

HOUSE BILL REPORT

HB 1635

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to consumer protection regarding contractors.

Brief Description: Protecting consumers in contractor transactions.

Sponsors: Representatives Ogden and Conway.

Brief History:

Committee Activity:

Commerce & Labor: 2/13/01, 2/27/01 [DPS].

Brief Summary of Substitute Bill

- Increases the amounts of the bonds and the insurance required of general and specialty contractors, and limits recovery against the bonds by claimants other than residential homeowners.
- Provides that liens filed by subcontractors or suppliers in connection with new residential construction for a residential homeowner may only be satisfied from amounts not yet paid to the prime contractor.
- Requires the Department of Labor and Industries to deny and suspend registration of contractors with an unsatisfied final judgment.
- Directs the department to establish an unregistered contractor enforcement team.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hunt and Kenney.

Minority Report: Do not pass. Signed by 3 members: Representatives B. Chandler, Republican Vice Chair; Lisk and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

The Contractors Registration Act, Chapter 18.27 RCW, requires general and specialty contractors to register with the Department of Labor and Industries. They also must meet certain requirements relating to registration, bonding and insurance, and notice to customers. In addition to registering contractors, the department administers and enforces other provisions of the Act.

Registration: The department must deny an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A registration is valid for one year. The department may not charge a registration fee of more than \$50.

Bonds: An applicant for registration or renewal must submit a bond. The amount of the bond must be \$6,000 for general contractors, and \$4,000 for specialty contractors. An action to recover against the bond must be filed in superior court within one year of the expiration of the current registration. Failure to maintain the bond is cause to suspend or deny a contractor's registration.

Insurance: An applicant also must obtain insurance or provide the department with an assigned account. The amount of insurance coverage or the assigned account must be \$20,000 for property damage, \$50,000 for injury or death to one person, and \$100,000 for injury or death to more than one person. Failure to maintain the insurance or the account is also cause to suspend or deny a contractor's registration.

Liens: A contractor bidding on or performing construction work that has a contract price of \$1,000 or more must provide the customer with a disclosure statement that includes the contractor's registration number. The disclosure statement must also set forth the amount of the contractor's bond and an explanation of steps that the customer might take to procure additional protection if a claim arises from the work done under the contract.

Subcontractors and suppliers who do not contract directly with the owner must give the owner notice of right to claim a lien. Subcontractors and suppliers who are not paid may file a lien against the property even if the prime contractor has been paid in full.

Advertising: A contractor may not advertise that he or she is bonded and insured. The civil penalty for prohibited advertising may not exceed \$5,000.

Summary of Substitute Bill:

The Contractors Registration Act is modified. Requirements relating to registration,

bonding and insurance, liens and advertising are changed. Requirements related to increased consumer and contractor awareness are added. An unregistered contractors enforcement team is established. A dedicated account is created.

Registration: The Department of Labor and Industries must deny an application for registration if the applicant was a principal or an officer of a previous registrant with an unsatisfied final judgment or owes the department penalties or fees. The department must suspend an active registration if the registrant has an unsatisfied final judgment against him or her, or is a principal or an officer of another registrant with an unsatisfied final judgment. A registration is valid for two years, instead of one year. The \$50 limitation on contractor registration fees is increased to \$100 for a two-year certificate of registration.

Bonds: The amount of the bond is increased from \$6,000 to \$12,000 for a general contractor, and from \$4,000 to \$6,000 for a specialty contractor. In specified circumstances, the director may increase the amount of the bond to up to \$36,000 for a general contractor and \$18,000 for a specialty contractor. Amounts paid to claimants other than residential homeowners must not exceed \$6,000 from a general contractor bond and \$4,000 from a specialty contractor bond. A residential homeowner may bring an action against the bond for breach of contract within one year of the date work is completed or abandoned. If a final judgment impairs the full amount of the bond, the contractor's registration is automatically suspended.

Insurance: The amount of insurance coverage or the assigned account is increased from \$20,000 to \$50,000 for property damage, from \$50,000 to \$100,000 for injury or death to one person, and from \$100,000 to \$200,000 for injury or death to more than one person. If the insurance policy expires, or is cancelled, revoked, or withdrawn, the contractor's registration is automatically suspended.

Liens: In addition to registration and bonding information, the disclosure statement that a contractor must give to a customer must say that: (1) the bond might not be sufficient to pay a customer's claim; (2) the customer's property can be liened; (3) for greater protection, the customer may retain a portion of the contract; and (4) for additional protection, the customer may request original lien release documents.

Subcontractors and suppliers who do not contract directly with the owner must give the owner notice of right to claim a lien in connection with new residential construction. Such liens may only be satisfied from the amounts not yet paid to the prime contractor.

