

WSR 24-05-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 20, 2024, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-052.

Title of Rule and Other Identifying Information: Contractor registration rules, WAC 296-200A-015 What terms do I need to know to understand this chapter?, 296-200A-030 How much are the surety bond or savings account amounts?, 296-200A-080 How is a suit filed against a contractor?, 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.040, 18.27.100, 18.27.110, 18.27.114 or 18.27.200?, and 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?

Hearing Location(s): On March 26, 2024, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501; or join electronically <https://lni-wa.gov.zoom.us/j/82737231807?pwd=VmdmTGdkMGh2dDAybGpnbjRsOHBBUT09>, Passcode hearing1@!; or join by phone 253-215-8782 US, Webinar ID 827 3723 1807, Passcode 5064095270. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: April 30, 2024.

Submit Written Comments to: Alicia Curry, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, by 5 p.m. on March 26, 2024.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, email Alicia.Curry@Lni.wa.gov, by March 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes amendments to the contractor registration rules. The amendments affect the definitions, penalty and bond amounts, and fees for general and specialty contractors. The amendments are necessary due to the passage of legislation and to support operating expenses for the contractor registration program (program).

2023's 2SHB 1534 (chapter 213, Laws of 2023) helps to strengthen protections for consumers in the construction industry. Provisions of the bill increase fines, penalties, and bond amounts for contractors. These provisions take effect July 1, 2024.

2019's SB 5795 (chapter 155, Laws of 2019) increases bond requirements for contractors. The law gives L&I the authority to require up to three times the normal bond amount if there has been one judgment against a contractor involving a residential single-family dwelling. The law took effect July 28, 2019.

The proposed rules include:

- Increasing fees by the fiscal growth factor of 6.40 percent to support operating expenses.
- Amendments for consistency with the statutory amendments under 2SHB 1534. This includes:
 - o Adding a new definition to define the meaning of "due diligence" related to a successor of an entity verifying the entity is in good standing related to unsatisfied final judgment against it for work performed under chapter 18.27 RCW

or owes money to L&I for assessed penalties or fees as a result of a final judgment.

- o Increasing surety bond and savings account amounts for general and specialty contractors.
- o Increasing the monetary penalty amounts that may be assessed for infractions issued for violations of chapter 18.27 RCW.
- Amendments for consistency with the statutory amendments under SB 5795. This includes:
 - o Amending the number of final judgments and single-family dwelling structures involved for when a bond or savings account can be increased.
- Amendments for updates and clarification. This includes:
 - o Clarifying the service fee for summons and complaints by removing the fee amount and referencing the fee schedule.
 - o Clarifying the requirements for collection of penalties from a contractor and payments of restitution.

Reasons Supporting Proposal: L&I is amending the rules for consistency with the statutory amendments under 2SHB 1534 that take effect July 1, 2024, and SB 5795 that took effect July 28, 2019. A fee increase by the fiscal growth factor is needed, as current fee levels are not adequate to cover current program expenses. A fee increase will ensure the program's revenues match expenditures.

Statutory Authority for Adoption: 2SHB 1534 (chapter 213, Laws of 2023), SB 5795 (chapter 155, Laws of 2019); and chapter 18.27 RCW.

Statute Being Implemented: 2SHB 1534 (chapter 213, Laws of 2023), SB 5795 (chapter 155, Laws of 2019); and chapter 18.27 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McBride, Program Manager, Tumwater, Washington, 360-902-5571; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendments are exempt from the cost-benefit analysis requirement under RCW 34.05.328 (5)(b)(iv), 34.05.328 (5)(b)(v), and 34.05.328 (5)(b)(vi), or not considered significant legislative rules under RCW 34.05.328 (5)(c)(ii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemption(s): See explanation below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections	This proposed rule section is <u>not exempt</u> - Analysis is required	This proposed rule section is <u>exempt</u>. Provide RCW to support this exemption.
1.	WAC 296-200A-015 What terms do I need to know to understand this chapter?	X	
2.	WAC 296-200A-030 How much are the surety bond or savings account amounts?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(e) because it adopts content of which is explicitly and specifically dictated by statute.
3.	WAC 296-200A-080 How is a suit filed against a contractor?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it makes changes that only clarify language of a rule without changing the substance or effect of requirements.
4.	WAC 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.040, 18.27.100, 18.27.110, 18.27.114 or 18.27.200?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(e) because it makes changes that only clarify language of a rule without changing the substance or effect of requirements and adopts content of which is explicitly and specifically dictated by statute.
5.	WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(f) because it sets or adjusts fees under the authority of RCW 19.02.075.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The portion of the proposed amendments not exempt is the addition of the definition of due diligence for consistency with the statutory amendments under 2SHB 1534. This rule sets forth L&I's interpretation of the statute and therefore, any costs associated are due to the underlying statute and not the interpretative rule. As such, the proposed rule does not impose any costs.

