

2SSB 6575 - H AMD 1488

By Representatives Conway, Moeller, Simpson, Van De Wege, Wood,
Ormsby, Williams

ADOPTED AS AMENDED 03/04/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 18.27.340 and 1997 c 314 s 17 are each amended to
4 read as follows:

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

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

11 (3) A contractor found to have committed an infraction under RCW
12 18.27.200 for failure to register shall be assessed a fine of not less
13 than one thousand dollars, nor more than five thousand dollars. For a
14 first offense, the director may reduce the penalty for failure to
15 register, but in no case below five hundred dollars, if the person:
16 Becomes registered within ten days of receiving a notice of infraction
17 ((and the notice of infraction is for a first offense)); and registers
18 for a department-approved contractor training class under section 2 of
19 this act within ten days of receiving a notice of infraction, completes
20 the class within one hundred twenty days of receiving the notice of
21 infraction, and pays any required class fees upon class registration.

22 (4) Until July 1, 2011, monetary penalties collected under this
23 chapter shall be deposited in the general fund. Beginning July 1,
24 2011, monetary penalties and class fees collected under this chapter
25 shall be deposited in the contractor registration account created in
26 section 4 of this act.

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

29 The department will approve or conduct contractor training classes

1 and charge a fee, payable upon class registration, that covers the
2 costs of administering the class. The department may adopt rules
3 relating to the number of classes to be offered by the department, the
4 locations of these classes, class fees, and curriculum. In determining
5 the locations of these classes, the department may consider offering
6 online classes and ensure that classes are reasonably accessible in
7 eastern and western Washington. The department shall deposit all fees
8 in the contractor registration account created in section 4 of this
9 act.

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

12 (1) The department shall charge fees for issuance, renewal, and
13 reinstatement of certificates of registration; and changes of name,
14 address, or business structure. The department shall set the fees by
15 rule.

16 (2) The entire amount of the fees are to be used solely to cover
17 the full cost of issuing certificates, filing papers and notices, and
18 administering and enforcing this chapter. The costs shall include
19 reproduction, travel, per diem, and administrative and legal support
20 costs.

21 (3) The department shall deposit all fees in the contractor
22 registration account created in section 4 of this act.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.27 RCW
24 to read as follows:

25 The contractor registration account is created in the state
26 treasury. The department shall deposit in the account all moneys from
27 registrations, renewals, or civil penalties assessed and collected
28 under this chapter. Appropriations from the account may be made only
29 for the purposes of administration and enforcement of this chapter,
30 including conducting contractor training classes under section 2 of
31 this act.

32 **Sec. 5.** RCW 60.28.040 and 2009 c 432 s 7 and 2009 c 219 s 7 are
33 each reenacted and amended to read as follows:

34 (1) Subject to subsection (5) of this section, the amount of all
35 taxes, increases, and penalties due or to become due under Title 82

1 RCW, from a contractor or the contractor's successors or assignees with
2 respect to a public improvement contract wherein the contract price is
3 thirty-five thousand dollars or more, shall be a lien prior to all
4 other liens upon the amount of the retained percentage withheld by the
5 disbursing officer under such contract.

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

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

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

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

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

- 35 (1) Every contractor shall register with the department.
- 36 (2) It is a gross misdemeanor for any contractor to:

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

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

6 (c) Use a false or expired registration number in purchasing or
7 offering to purchase an advertisement for which a contractor
8 registration number is required;

9 (d) Transfer a valid registration to an unregistered contractor or
10 allow an unregistered contractor to work under a registration issued to
11 another contractor; or

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

13 (3) It is not unlawful for a registered contractor to employ an
14 unregistered contractor who was registered at the time he or she
15 entered into a contract with the registered contractor, unless the
16 registered contractor or his or her representative has been notified in
17 writing by the department of labor and industries that the contractor
18 has become unregistered.

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

21 (5) A person is guilty of a separate gross misdemeanor for each day
22 worked if, after the person receives a (~~citation~~) notice of
23 infraction from the department, the person works while unregistered, or
24 while his or her registration is suspended or revoked, or works under
25 a registration issued to another contractor. A person is guilty of a
26 separate gross misdemeanor for each worksite on which he or she
27 violates subsection (2) of this section. Nothing in this subsection
28 applies to a registered contractor.

29 (6) A person is guilty of a class C felony if, after receiving a
30 third or subsequent final infraction for working as a contractor while
31 unregistered, while his or her registration is suspended or revoked, or
32 under a registration issued to another contractor, he or she works as
33 a contractor while unregistered, while his or her registration is
34 suspended or revoked, or under a registration issued to another
35 contractor.

