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SENATE BILL 5047

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Weinstein, Franklin, Kauffman, Rockefeller, Fraser,  
Pridemore, Jacobsen, Kohl-Welles and Kline

Read first time 01/09/2007.                      Referred to Committee on Labor,  
Commerce, Research & Development.

1            AN ACT Relating to contractor's surety bonds; and amending RCW  
2 18.27.040.

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

4            **Sec. 1.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read  
5 as follows:

6            (1)(a) Each applicant shall file with the department a surety bond  
7 issued by a surety insurer who meets the requirements of chapter 48.28  
8 RCW in (~~the sum of twelve thousand dollars if the applicant is a~~  
9 ~~general contractor and six thousand dollars if the applicant is a~~  
10 ~~specialty contractor.~~) accordance with the following schedule:

11            (i) If the gross revenue of the applicant for the four quarters  
12 preceding the date of application is more than seven and one-half  
13 million dollars, the applicant shall furnish a bond of seventy-five  
14 thousand dollars;

15            (ii) If the gross revenue of the applicant for the four quarters  
16 preceding the date of the application is more than two million dollars  
17 but less than or equal to seven and one-half million dollars, the  
18 applicant shall furnish a bond of fifty thousand dollars; and

1        (iii) If the gross revenue of the applicant for the four quarters  
2 preceding the date of the application is less than two million dollars,  
3 the applicant shall furnish a bond of twenty-five thousand dollars.

4        (b) The department shall, beginning on July 1, 2007, adjust the  
5 bond amounts required under (a) of this subsection on an annual basis  
6 by use of the consumer price index compiled by the bureau of labor  
7 statistics, United States department of labor for the state of  
8 Washington.

9        (2) If no valid bond is already on file with the department at the  
10 time the application is filed, a bond must accompany the registration  
11 application. The bond shall have the state of Washington named as  
12 obligee with good and sufficient surety in a form to be approved by the  
13 department. The bond shall be continuous and may be canceled by the  
14 surety upon the surety giving written notice to the director. A  
15 cancellation or revocation of the bond or withdrawal of the surety from  
16 the bond automatically suspends the registration issued to the  
17 registrant until a new bond or reinstatement notice has been filed and  
18 approved as provided in this section. The bond shall be conditioned  
19 that the applicant will pay all persons performing labor, including  
20 employee benefits, for the contractor, will pay all taxes and  
21 contributions due to the state of Washington, and will pay all persons  
22 furnishing labor or material or renting or supplying equipment to the  
23 contractor and will pay all amounts that may be adjudged against the  
24 contractor by reason of breach of contract including negligent or  
25 improper work in the conduct of the contracting business. A change in  
26 the name of a business or a change in the type of business entity shall  
27 not impair a bond for the purposes of this section so long as one of  
28 the original applicants for such bond maintains partial ownership in  
29 the business covered by the bond.

30        ~~((+2))~~ (3) At the time of initial registration or renewal, the  
31 contractor shall provide a bond or other security deposit as required  
32 by this chapter and comply with all of the other provisions of this  
33 chapter before the department shall issue or renew the contractor's  
34 certificate of registration. Any contractor registered as of July 1,  
35 2001, who maintains that registration in accordance with this chapter  
36 is in compliance with this chapter until the next renewal of the  
37 contractor's certificate of registration.

1        ~~((3))~~ (4) Any person, firm, or corporation having a claim against  
2 the contractor for any of the items referred to in this section may  
3 bring suit upon the bond or deposit in the superior court of the county  
4 in which the work was done or of any county in which jurisdiction of  
5 the contractor may be had. The surety issuing the bond shall be named  
6 as a party to any suit upon the bond. Action upon the bond or deposit  
7 brought by a residential homeowner for breach of contract by a party to  
8 the construction contract shall be commenced by filing the summons and  
9 complaint with the clerk of the appropriate superior court within two  
10 years from the date the claimed contract work was substantially  
11 completed or abandoned. Action upon the bond or deposit brought by any  
12 other authorized party shall be commenced by filing the summons and  
13 complaint with the clerk of the appropriate superior court within one  
14 year from the date the claimed labor was performed and benefits  
15 accrued, taxes and contributions owing the state of Washington became  
16 due, materials and equipment were furnished, or the claimed contract  
17 work was substantially completed or abandoned. Service of process in  
18 an action against the contractor, the contractor's bond, or the deposit  
19 shall be exclusively by service upon the department. Three copies of  
20 the summons and complaint and a fee adopted by rule of not less than  
21 twenty dollars to cover the costs shall be served by registered or  
22 certified mail, or other delivery service requiring notice of receipt,  
23 upon the department at the time suit is started and the department  
24 shall maintain a record, available for public inspection, of all suits  
25 so commenced. Service is not complete until the department receives  
26 the fee and three copies of the summons and complaint. The service  
27 shall constitute service on the registrant and the surety for suit upon  
28 the bond or deposit and the department shall transmit the summons and  
29 complaint or a copy thereof to the registrant at the address listed in  
30 the registrant's application and to the surety within two days after it  
31 shall have been received.