February 20, 2024
 Joel Sacks
 Director

OTS-5143.5

AMENDATORY SECTION (Amending WSR 11-23-140, filed 11/22/11, effective 12/31/11)

WAC 296-200A-015 What terms do I need to know to understand this chapter? For the purposes of this chapter, the following terms and definitions are important:

"Administrative law judge" is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 18.27 RCW and this chapter.

"Appeal bond" is a certified check or money order in the amount prescribed under RCW 18.27.250 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a registered contractor according to chapter 18.27 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Citation" means the same as "infraction."

"Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 18.27 RCW and this chapter.

"Consultant" means any person, individual, firm, agent or other entity who directs, controls or monitors construction activities for a property owner. A general contractor registration is required. A licensed professional acting in the capacity of their license is exempt from registration.

"Contractor compliance chief" refers to the person designated by the director to address all policy and technical issues related to chapter 18.27 RCW and this chapter.

"Department" refers to the department of labor and industries.

"Developer" means any person, firm, corporation or other entity that undertakes:

- The subdivision or development of land for residential purposes; or
- The construction or reconstruction of one or more residential units.

A general contractor registration is required.

"Director" refers to the director of the department of labor and industries or the director's designee acting in the place of the director.

"Due diligence" for the purposes of RCW 18.27.030 (3) (d), an applicant is deemed to have exercised due diligence upon conducting a reasonable review of the department's website verifying there are no unsatisfied judgments on file against the contractor or the company, either from a lawsuit or infraction. A lawsuit may be marked as open. A lawsuit can change to unsatisfied at any time.

(a) Unsatisfied judgments from a lawsuit will show the status as "unsatisfied."

(b) Unsatisfied judgments from an infraction will show the status as "not satisfied."

(c) Due diligence must be exercised immediately preceding submitting the application packet.

(d) A printout of the website confirming no record of unsatisfied judgments on file is acceptable documentation of due diligence.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a contractor and/or contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the contractor and owed the department as a result of an infraction or notice of correction that has not been appealed, final tax warrants or any delinquent fees or penalties due.

"Final tax warrant" is a document used by the department to establish the debt of a tax payer.

"Infraction" means a violation of chapter 18.27 RCW and this chapter as cited by the chief contractor compliance inspector or the

department's construction compliance inspectors. The notice of infraction also serves as a notice of assessment.

"Mobile/manufactured home dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW.

"On-premise sign" means a sign at a permanent place of business or a sign placed at a job location while the registered contractor is working at the site. A sign left at a work site after a contractor has left is not an "on-premise" sign and must contain the registered contractor's registration number.

"Property management company" means any person, firm or other entity that in the pursuit of a property management business advertises, bids/offers, or performs construction, maintenance or repair services with their own employees on property not owned by the property management company. A general contractor registration is required.

"Renewal" or **"renewed"** means the renewal of a contractor's registration before it expires.

"Reinstatement" or **"reinstated"** means the reinstatement of a contractor's registration after the registration has expired, or has been suspended, or been revoked.

"Reregistration" or **"reregister"** means an update to a contractor's registration because of business structure change.

"Secured contractor" is a contractor who has complied with RCW 18.27.040 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state bank and assigned to the department in lieu of a surety bond.

