
Commerce & Labor Committee

HB 1843

Brief Description: Modifying provisions regulating contractors.

Sponsors: Representatives Conway, Condotta, Chandler and Moeller; by request of Department of Labor & Industries.

Brief Summary of Bill

- Makes numerous changes to the Contractor Registration Act, including changes relating to definitions, registration, exemptions, bonds, disclosure statements, collections, investigations, civil infractions, and criminal violations.

Hearing Date: 2/9/07

Staff: Jill Reinmuth (786-7134).

Background:

The Contractor Registration Act (Act) requires general and specialty contractors to register with the Department of Labor and Industries (Department). In addition to registering contractors, the Department administers and enforces other provisions of the Act.

Definitions

"Contractor" is defined as meaning any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another any building or other structure.

"General contractor" is defined as a contractor whose business operations require the use of more than two unrelated building trades or crafts. "Specialty contractor" is defined as a contractor whose operations do not fall within the definition of "general contractor."

Registration Requirement

The Department must deny an application if the applicant has an unsatisfied final judgment against him or her in an action based on the Act, was a principal or an officer of a partnership, corporation or other entity with an unsatisfied final judgment in an action based on work that is subject to the Act, or owes the Department penalties or fees.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department must suspend a registration if the registrant is a sole proprietor or a principal or officer of a registered contractor that has an unsatisfied final judgment against it for work that is subject to the Act.

Bond Requirement

An applicant for registration or renewal must submit a bond. The amount of the bond must be \$12,000 for a general contractor, and \$6,000 for a specialty contractor. In lieu of a surety bond, a contractor may file a deposit consisting of cash or other security acceptable to the Department.

The bond must be conditioned such that the applicant will pay all persons performing labor for the contractor, all taxes and contributions due to the state, and all persons furnishing labor or material or renting or supplying equipment to the contractor, as well as all amounts that may be adjudged against the contractor by reason of breach of contract including negligent or improper work.

The amounts paid on the bond to claimants other than residential homeowners must not exceed one-half of the general contractor bond and \$4,000 or one-half of a specialty contractor bond, whichever is greater. A residential homeowner may bring an action against the bond for breach of contract within two years of the date work is substantially completed or abandoned. If a final judgment impairs the full amount of the bond, the contractor's registration is automatically suspended.

Exemptions

Certain activities and persons are exempt from the registration requirement. They include:

- The sale or installation of finished products, materials, or merchandise that are not actually fabricated into and that do not become a permanent fixed part of a structure;
- Any construction carried on within the limits and boundaries of a site or reservation under the jurisdiction of the federal government;
- An owner who contracts with a registered contractor; or
- Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not, but not to a person otherwise covered by the Act who constructs an improvement on his or her own property with the intention and the purpose of selling the improved property.

Disclosure Statement

A contractor must provide a customer with a disclosure statement that includes registration and bonding information. In addition, the disclosure statement must say that the bond might not be sufficient to pay the customer's claim, the customer's property can be liened, and the customer may retain a portion of the contract or request original lien release documents for greater protection.

Collections

A contractor may not bring an action to collect compensation for work for which registration is required without proving that he was in compliance with the registration requirements of the Act. A

court may not find that the contractor was in substantial compliance unless the court finds that the contractor has a current bond or other security and current insurance.

Investigations

The Director may inspect and investigate job sites to determine whether a contractor is registered or whether the contractor has violated the Act.

Civil Infractions

A notice of infraction must be personally served on the contractor or service can be made by certified mail to the contractor. If a notice is personally served on an employee of a firm or corporation, the Department must within four days send a copy of the notice by certified mail to the contractor if the Department is able to obtain the contractor's address.

The burden of proof is on the Department to establish the commission of an infraction by a preponderance of the evidence.

The notice of infraction must be dismissed if the defendant establishes that, at the time the work was performed, the defendant was registered or was exempt from registration.

The prevailing party in an action against the contractor and the contractor's bond or deposit is entitled to costs, interests, and reasonable attorneys' fees.

Criminal Violations

It is a misdemeanor for a contractor to advertise without being registered, use a false or expired registration number in purchasing an advertisement, or transfer a valid registration to an unregistered contractor. It is also a misdemeanor for a contractor to willfully violate the written promise to respond to a notice of infraction.

Summary of Bill:

The Contractor Registration Act (Act) is modified. Requirements relating to definitions, registration, exemptions, bonds, disclosure statements, collections, investigations, civil infractions, and criminal violations are changed.

