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**SUBSTITUTE HOUSE BILL 2826**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Conway, Chase, Hudgins, and Simpson)

READ FIRST TIME 02/02/10.

1            AN ACT Relating to recommendations of the joint legislative task  
2 force on the underground economy; amending RCW 18.27.340, 18.27.070,  
3 and 18.27.020; reenacting and amending RCW 60.28.040; adding new  
4 sections to chapter 18.27 RCW; prescribing penalties; and providing an  
5 effective date.

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

7            **Sec. 1.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to read  
8 as follows:

9            (1) Except as otherwise provided in subsection (3) of this section,  
10 a contractor found to have committed an infraction under RCW 18.27.200  
11 shall be assessed a monetary penalty of not less than two hundred  
12 dollars and not more than five thousand dollars.

13            (2) The director may waive collection in favor of payment of  
14 restitution to a consumer complainant.

15            (3) A contractor found to have committed an infraction under RCW  
16 18.27.200 for failure to register or under section 7 of this act shall  
17 be assessed a fine of not less than one thousand dollars, nor more than  
18 five thousand dollars. For a first offense, the director may reduce  
19 the penalty for failure to register, but in no case below five hundred

1 dollars, if the person: Becomes registered within ten days of  
2 receiving a notice of infraction ((and the notice of infraction is for  
3 a first offense)); and registers for a department-approved contractor  
4 training class under section 2 of this act within ten days of receiving  
5 a notice of infraction, completes the class within one hundred twenty  
6 days of receiving the notice of infraction, and pays any required class  
7 fees upon class registration.

8 (4) Until July 1, 2011, monetary penalties collected under this  
9 chapter shall be deposited in the general fund. Beginning July 1,  
10 2011, monetary penalties and class fees collected under this chapter  
11 shall be deposited in the contractor registration account.

12 NEW SECTION. Sec. 2. A new section is added to chapter 18.27 RCW  
13 to read as follows:

14 The department may approve or conduct contractor training classes  
15 and charge a fee, payable upon class registration, that covers the  
16 costs of administering the class. The department may adopt rules  
17 relating to the number of classes to be offered by the department, the  
18 locations of these classes, class fees, and curriculum.

19 **Sec. 3.** RCW 18.27.070 and 1997 c 314 s 7 are each amended to read  
20 as follows:

21 (1) The department shall charge fees for issuance, renewal, and  
22 reinstatement of certificates of registration; and changes of name,  
23 address, or business structure. The department shall set the fees by  
24 rule.

25 (2) The entire amount of the fees are to be used solely to cover  
26 the full cost of issuing certificates, filing papers and notices, and  
27 administering and enforcing this chapter. The costs shall include  
28 reproduction, travel, per diem, and administrative and legal support  
29 costs.

30 (3) The department shall deposit all fees in the contractor  
31 registration account.

32 NEW SECTION. Sec. 4. A new section is added to chapter 18.27 RCW  
33 to read as follows:

34 The contractor registration account is created in the state  
35 treasury. The department shall deposit in the account all moneys from

1 registrations, renewals, or civil penalties assessed and collected  
2 under this chapter. Appropriations from the account may be made only  
3 for the purposes of administration of the chapter, including conducting  
4 contractor training classes under section 2 of this act.

5 **Sec. 5.** RCW 60.28.040 and 2009 c 432 s 7 and 2009 c 219 s 7 are  
6 each reenacted and amended to read 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 thirty-five thousand dollars or more, shall be a lien prior to all  
12 other liens upon the amount of the retained percentage withheld by the  
13 disbursing officer under such contract.

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~~) thirty-five thousand dollars or more, the amount of all  
19 other taxes, increases, and penalties under Title 82 RCW, due and owing  
20 from the contractor, shall be a lien prior to all other liens upon the  
21 amount of the retained percentage withheld by the disbursing officer  
22 under such 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 taxes, increases, 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~~) thirty-five thousand dollars  
29 or more, shall be a lien prior to all other liens upon the amount of  
30 the retained percentage withheld by the disbursing officer under such  
31 contract.

