
SUBSTITUTE SENATE BILL 5614

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Keiser, Franklin, Kline, McDermott, and Fraser)

READ FIRST TIME 02/24/09.

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 a new section 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 51.04 RCW; prescribing penalties;
8 and providing an effective date.

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

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

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

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

17 A city that issues a business license to a person required to be
18 registered under chapter 18.27 RCW may verify that the person is

1 registered under chapter 18.27 RCW and report violations to the
2 department of labor and industries. The department of licensing shall
3 conduct the verification for cities that participate in the master
4 license system.

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

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

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

15 A county that issues a business license to a person required to be
16 registered under chapter 18.27 RCW may verify that the person is
17 registered under chapter 18.27 RCW and report violations to the
18 department of labor and industries.

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

21 (1) Public improvement contracts shall provide, and public bodies
22 shall reserve, a contract retainage not to exceed five percent of the
23 moneys earned by the contractor as a trust fund for the protection and
24 payment of: (a) The claims of any person arising under the contract;
25 and (b) the state with respect to taxes imposed pursuant to Titles 50,
26 51, and 82 RCW which may be due from such contractor.

27 (2) Every person performing labor or furnishing supplies toward the
28 completion of a public improvement contract shall have a lien upon
29 moneys reserved by a public body under the provisions of a public
30 improvement contract. However, the notice of the lien of the claimant
31 shall be given within forty-five days of completion of the contract
32 work, and in the manner provided in RCW 39.08.030.

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

1 (a) After completion of all contract work other than landscaping,
2 the contractor may request that the public body release and pay in full
3 the amounts retained during the performance of the contract, and sixty
4 days thereafter the public body must release and pay in full the
5 amounts retained (other than continuing retention of five percent of
6 the moneys earned for landscaping) subject to the provisions of
7 chapters 39.12 and 60.28 RCW.

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

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

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

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

19 (c) Placed in escrow with a bank or trust company by the public
20 body. When the moneys reserved are placed in escrow, the public body
21 shall issue a check representing the sum of the moneys reserved payable
22 to the bank or trust company and the contractor jointly. This check
23 shall be converted into bonds and securities chosen by the contractor
24 and approved by the public body and the bonds and securities shall be
25 held in escrow. Interest on the bonds and securities shall be paid to
26 the contractor as the interest accrues.

27 (5) The contractor or subcontractor may withhold payment of not
28 more than five percent from the moneys earned by any subcontractor or
29 sub-subcontractor or supplier contracted with by the contractor to
30 provide labor, materials, or equipment to the public project. Whenever
31 the contractor or subcontractor reserves funds earned by a
32 subcontractor or sub-subcontractor or supplier, the contractor or
33 subcontractor shall pay interest to the subcontractor or sub-
34 subcontractor or supplier at a rate equal to that received by the
35 contractor or subcontractor from reserved funds.

36 (6) A contractor may submit a bond for all or any portion of the
37 contract retainage in a form acceptable to the public body and from a
38 bonding company meeting standards established by the public body. The

1 public body shall accept a bond meeting these requirements unless the
2 public body can demonstrate good cause for refusing to accept it. This
3 bond and any proceeds therefrom are subject to all claims and liens and
4 in the same manner and priority as set forth for retained percentages
5 in this chapter. The public body shall release the bonded portion of
6 the retained funds to the contractor within thirty days of accepting
7 the bond from the contractor. Whenever a public body accepts a bond in
8 lieu of retained funds from a contractor, the contractor shall accept
9 like bonds from any subcontractors or suppliers from which the
10 contractor has retained funds. The contractor shall then release the
11 funds retained from the subcontractor or supplier to the subcontractor
12 or supplier within thirty days of accepting the bond from the
13 subcontractor or supplier.

14 (7) If the public body administering a contract, after a
15 substantial portion of the work has been completed, finds that an
16 unreasonable delay will occur in the completion of the remaining
17 portion of the contract for any reason not the result of a breach
18 thereof, it may, if the contractor agrees, delete from the contract the
19 remaining work and accept as final the improvement at the stage of
20 completion then attained and make payment in proportion to the amount
21 of the work accomplished and in this case any amounts retained and
22 accumulated under this section shall be held for a period of sixty days
23 following the completion. In the event that the work is terminated
24 before final completion as provided in this section, the public body
25 may thereafter enter into a new contract with the same contractor to
26 perform the remaining work or improvement for an amount equal to or
27 less than the cost of the remaining work as was provided for in the
28 original contract without advertisement or bid. The provisions of this
29 chapter are exclusive and shall supersede all provisions and
30 regulations in conflict herewith.