36 (7) The director by rule shall establish a two-year audit and
37 monitoring program for a contractor not registered under this chapter
38 who becomes registered after receiving an infraction or conviction

1 under this chapter as an unregistered contractor. The director shall
2 notify the departments of revenue and employment security of the
3 infractions or convictions and shall cooperate with these departments
4 to determine whether any taxes or registration, license, or other fees
5 or penalties are owed the state.

6 NEW SECTION. **Sec. 7.** The legislature finds that the state loses
7 over one hundred million dollars a year in taxes due to underground
8 economy construction activity, causing great inequity to law-abiding
9 businesses and taxpayers. The legislature further finds that an
10 employer in construction is required to pay industrial insurance and
11 unemployment taxes for a worker unless a seven-part independent
12 contractor test is met, which test includes that the worker is free
13 from direction and control and has his or her own books and records.
14 The legislature finds that some contractors avoid taxes by engaging
15 multiple contractors to work together on the same task and treating the
16 contractors as independent contractors rather than hiring and paying
17 taxes on these persons as covered workers. The legislature finds,
18 however, that if multiple contractors are working together on the same
19 task on a job site, the contractors must be working under direction and
20 control such that they are not independent contractors but are, in
21 fact, covered workers.

22 The legislature finds that the seven-part test is and should
23 continue to be applied in investigations of underground economy
24 activity. However, the legislature also finds that prohibiting up
25 front certain contracting which by its nature creates a situation in
26 which taxes due are not paid will provide clarity to contractors and
27 provide an additional cost-effective means to reduce the underground
28 economy. By enacting section 8 of this act, the legislature intends to
29 define the prohibited contracting narrowly to assure no legitimate
30 contracting is prohibited. The legislature further intends to exempt
31 work on single-family residences. The legislature intends that nothing
32 in section 8 of this act prohibits a contractor from engaging other
33 contractors to assist with tasks so long as those contractors are
34 treated as covered workers.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.27 RCW
36 to read as follows:

1 (1) A contractor commits a violation under this chapter and is
2 subject to an infraction if on a single job site, work is performed
3 together on the same task by more than two contractors who bring no
4 workers to that job site who are subject to the mandatory coverage of
5 Title 51 RCW.

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

9 (3) The violation under subsection (1) of this section is committed
10 by all parties to the contract.

11 (4) A contractor found to have committed an infraction under this
12 section shall be assessed a fine of not less than one thousand dollars,
13 nor more than five thousand dollars. For a first offense, the director
14 may reduce the penalty to no less than five hundred dollars if the
15 contractor registers for a department-approved training class under
16 section 2 of this act within ten days of receiving a notice of
17 infraction, completes the class within one hundred twenty days of
18 receiving the notice of infraction, and pays any required class fees
19 upon class registration. For a second or subsequent offense under this
20 section, the director may suspend the registration of the contractor.

21 (5) For purposes of this section, a "job site" is a single physical
22 address.

23 (6) This section does not apply to work performed on a single-
24 family residence.

25 **Sec. 9.** 2009 c 432 s 13 (uncodified) is amended to read as
26 follows:

27 The department of labor and industries, the employment security
28 department, and the department of revenue shall coordinate and report
29 to the appropriate committees of the legislature by December 1st of
30 each year on the effectiveness of efforts implemented since July 1,
31 2008, to address the underground economy. The agencies shall use
32 benchmarks and measures established by the institute for public policy
33 and other measures it determines appropriate. The department of labor
34 and industries must include in its report measures of the effectiveness
35 of section 8 of this act.

1 NEW SECTION. **Sec. 10.** Section 9 of this act is codified as a new
2 section in chapter 43.22 RCW.

3 NEW SECTION. **Sec. 11.** Sections 3 and 4 of this act take effect
4 July 1, 2011."

5 Correct the title.

EFFECT: (1) Creates a Contractor Registration Account (Account) beginning July 1, 2011. Requires all registration fees, penalties, and class fees to be deposited into the Account, and provides that moneys may be appropriated from the Account only for purposes of administering and enforcing the contractor registration provisions.

(2) Creates a contractor registration infraction if, on a single job site (same physical address), work is performed together on the same task by more than two contractors who bring no workers to that job site who must be covered under industrial insurance. Exempts work performed on a single-family residence. States legislative findings and intent regarding the infraction.

Provides that if contractors are working in the same trade or craft on a single job site, the contractors have the burden of proof to show that they are not working together on the same task.

Provides that all parties to the contract commit the violation. Establishes penalties of not less than \$1000 nor more than \$5000.

Provides that for a first offense, the director may reduce the penalty to no less than \$500 if the contractor registers for and completes a training class. Provides that for a second or subsequent violation, the director may suspend the contractor's registration.

Requires the Department of Labor and Industries to report on the effectiveness of the infraction as part of its annual report on the underground economy.

--- END ---