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

1 (5) The employees of a contractor or the contractor's successors or  
2 assignees who have not been paid the prevailing wage under such a  
3 public improvement contract shall have a first priority lien against  
4 the bond or retainage prior to all other liens.

5 **Sec. 6.** RCW 18.27.020 and 2007 c 436 s 2 are each amended to read  
6 as follows:

7 (1) Every contractor shall register with the department.

8 (2) It is a gross misdemeanor for any contractor to:

9 (a) Advertise, offer to do work, submit a bid, or perform any work  
10 as a contractor without being registered as required by this chapter;

11 (b) Advertise, offer to do work, submit a bid, or perform any work  
12 as a contractor when the contractor's registration is suspended or  
13 revoked;

14 (c) Use a false or expired registration number in purchasing or  
15 offering to purchase an advertisement for which a contractor  
16 registration number is required;

17 (d) Transfer a valid registration to an unregistered contractor or  
18 allow an unregistered contractor to work under a registration issued to  
19 another contractor; or

20 (e) Subcontract to or use an unregistered contractor.

21 (3) It is not unlawful for a registered contractor to employ an  
22 unregistered contractor who was registered at the time he or she  
23 entered into a contract with the registered contractor, unless the  
24 registered contractor or his or her representative has been notified in  
25 writing by the department of labor and industries that the contractor  
26 has become unregistered.

27 (4) All gross misdemeanor actions under this chapter shall be  
28 prosecuted in the county where the infraction occurs.

29 (5) A person is guilty of a separate gross misdemeanor for each day  
30 worked if, after the person receives a (~~citation~~) notice of  
31 infraction from the department, the person works while unregistered, or  
32 while his or her registration is suspended or revoked, or works under  
33 a registration issued to another contractor. A person is guilty of a  
34 separate gross misdemeanor for each worksite on which he or she  
35 violates subsection (2) of this section. Nothing in this subsection  
36 applies to a registered contractor.

1       (6) A person is guilty of a class C felony if, after receiving a  
2 third or subsequent final infraction for working as a contractor while  
3 unregistered, while his or her registration is suspended or revoked, or  
4 under a registration issued to another contractor, he or she works as  
5 a contractor while unregistered, while his or her registration is  
6 suspended or revoked, or under a registration issued to another  
7 contractor.

8       (7) The director by rule shall establish a two-year audit and  
9 monitoring program for a contractor not registered under this chapter  
10 who becomes registered after receiving an infraction or conviction  
11 under this chapter as an unregistered contractor. The director shall  
12 notify the departments of revenue and employment security of the  
13 infractions or convictions and shall cooperate with these departments  
14 to determine whether any taxes or registration, license, or other fees  
15 or penalties are owed the state.

16       NEW SECTION. Sec. 7. A new section is added to chapter 18.27 RCW  
17 to read as follows:

18       (1) A contractor commits a violation under this chapter and is  
19 subject to an infraction if, on a single job site, the contractor works  
20 on a task that is performed together by:

21       (a) More than two sole proprietor contractors, at least one of  
22 which has no workers subject to coverage of Title 51 RCW on that job  
23 site;

24       (b) More than one contractor other than a sole proprietorship, at  
25 least one of which has no workers subject to coverage of Title 51 RCW  
26 on that job site.

27       (2) If contractors are working in the same trade or craft on a  
28 single job site, the contractors have the burden of proof to show that  
29 they are not working together on the same task.

30       (3) The violation is committed by all contractors who are parties  
31 to the contract for performance of that task.

32       (4) For purposes of this section, "job site" means a single  
33 physical address, or multiple addresses if the addresses are covered by  
34 the same general contract.

1        NEW SECTION.    **Sec. 8.**    Sections 3 and 4 of this act take effect  
2    July 1, 2011.

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