32        ~~((4))~~ (5) The surety upon the bond shall not be liable in an  
33 aggregate amount in excess of the amount named in the bond nor for any  
34 monetary penalty assessed pursuant to this chapter for an infraction.  
35 The liability of the surety shall not cumulate where the bond has been  
36 renewed, continued, reinstated, reissued or otherwise extended. The  
37 surety upon the bond may, upon notice to the department and the  
38 parties, tender to the clerk of the court having jurisdiction of the

1 action an amount equal to the claims thereunder or the amount of the  
2 bond less the amount of judgments, if any, previously satisfied  
3 therefrom and to the extent of such tender the surety upon the bond  
4 shall be exonerated but if the actions commenced and pending at any one  
5 time exceed the amount of the bond then unimpaired, claims shall be  
6 satisfied from the bond in the following order:

7 (a) Employee labor and claims of laborers, including employee  
8 benefits;

9 (b) Claims for breach of contract by a party to the construction  
10 contract;

11 (c) Registered or licensed subcontractors, material, and equipment;

12 (d) Taxes and contributions due the state of Washington;

13 (e) Any court costs, interest, and ~~((attorney's [attorneys']~~)  
14 attorneys' fees plaintiff may be entitled to recover. The surety is  
15 not liable for any amount in excess of the penal limit of its bond.

16 A payment made by the surety in good faith exonerates the bond to  
17 the extent of any payment made by the surety.

18 ~~((+5))~~ (6) The total amount paid from a bond or deposit required  
19 of a general contractor by this section to claimants other than  
20 residential homeowners must not exceed one-half of the bond amount.  
21 The total amount paid from a bond or deposit required of a specialty  
22 contractor by this section to claimants other than residential  
23 homeowners must not exceed one-half of the bond amount or four thousand  
24 dollars, whichever is greater.

25 ~~((+6))~~ (7) The prevailing party in an action filed under this  
26 section against the contractor and contractor's bond or deposit, for  
27 breach of contract by a party to a construction contract, is entitled  
28 to costs, interest, and reasonable attorneys' fees. The surety upon  
29 the bond is not liable in an aggregate amount in excess of the amount  
30 named in the bond nor for any monetary penalty assessed pursuant to  
31 this chapter for an infraction.

32 ~~((+7))~~ (8) If a final judgment impairs the liability of the surety  
33 upon the bond so furnished that there is not in effect a bond in the  
34 full amount prescribed in this section, the registration of the  
35 contractor is automatically suspended until the bond liability in the  
36 required amount unimpaired by unsatisfied judgment claims is furnished.

37 ~~((+8))~~ (9) In lieu of the surety bond required by this section the

1 contractor may file with the department a deposit consisting of cash or  
2 other security acceptable to the department.

3 ~~((9))~~ (10) Any person having filed and served a summons and  
4 complaint as required by this section having an unsatisfied final  
5 judgment against the registrant for any items referred to in this  
6 section may execute upon the security held by the department by serving  
7 a certified copy of the unsatisfied final judgment by registered or  
8 certified mail upon the department within one year of the date of entry  
9 of such judgment. Upon the receipt of service of such certified copy  
10 the department shall pay or order paid from the deposit, through the  
11 registry of the superior court which rendered judgment, towards the  
12 amount of the unsatisfied judgment. The priority of payment by the  
13 department shall be the order of receipt by the department, but the  
14 department shall have no liability for payment in excess of the amount  
15 of the deposit.

16 ~~((10))~~ (11) The director may require an applicant applying to  
17 renew or reinstate a registration or applying for a new registration to  
18 file a bond of up to three times the normally required amount, if the  
19 director determines that an applicant, or a previous registration of a  
20 corporate officer, owner, or partner of a current applicant, has had in  
21 the past five years a total of six final judgments in actions under  
22 this chapter involving a residential single-family dwelling on two or  
23 more different structures.

24 ~~((11))~~ (12) The director may adopt rules necessary for the proper  
25 administration of the security.

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