

# HOUSE BILL REPORT

## HB 2544

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### As Reported By House Committee On:

Commerce & Labor

**Title:** An act relating to registration of contractors.

**Brief Description:** Regulating the registration of contractors.

**Sponsors:** Representatives Cairnes, Conway, Benton, Thompson, D. Schmidt, Sterk, Chandler and Cooke.

### **Brief History:**

#### **Committee Activity:**

Commerce & Labor: 1/25/96, 1/31/96 [DPS].

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives McMorris, Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Horn and Lisk.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Hargrove, Vice Chairman; Fuhrman and Goldsmith.

**Staff:** Chris Cordes (786-7117).

**Background:** Construction contractors, whether general contractors or specialty contractors are required to register with the Department of Labor and Industries. The statute governs the application requirements, bonding and insurance requirements, notice requirements for customers, and penalties for violations.

### **Statement of purpose**

The purpose of the contractor registration statute is to afford protection to the public, including persons furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financial irresponsible, or incompetent contractors.

### **Application for registration as a contractor**

The Department of Labor and Industries must deny registration if an applicant has been previously registered as a sole proprietor, partnership, or corporation, and was a principal or officer of the corporation, and the applicant has unsatisfied final judgments arising from the previous registration.

Applicants for registration or for renewing a registration must submit a surety bond of \$6,000 for general contractors and \$4,000 for specialty contractors. The surety on a bond is not liable in an aggregate amount beyond the amount named in the bond nor for any monetary penalty assessed for an infraction. The surety's liability does not cumulate where the bond has been renewed or extended.

Registration is valid for one year and must be renewed on or before the expiration date. Registration is suspended if a final judgment impairs the bond or the bond is canceled, or the contractor fails to maintain required insurance or financial responsibility. The department must give notice of suspension of registration.

The department must set fees by rule to cover the cost of issuing certificates, filing papers and notices, and administering and enforcing the registration law.

### **Substantial compliance doctrine**

A contractor may not maintain a suit for breach of contract unless the contractor is registered as required. In determining whether a contractor may maintain a suit, the court may not find a contractor in substantial compliance with registration requirements unless the department has on file the information required from each contractor applicant, and the contractor has a current bond or other security required and current insurance. The court must take into consideration the length of time that the contractor was not validly registered.

### **Contractor advertising**

The alphabetized list of contractors in the advertising section of telephone books and directories must include the contractor's current registration number. A seller of advertising should not accept advertisements if the contractor fails to provide the registration number.

### **Infractions and misdemeanors**

Contractors commit infractions if advertising, offering to do work, or submitting a bid without being registered or while registration is suspended. Infractions are subject to penalties of not less than \$200 or more than \$3,000.

It is also a misdemeanor for a contractor to advertise, offer to do work, or submit a bid without being registered or while registration is suspended, to use a false or

expired registration number when purchasing advertising, or to transfer a valid license to an unregistered contractor.

An administrative law judge hearing the infraction is authorized to waive, reduce, or suspend the monetary penalty only on a showing of good cause that the penalty would be unduly burdensome to the contractor.

### **Mandatory coverage of employment for industrial insurance**

There is an exemption from mandatory coverage under industrial insurance for employment involving maintenance, repair, remodeling, or similar work in or about a private home.

### **Summary of Substitute Bill:**

#### **Statement of purpose**

The statement of purpose for regulating contractor registration is replaced with a new purpose statement. The purposes are to protect the general welfare of the residents of the state who purchase construction services and the general economic welfare of businesses in compliance with the registration requirements, to enhance state revenue, and to promote compliance and enforcement by providing swift and meaningful remedies for those failing to register as required.

#### **Definition of contractor**

The definition of "contractor" includes any person who is covered by the definition, whether the person is registered or not.

#### **Application for registration as a contractor**

The requirement for the Department of Labor and Industries to deny registration to certain applicants who were previously registered as corporations, and the applicant was a principal or officer of the corporation, is amended to delete the requirement that the person was a principal or officer of the corporation. A requirement is added that the department must check for the applicant's past noncompliance with the registration requirements, including checking for evidence of violations, suspended or revoked registrations, or misdemeanors or infractions related to the registration requirements. Multiple instances of past noncompliance may be grounds for denial of an application.

The bond that must accompany an application for registration must be continuous and may be canceled by the surety on written notice to the director. The bond is one continuous obligation, whether renewed or otherwise extended, and the surety is not

liable in an aggregate or cumulative amount exceeding the penal sum of the bond. The penal sum of the bond from two points in time may not be added to determine the surety's liability.

The prevailing party in a bond claim action against the contractor and contractor's bond is entitled to costs and reasonable attorneys' fees.