"Unregistered contractor" means a person, firm, corporation or other entity working as a contractor without being registered in compliance with chapter 18.27 RCW and this chapter.

"Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-030 How much are the surety bond or savings account amounts? (1) The continuous surety bond or savings account amounts for applicants of contractors with ~~((five or fewer))~~ no final judgments involving ~~((two or more))~~ a residential single-family dwelling~~((s))~~ in the previous five years are as follows:

(a) ~~((Twelve thousand dollars))~~ \$30,000 for general contractors.

(b) ~~((Six thousand dollars))~~ \$15,000 for specialty contractors.

(2) The surety bond or savings account amounts for applicants of contractors with ~~((three or more))~~ one final judgment~~((s))~~ involving ~~((two or more))~~ a residential single-family dwelling~~((s))~~ in the previous five years ~~((will))~~ may be increased based upon (a) and (b) of this subsection.

(a) General contractors.

Number of Final Judgments	Bond or Savings Account Amount per Registration Cycle
((3	\$18,000.00
4	\$24,000.00
5	\$30,000.00
6 or more	\$36,000.00))
<u>1</u>	<u>\$40,000.00</u>
<u>2</u>	<u>\$60,000.00</u>
<u>3 or more</u>	<u>\$90,000.00</u>

(b) Specialty contractors.

Number of Final Judgments	Bond or Savings Account Amount per Registration Cycle
((3	\$ 8,000.00
4	\$12,000.00
5	\$16,000.00
6 or more	\$18,000.00))
<u>1</u>	<u>\$20,000.00</u>
<u>2</u>	<u>\$30,000.00</u>
<u>3 or more</u>	<u>\$45,000.00</u>

(3) At the time of reregistration, renewal or reinstatement the department shall only consider final judgments from the previous five years which will be used to determine the bond or savings account amount according to subsection (2) (a) and (b) of this section.

(4) A contractor's required bond or savings account amount may only be reviewed for reduction to a lower level at their next regular renewal. The increased bond requirement must remain in effect during the entire registration cycle even if reinstatement or reregistration occurs.

(5) For purposes of this section, final judgment does not include infractions.

AMENDATORY SECTION (Amending WSR 11-23-140, filed 11/22/11, effective 12/31/11)

WAC 296-200A-080 How is a suit filed against a contractor? (1)

A civil suit against a contractor must be filed in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a contractor, the contractor's bond, and/or the contractor's deposit must be exclusively delivered to the department by registered or certified mail to: P.O. Box 44450, Olympia, Washington 98504-4450 or by any delivery requiring notice of receipt to: 7273 Linderson Way S.W., Tumwater, WA 98501. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the contractor, the contractor's bond and/or the contractor's

deposit. The person filing the suit must pay (~~a fifty-dollar~~) the service fee to the department as identified in WAC 296-200A-900.

(3) The summons and complaint against a contractor must include the following information:

(a) The name of the contractor exactly as it appears in the contractor's registration file;

(b) The contractor's business address;

(c) The names of the owners, partners or officers of the contractor if known; and

(d) The contractor's registration number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

(a) The name of the bonding company that issued the contractor's bond;

(b) The bond number; and

(c) The effective date of the bond.

(5) If the suit is against a contractor using an assigned account in lieu of a bond, the complaint must also include:

(a) The name of the institution where the assigned account is held;

(b) The account number; and

(c) The date the assigned account was opened.

(6) Service is not considered complete until the department receives the documents in Tumwater with the (~~fifty-dollar~~) required fee and three copies of the summons and complaint.

(7) Within two days of receiving a summons and complaint, the department must mail a copy of the summons and complaint to the registrant at the address listed on the registrant's application or at their last known address provided to the department and to the registrant's surety.

(8) The department will return a summons and complaint without it being served, if the department cannot readily identify either the contractor or bonding company being sued, if the action did not arise under chapter 18.27 RCW, or if the fee and three copies of the summons and complaint are not received.

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.040, 18.27.100, 18.27.110, 18.27.114 or 18.27.200? (1) Each day that a violation occurs will be a separate offense.

