that the term of one member  
29 appointed from each group expires in two years and the term of one  
30 member appointed from each group expires in one year. Vacancies shall  
31 be filled in the same manner as initial appointments.

32 (4) The member representing the department of labor and industries  
33 shall serve as chair.

34 (5) Beginning December 1, 2010, and annually thereafter, the  
35 committee shall report to the appropriate committees of the legislature  
36 on its findings and recommendations.

1 (6) In conducting its continuing study, the committee may consider,  
2 but is not limited to the following issues:

3 (a) Shortening of reporting times for new hire reporting under RCW  
4 26.23.040 as a means of improving state agency data cross-matching  
5 capabilities and usefulness;

6 (b) Modifying resale certificate provisions;

7 (c) Requiring contractors to place subcontractor unified business  
8 identifier numbers on checks;

9 (d) Establishing penalties for owners who intentionally do not  
10 follow the law;

11 (e) Establishing penalties for persons who offer or accept  
12 undocumented cash payment;

13 (f) Enhancing funding for the master business application system;

14 (g) Requiring photo identification for contractor registration and  
15 renewal;

16 (h) Requiring new and out-of-state contractors to attend a  
17 contractor training class before registration;

18 (i) Requiring contractors to attend continuing education;

19 (j) Creating effective sanctions for contractor registration  
20 violations; and

21 (k) Establishing additional benchmarks and measures for purposes of  
22 section 15 of this act.

23 (7) Members, except those representing an employer or organization,  
24 shall be reimbursed for travel expenses as provided in RCW 43.03.050  
25 and 43.03.060.

26 (8) The department of labor and industries, the employment security  
27 department, and the department of revenue shall coordinate and provide  
28 staff support for the committee.

29 NEW SECTION. **Sec. 15.** The department of labor and industries, the  
30 employment security department, and the department of revenue shall  
31 coordinate and report to the appropriate committees of the legislature  
32 by December 1st of each year on the effectiveness of efforts  
33 implemented since July 1, 2008, to address the underground economy.  
34 The agencies shall use benchmarks and measures established by the  
35 institute for public policy and other measures it determines  
36 appropriate.

1        NEW SECTION.   **Sec. 16.**   Sections 14 and 15 of this act constitute  
2   a new chapter in Title 43 RCW.

3        NEW SECTION.   **Sec. 17.**   Section 13 of this act takes effect October  
4   1, 2009.

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