Definitions

"Contractor" is defined as including any person who undertakes to construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building or other structure.

Examples of contractor activities include performing tree services and installing cabinets.

"Contractor" includes persons who perform constructing consulting activities, persons who offer to sell their property without occupying or using the structure for more than one year, and developers. "General contractor" is defined as a person whose business operations require the use of more than one building trade or craft upon a single job or project or under a single building permit.

Registration

The Department of Labor and Industries (Department) must deny an application if the applicant has an unsatisfied final judgment against him or her in an action based on "work performed

subject to" the Act, if the applicant was an "owner," principal, or officer of a partnership, corporation or other entity with an unsatisfied final judgment in an action based on work performed subject to the Act, or if the applicant owes the Department penalties or fees.

The Department must suspend an active registration if the registrant has an unsatisfied final judgment against it for work within the scope of the Act. The Department also must suspend a registration if the registrant is a sole proprietor or an "owner," principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of the Act.

The Department may suspend a registration if an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

Bond Requirement

In lieu of a bond, a contractor may file an assigned savings account, upon forms provided by the department.

The bond must be conditioned that the applicant will pay all persons performing labor for the contractor, all taxes and contributions due to the state, and all persons furnishing material or renting or supplying equipment to the contractor, as well as all amounts that may be adjudged against the contractor by reason of breach of contract including improper work.

An action upon the bond or deposit brought by a residential homeowner for breach of contract must be commenced within two years from the date the claimed contractor work was completed, substantially completed, or abandoned, whichever occurred first. An action by another party must be commenced within one year of the date the claimed labor was performed, taxes and contributions became due, materials and equipment were furnished, or the contract was completed, substantially completed, or abandoned, whichever occurred first.

After two years, if no residential homeowner has filed a claim against the bond, the amount reserved for residential homeowner claims may be used to pay any unsatisfied judgments to other claimants. The priority of payment is the order in which the requests were received during those two years.

Exemptions

The activities and persons that are exempt from the registration requirement are modified. They include:

- The sale of finished products, materials, or merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures;
- Any construction carried on within the limits and boundaries of a site or reservation under the jurisdiction of the federal government, but not if the Department is requested to come onto the property by the site or reservation or a householder on the site or reservation;
- An owner who contracts with a registered contractor, but not if he performs the activities of a contractor for the purpose of leasing or selling the improved property; and

- Any person working on his or her own property or residence, but not if the person performs the activities of a contractor for the purpose of selling, demolishing, or leasing the property.

Disclosure Statements

A contractor must retain signed copies of disclosure statements for three years, and produce copies for the Department upon request.

Collections

A contractor may not bring an action to collect compensation for work for which registration is required without proving that he was in compliance with the registration requirements. A court may not find that the contractor was in substantial compliance unless the contractor has "at all times had in force" a current bond or other security as well as current insurance.

Investigations

The Director of the Department (Director) may apply for and a court may issue a search warrant authorizing access to any job site at which a contractor has submitted a bid or is working. The costs of obtaining the search warrant are added to the penalty if the violation becomes final.

The Director also may issue subpoenas for documents concerning business transactions between a contractor and the contractor's customers, subcontractors, and suppliers.

Civil Infractions

A notice of infraction must be personally served on the contractor or service can be made by certified mail to the contractor at the contractor's last known address. If a notice is personally served on an employee of a firm or corporation, the Department must send a copy of the notice to the contractor if the Department is able to obtain the contractor's address.

The notice of infraction must be dismissed if the appellant establishes that, at the time the advertising occurred, offer or bid was made, or work was performed, the appellant was registered or was exempt from registration.

An appeal of a notice of infraction must be accompanied by a certified check for \$200. If the Department's decision is not sustained, the check is returned. If the Department's decision is sustained, the Department must apply the sum to the payment of appeal expenses.

The prevailing party in an action, for breach of contract by a party to the construction contract involving a residential homeowner, is entitled to costs, interests, and reasonable attorneys' fees.

Criminal Violations

It is a gross misdemeanor to advertise without being registered, use a false or expired registration number in purchasing an advertisement, transfer a valid registration to an unregistered contractor, or subcontract to or employ an unregistered contractor. It is also a gross misdemeanor to willfully violate the written promise to respond to a notice of infraction is increased to a gross misdemeanor.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.