A registration is considered validly renewed on the date that the department receives the required fee and proof of bond and insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery is proof of renewed registration until verification is received from the department.

The department must mail notice of the suspension of a contractor's registration to the contractor's address on the registration by certified and first class mail within 48 hours of the suspension.

The fees to be charged by the department must include the cost of consumer education activities. No less than 20 percent of yearly revenues derived from registration fees must be committed to consumer education activities of the department.

### **Substantial compliance doctrine**

The doctrine of substantial compliance is not to be used by the department in applying or construing the registration requirements.

### **Contractor advertising**

The contractor registration number may be omitted from an alphabetized listing of contractors that states only the name, address, and telephone number.

Language is deleted stating that a person selling advertising should not accept advertisements if the contractor fails to provide the registration number. The director of the Department of Labor and Industries is authorized to issue a subpoena to a seller of advertising asking for the name, address, and telephone number of the purchaser of advertising. The subpoena must enclose a stamped, self-addressed envelope and a blank form to be filled out by the seller of the advertising. If the seller has the information on file, the seller must return the completed form to the department within a reasonable time. The seller's good-faith compliance with the request for information is a complete defense to any civil or criminal action brought against the seller arising from compliance.

The subpoena must be issued within 48 hours after the expiration of the issue or publication of the advertising. The subpoena requirements apply to advertising by airwave transmission.

A contractor may not use an expired registration number in any solicitation or identification as a contractor.

### **Infractions**

An "unregistered contractor" is anyone doing work as a contractor without being registered and includes contractors whose registrations have been suspended or are expired for more than 30 days beyond the renewal date.

There is a presumption that a person engaged in contractor activities knows the registration requirements.

A person who fails to register as required is subject to a fine of not less than \$1,000 or more than \$5,000 per violation. The penalty may be reduced to no less than \$500 if the person registers within 10 days of the notice of infraction and it is a first offense.

If a person who is issued a notice of infraction is a person who has failed to register as required, the person is subject to a penalty of \$1,000 for each infraction and each day the person works without becoming registered is a separate infraction. If the person registers within 10 days of the notice of infraction, the penalty may be reduced to no less than \$500.

The authority of an administrative law judge to waive, reduce, or suspend a monetary penalty is deleted. However, the director may waive collection of a penalty in favor of payment of restitution to a consumer complainant.

### **Misdemeanor and felony violations**

An additional misdemeanor is created. Each day beyond the date of citation that a person works without being registered, works while his or her registration is suspended or revoked, or works under a registration issued to another contractor is a separate misdemeanor. Each work site at which the person works is a separate misdemeanor.

### **Monitoring program**

The director of the Department of Labor and Industries must establish a two-year monitoring program for persons who, after receiving an infraction or conviction for failure to register, become registered contractors. The director must notify the Department of Revenue and the Employment Security Department of the infractions and convictions and cooperate in determining whether any taxes, fees, or penalties are owed to the state.

## **Mandatory coverage of employment for industrial insurance**

The exemption from mandatory coverage under industrial insurance for work in or about a private home is amended. The exemption does not apply to remodeling or similar work about the private home of the employer. The exemption continues to apply to maintenance, defined as the work of keeping in proper condition, and to repair, defined as restoring to sound condition after damage. A private home is defined as a person's place of residence.

**Substitute Bill Compared to Original Bill:** The substitute bill deletes provisions in the original bill that (1) would have made it both an infraction and a misdemeanor if a contractor knowingly subcontracted with an unregistered contractor; and (2) would have created a class C felony for each day of work that an unregistered contractor worked after an administrative law judge found an infraction involving failure to register.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** After many years of study, it is important to move ahead on this issue. There is a clear need to make the laws tougher because it is difficult for legitimate contractors to compete with those who do not register and do not pay taxes. Something needs to be done to reduce the underground economy. This bill will give the Department of Labor and Industries tools to increase compliance with the law. Although the bonding levels for contractors still need to be addressed, this bill may not be the appropriate place.

**Testimony Against:** Although sellers of advertising recognize the problem of unregistered contractors, it is very difficult and not cost effective for small publishers to keep the kind of records that this bill addresses. It is also difficult for one industry to regulate another. Small publishers might be forced to stop taking contractor advertisements.

**Testified:** (In favor) Jim Lappala; Charlie Mitchell; Doug Bohlke, Contractors Bonding and Insurance Company; Bob Dilger, Washington State Building and Construction Trades Council; and Dan Sexton, Washington State Association of Plumber and Pipefitters. (With concerns) Diana Kramer, Washington Newspaper Publishers.