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HOUSE BILL 2548

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Condotta, Manweller, and Wilson

Read first time 01/14/16. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to department of labor and industries appeals;  
2 and amending RCW 18.27.250, 19.28.131, 19.28.381, 19.28.490, and  
3 70.87.170.

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

5 **Sec. 1.** RCW 18.27.250 and 2014 c 190 s 1 are each amended to  
6 read as follows:

7 (1) A violation designated as an infraction under this chapter  
8 shall be heard and determined by an administrative law judge of the  
9 office of administrative hearings. If a party desires to contest the  
10 notice of infraction, the party shall file a notice of appeal with  
11 the department specifying the grounds of the appeal within thirty  
12 days of service of the infraction in a manner provided by this  
13 chapter. The appeal must be accompanied by a certified check (~~for~~  
14 ~~two hundred dollars or ten percent of the penalty amount, whichever~~  
15 ~~is less, but in no event less than one hundred dollars~~) in the  
16 amount provided by subsection (2) of this section, which shall be  
17 returned to the assessed party if the decision of the department is  
18 not sustained following the final decision in the appeal. If the  
19 final decision sustains the decision of the department, the  
20 department must apply the amount of the check to the payment of the  
21 expenses of the appeal, including costs charged by the office of

1 administrative hearings. The administrative law judge shall conduct  
2 hearings in these cases at locations in the county where the  
3 infraction occurred.

4 (2) The amount of the certified check required by subsection (1)  
5 of this section is the lesser of two hundred dollars or ten percent  
6 of the penalty amount, but in no event less than one hundred dollars.  
7 However, if the party has twelve or fewer employees, and has had no  
8 finally adjudicated violations of this chapter in the preceding five  
9 years, the maximum amount of the certified check for all appeals  
10 resulting from one investigation is two hundred fifty dollars.

11 **Sec. 2.** RCW 19.28.131 and 2014 c 190 s 2 are each amended to  
12 read as follows:

13 (1) Until July 1, 2007, the department shall issue a written  
14 warning to any specialty contractor, performing the scope of work  
15 defined by rule for the pump and irrigation or domestic pump  
16 specialties, not having a valid electrical contractor license. The  
17 warning will state that the contractor must be qualified for and  
18 apply for a specialty electrical contractor license under the  
19 requirements in RCW 19.28.041 within thirty calendar days of the  
20 warning. Only one warning will be issued to any contractor. If the  
21 contractor fails to comply with this section, the department shall  
22 issue a penalty or penalties as authorized in this section to the  
23 contractor. Any person, firm, partnership, corporation, or other  
24 entity violating any of the provisions of RCW 19.28.010 through  
25 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty  
26 of not less than fifty dollars or more than ten thousand dollars. The  
27 department shall set by rule a schedule of penalties for violating  
28 RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361. The  
29 department shall notify the person, firm, partnership, corporation,  
30 or other entity violating any of the provisions of RCW 19.28.010  
31 through 19.28.141 and 19.28.311 through 19.28.361 of the amount of  
32 the penalty and of the specific violation using a method by which the  
33 mailing can be tracked or the delivery can be confirmed sent to the  
34 last known address of the assessed party. Any penalty is subject to  
35 review by an appeal to the board. The filing of an appeal stays the  
36 effect of the penalty until the board makes its decision. The appeal  
37 shall be filed within twenty days after notice of the penalty is  
38 given to the assessed party using a method by which the mailing can  
39 be tracked or the delivery can be confirmed, sent to the last known

1 address of the assessed party and shall be made by filing a written  
2 notice of appeal with the department. The notice shall be accompanied  
3 by a certified check (~~((for two hundred dollars or ten percent of the~~  
4 ~~penalty amount, whichever is less, but in no event less than one~~  
5 ~~hundred dollars))~~ in the amount provided by subsection (2) of this  
6 section, which shall be returned to the assessed party if the  
7 decision of the department is not sustained by the board. If the  
8 board sustains the decision of the department, the amount of the  
9 check shall be applied by the department to the payment of the per  
10 diem and expenses of the members of the board incurred in the matter,  
11 and any balance remaining after payment of per diem and expenses  
12 shall be paid into the electrical license fund. The hearing and  
13 review procedures shall be conducted in accordance with chapter 34.05  
14 RCW. The board shall assign its hearings to an administrative law  
15 judge to conduct the hearing and issue a proposed decision and order.  
16 The board shall be allowed a minimum of twenty days to review a  
17 proposed decision and shall issue its decision no later than the next  
18 regularly scheduled board meeting.

19 (2) The amount of the certified check required by subsection (1)  
20 of this section is the lesser of two hundred dollars or ten percent  
21 of the penalty amount, but in no event less than one hundred dollars.  
22 However, if the party has twelve or fewer employees, and has had no  
23 finally adjudicated violations of this chapter in the preceding five  
24 years, the maximum amount of the certified check for all appeals  
25 resulting from one investigation is two hundred fifty dollars.