(2) Once a violation of chapter 18.27 RCW or this chapter becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the tables that follow.

(3) Second or additional offenses subject to increased penalties also include individuals or entities.

(4) A person, firm, corporation, or other entity who violates a provision of chapter 18.27 RCW and this chapter is liable for a civil penalty based upon the following schedule.

(a) Monetary penalties that may be assessed for a violation of RCW 18.27.040(10) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$500.00
Third Final Violation	\$750.00
Each Additional Final Violation	\$1,000.00

(b) (i) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (1), (2), (3), and (4) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$750.00
Third Final Violation	\$2,250.00
Fourth Final Violation	\$5,000.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100 (1), (2), (3), and (4) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (5) and (7) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$2,000.00*
Second Final Violation	\$4,000.00
Third Final Violation	\$6,000.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100 (5) and (7) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(iii) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (6) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$1,000.00*
Second Final Violation	\$3,000.00
Third Final Violation	\$6,000.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100(6) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(c) Monetary penalties that may be assessed for a violation of RCW 18.27.110 are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$750.00
Third Final Violation	\$2,250.00
Fourth Final Violation	\$7,500.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.110 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(d) Monetary penalties that may be assessed for a violation of RCW 18.27.114 are:

Monetary Penalties	Dollar Amount
First Final Violation	\$500.00*
Second Final Violation	\$1,000.00
Third Final Violation	\$2,000.00
Fourth Final Violation	\$4,000.00
Each Additional Final Violation	\$5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.114 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(e) Monetary penalties that may be assessed for a violation of RCW 18.27.200 are:
(i)

RCW 18.27.200 (1)(a)

Monetary Penalties	Dollar Amount
First Final Violation	((\$500.00))* <u>\$1,200.00</u>
Second Final Violation	\$3,000.00
(Each Additional) <u>Third Final Violation</u>	\$5,000.00
<u>Each Additional Violation</u>	<u>\$10,000.00</u>

* Minimum penalty per violation. Once a violation of RCW 18.27.340(1) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii)

**RCW 18.27.200 (1)(b) ((through)),
(c) and (e)**

Monetary Penalties	Dollar Amount
First Final Violation	((\$1,000.00))* <u>\$1,200.00</u>
Second Final Violation	\$3,000.00
(Each Additional) <u>Third Final Violation</u>	\$5,000.00
<u>Each Additional Violation</u>	<u>\$10,000.00</u>

* Minimum penalty per violation. Once a violation of RCW 18.27.340(3) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the above table. However, if the unregistered contractor becomes registered within (~~ten~~) 10 days of receiving the notice of infraction and the notice is the contractor's first offense, the director may reduce the penalty. In no case can the director reduce the penalty below (~~five hundred dollars~~) \$600.

(5) For violations of RCW 18.27.200, the director may waive a penalty collection from a contractor in exchange for a payment of restitution to a damaged consumer (~~in an amount at least equal to the assessed penalty. Prior to the infraction becoming final, the contractor must provide to the department a notarized release from the damaged consumer stating that he or she paid the damaged consumer in an amount at least equal to the assessed penalty~~). If the assessed penalty amount or amounts are more than the restitution amount, the remaining balance is owed to the department.

AMENDATORY SECTION (Amending WSR 22-07-087, filed 3/22/22, effective 4/22/22)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

(1) (~~(\$124.70)~~) \$132.60 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) (~~(\$58.90)~~) \$62.60 for the reinstatement of a certificate of registration.

(3) (~~(\$13.80)~~) \$14.60 for providing a duplicate certificate of registration.

(4) (~~(\$28.10)~~) \$29.90 for each requested certified letter prepared by the department.

(5) (~~(\$178.10)~~) \$189.50 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs (~~(\$14.80)~~) \$15.70.

(6) (~~(\$2.10)~~) \$2.20 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be (~~(\$30.80)~~) \$32.70.

(7) (~~(\$55.00)~~) \$58.50 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) (~~(\$27.50)~~) \$29.20 is required to cover the costs for the service of processing refunds.