31 (8) Whenever the department of transportation has contracted for
32 the construction of two or more ferry vessels, sixty days after
33 completion of all contract work on each ferry vessel, the department
34 must release and pay in full the amounts retained in connection with
35 the construction of the vessel subject to the provisions of RCW
36 60.28.020 and chapter 39.12 RCW. However, the department of
37 transportation may at its discretion condition the release of funds
38 retained in connection with the completed ferry upon the contractor

1 delivering a good and sufficient bond with two or more sureties, or
2 with a surety company, in the amount of the retained funds to be
3 released to the contractor, conditioned that no taxes shall be
4 certified or claims filed for work on the ferry after a period of sixty
5 days following completion of the ferry; and if taxes are certified or
6 claims filed, recovery may be had on the bond by the department of
7 revenue, the employment security department, the department of labor
8 and industries, and the material suppliers and laborers filing claims.

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

13 (10) Contracts on projects funded in whole or in part by farmers
14 home administration and subject to farmers home administration
15 regulations are not subject to subsections (1) through (9) of this
16 section.

17 (11) This subsection applies only to a public body that has
18 contracted for the construction of a facility using the general
19 contractor/construction manager procedure, as defined under RCW
20 39.10.210. If the work performed by a subcontractor on the project has
21 been completed within the first half of the time provided in the
22 general contractor/construction manager contract for completing the
23 work, the public body may accept the completion of the subcontract.
24 The public body must give public notice of this acceptance. After a
25 forty-five day period for giving notice of liens, and compliance with
26 the retainage release procedures in RCW 60.28.021, the public body may
27 release that portion of the retained funds associated with the
28 subcontract. Claims against the retained funds after the forty-five
29 day period are not valid.

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

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

34 (b) "Person" means a person or persons, mechanic, subcontractor, or
35 materialperson who performs labor or provides materials for a public
36 improvement contract, and any other person who supplies the person with
37 provisions or supplies for the carrying on of a public improvement
38 contract.

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

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

6 **Sec. 6.** RCW 60.28.021 and 2007 c 218 s 94 are each amended to read
7 as follows:

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

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

30 **Sec. 7.** RCW 60.28.040 and 1985 c 80 s 1 are each amended to read
31 as follows:

32 (1) Subject to subsection (5) of this section, the amount of all
33 taxes, increases, and penalties due or to become due under Title 82
34 RCW, from a contractor or the contractor's successors or assignees with
35 respect to a public improvement contract wherein the contract price is

1 twenty thousand dollars or more, shall be a lien prior to all other
2 liens upon the amount of the retained percentage withheld by the
3 disbursing officer under such contract(~~(, except that)~~).

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

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

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

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

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

36 Upon completion of a contract, the state, county, or other
37 municipal officer charged with the duty of disbursing or authorizing

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

14 **Sec. 9.** RCW 60.28.060 and 1967 ex.s. c 26 s 25 are each amended to
15 read as follows:

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

1 department of revenue. If the contractor owes no taxes imposed
2 pursuant to Titles 50, 51, and 82 RCW, the department of revenue, the
3 employment security department, and the department of labor and
4 industries shall so certify to the disbursing officer.

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

7 The department shall conduct education and outreach to employers on
8 workers' compensation requirements and premium responsibilities,
9 including independent contractor issues. The department shall work
10 with new employers on an individual basis and also establish mass
11 education campaigns.

12 **Sec. 11.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read
13 as follows:

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

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

30 (2)(a) Each employer shall register with the department and obtain
31 an employment security account number. Registration must include the
32 names and social security numbers of the owners, partners, members, or
33 corporate officers of the business, as well as their mailing addresses
34 and telephone numbers and other information the commissioner may by
35 rule prescribe. Registration of corporations must also include the
36 percentage of stock ownership for each corporate officer, delineated by

1 zero percent, less than ten percent, or ten percent or more. Any
2 changes in the owners, partners, members, or corporate officers of the
3 business, and changes in percentage of ownership of the outstanding
4 shares of stock of the corporation, must be reported to the department
5 at intervals prescribed by the commissioner under (b) of this
6 subsection.

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

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

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

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

36 (3) Any employer who fails to keep and preserve records required by
37 this section shall be subject to a penalty determined by the

1 commissioner but not to exceed two hundred fifty dollars or two hundred
2 percent of the quarterly tax for each offense, whichever is greater.

3 NEW SECTION. **Sec. 12.** Section 11 of this act takes effect October
4 1, 2009.

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