26 **Sec. 3.** RCW 19.28.381 and 2014 c 190 s 3 are each amended to  
27 read as follows:

28 (1) The department may deny renewal of a certificate or license  
29 issued under this chapter, if the applicant for renewal owes  
30 outstanding penalties for a final judgment under this chapter. The  
31 department shall notify the applicant of the denial by registered  
32 mail, return receipt requested, to the address on the application.  
33 The applicant may appeal the denial within twenty days by filing a  
34 notice of appeal with the department accompanied by a certified check  
35 (~~((for two hundred dollars or ten percent of the amount of the~~  
36 ~~outstanding penalties, whichever is less, but in no event less than~~  
37 ~~one hundred dollars))~~ in the amount provided by subsection (2) of  
38 this section. The check shall be returned to the applicant if the  
39 decision of the department is not upheld by the board. The office of

1 administrative hearings shall conduct the hearing under chapter 34.05  
2 RCW. The electrical board shall review the proposed decision at the  
3 next regularly scheduled board meeting. If the board sustains the  
4 decision of the department, the amount of the check must be applied  
5 to the cost of the hearing.

6 (2) The amount of the certified check required by subsection (1)  
7 of this section is the lesser of two hundred dollars or ten percent  
8 of the penalty amount, but in no event less than one hundred dollars.  
9 However, if the party has twelve or fewer employees, and has had no  
10 finally adjudicated violations of this chapter in the preceding five  
11 years, the maximum amount of the certified check for all appeals  
12 resulting from one investigation is two hundred fifty dollars.

13 **Sec. 4.** RCW 19.28.490 and 2014 c 190 s 4 are each amended to  
14 read as follows:

15 (1) Any person, firm, partnership, corporation, or other entity  
16 violating any of the provisions of this chapter may be assessed a  
17 penalty of not less than one hundred dollars or more than ten  
18 thousand dollars per violation. The department, after consulting with  
19 the board and receiving the board's recommendations, shall set by  
20 rule a schedule of penalties for violating this chapter. The  
21 department shall notify the person, firm, partnership, corporation,  
22 or other entity violating any of these provisions of the amount of  
23 the penalty and of the specific violation. The notice shall be sent  
24 using a method by which the mailing can be tracked or the delivery  
25 can be confirmed to the last known address of the assessed party.  
26 Penalties are subject to review by an appeal to the board. The filing  
27 of an appeal stays the effect of the penalty until the board makes  
28 its decision. The appeal shall be filed within twenty days after  
29 notice of the penalty is given to the assessed party, and shall be  
30 made by filing a written notice of appeal with the department. The  
31 notice shall be accompanied by a certified check (~~for two hundred~~  
32 dollars or ten percent of the penalty amount, whichever is less, but  
33 in no event less than one hundred dollars)) in the amount provided by  
34 subsection (2) of this section. The check shall be returned to the  
35 assessed party if the decision of the department is not sustained by  
36 the board. If the board sustains the decision of the department, the  
37 amount of the check shall be applied by the department to the payment  
38 of the per diem and expenses of the members of the board incurred in  
39 the matter, and any balance remaining after payment of per diem and

1 expenses shall be paid into the electrical license fund. The hearing  
2 and review procedures shall be conducted in accordance with chapter  
3 34.05 RCW. The board shall assign its hearings to an administrative  
4 law judge to conduct the hearing and issue a proposed decision and  
5 order. The board shall be allowed a minimum of twenty days to review  
6 a proposed decision and shall issue its decision no later than the  
7 next regularly scheduled board meeting.

8 (2) The amount of the certified check required by subsection (1)  
9 of this section is the lesser of two hundred dollars or ten percent  
10 of the penalty amount, but in no event less than one hundred dollars.  
11 However, if the party has twelve or fewer employees, and has had no  
12 finally adjudicated violations of this chapter in the preceding five  
13 years, the maximum amount of the certified check for all appeals  
14 resulting from one investigation is two hundred fifty dollars.

15 **Sec. 5.** RCW 70.87.170 and 2014 c 190 s 5 are each amended to  
16 read as follows:

17 (1) Any person aggrieved by an order or action of the department  
18 denying, suspending, revoking, or refusing to renew a permit or  
19 license; assessing a penalty for a violation of this chapter; or  
20 ordering the operation of a conveyance to be discontinued, may  
21 request a hearing within fifteen days after notice of the  
22 department's order or action is received. The date the hearing was  
23 requested shall be the date the request for hearing was postmarked.

24 (2) The party requesting the hearing must accompany the request  
25 with a certified or cashier's check for two hundred dollars payable  
26 to the department, except that if a penalty assessment is the issue  
27 for the hearing, the check amount (~~((shall be ten percent of the~~  
28 ~~penalty amount or two hundred dollars, whichever is less, but in no~~  
29 ~~event less than one hundred dollars))~~ must be in the amount provided  
30 by subsection (3) of this section. The department shall refund the  
31 amount of the check if the party requesting the hearing prevails at  
32 the hearing; otherwise, the department shall retain the amount of the  
33 check.

34 (3) The amount of the certified check required by subsection (2)  
35 of this section is the lesser of two hundred dollars or ten percent  
36 of the penalty amount, but in no event less than one hundred dollars.  
37 However, if the party has twelve or fewer employees, and has had no  
38 finally adjudicated violations of this chapter in the preceding five

1 years, the maximum amount of the certified check for all appeals  
2 resulting from one investigation is two hundred fifty dollars.

3 (4) If the department does not receive a timely request for  
4 hearing, the department's order or action is final and may not be  
5 appealed.

6 ~~((4))~~ (5) If the aggrieved party requests a hearing, the  
7 department shall ask an administrative law judge to preside over the  
8 hearing. The hearing shall be conducted in accordance with chapter  
9 34.05 RCW.

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