Advertising: The maximum penalty for other prohibited advertising is increased from \$5,000 to \$10,000.

Consumer and Contractor Awareness: The department must increase consumer awareness of legal requirements protection available to consumers; increase contractor

awareness of legal obligations; use reasonable means to increase awareness; develop model construction contracts; and air public service announcements regarding consumer and contractor education services.

Unregistered Contractors: The department, along with the Employment Security Department and the Department of Revenue, must establish an unregistered contractors enforcement team. The team must develop a written plan to coordinate enforcement activities, and develop annual reports to the Legislature on enforcement activities. The director of the Department of Labor and Industries must allocate a minimum of .05 of an FTE to implement the plan.

Other: The contractor registration act is made inapplicable to a mobile/manufactured home dealer or manufacturer who subcontracts with a registered contractor to set up a home. A process is established for the department to collect payments, penalties or fines due from unregistered contractors. Definitions of several terms, including "residential homeowner" and "unsatisfied final judgment" are added.

Substitute Bill Compared to Original Bill:

Provisions relating to registration, bonding and insurance, liens, and advertising are changed. Provisions relating to increased consumer and contractor awareness, an unregistered contractors enforcement team, and a dedicated account are added. Provisions relating to an advisory committee and education and testing requirements are deleted.

Registration: A new provision prohibits the Department of Labor and Industries from denying an application or suspend a registration because of an unsatisfied final judgment if a court finds that the unsatisfied final judgment is the result of the fraud or negligence of another party.

The limitation on the amount of contractor registration fees is restored. The amount of the fee is increased from \$50 for a one-year certificate of registration to \$100 for a two-year certificate of registration. The department is required to revise the amount once every two years to reflect the fiscal growth factor.

Bonds: The proposed amounts of the bonds are decreased from \$15,000 to \$12,000 for a general contractor and from \$8,000 to \$6,000 for a specialty contractor. The proposed amounts of the bonds reserved for claimants other than residential homeowners are changed to \$6,000 from the general contractor bond and \$4,000 from the specialty contractor bond.

The specific circumstances in which the director may increase the amount of the bond are modified. The multiplier by which the amount of the bond is decreased from five times the normal amount to three times the normal amount.

The statute of limitations for residential homeowners to bring actions against bonds is decreased to from two years to one year from the date that contract work was completed or abandoned. The prevailing parties in actions against bonds are permitted to recover attorneys' fees and costs.

Liens: The content of the disclosure statement is modified to include language regarding retaining a portion of the contract; and requesting original lien release documents, and to exclude language regarding payment and performance bonds; attorneys and construction experts; and making checks payable jointly.

A provision is added to prohibit subcontractor and supplier liens from being satisfied if the residential homeowner has paid the contractor, prior to receipt of the lien notice, for the specific services or supplies for which the lien is claimed.

Advertising: The prohibition on advertising that a contractor is bonded and insured is not repealed.

Consumer and Contractor Education: A provision is added requiring the department to increase consumer and contractor awareness of legal protection and obligations.

Unregistered Contractors: A provision is added to require the department to create an enforcement team, and to require the team develop a written plan to coordinate enforcement activities.

Dedicated Account: Provisions are added to create the contractor registration account.

Other: The new collection process is made applicable only to unregistered contractors. A definition of "unsatisfied final judgment" is added.

Advisory Committee: A provision establishing an advisory committee is deleted.

Continuing Education and Competency Testing: Provisions requiring continuing education and competency testing are deleted.

Appropriation: None.

Fiscal Note: Requested on February 7, 2001.

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

Testimony For: For many people, their biggest investment is their home. This homeowner protection bill is necessary because of the problems that homeowners have

with registered and unregistered contractors. Although there are many good contractors in Washington, there are others who do poor quality work or leave work unfinished.

The bond amounts need to be increased. The current bond amounts sometimes do not cover even the legal fees. Homeowners need assurance of access to a portion of the bond amount. They also need to be better educated as to their resources and their responsibilities. Contractors need competency testing for business knowledge. Continuing education would help contractors stay current in their field.

Testimony Against: The bill should focus on the problem of unregistered contractors, especially those who do not pay taxes. Some changes to bond amounts and lien rights may be appropriate. Requirements for prompt payment of subcontractors and suppliers are needed, but changes in lien rights are not acceptable. An advisory board and continuing education requirements would give homeowners a false sense of security. The bill does not provide for better consumer education. The definition of contractor appears to exclude "spec" builders from registration requirements. The prohibition on advertising about bonding and insurance should not be repealed.

Testified: (In support, original bill) Representative Ogden, prime sponsor; Julia Barrett, residential homeowner; Patrick Underhill, International Carpenters Union; Gregg Morck, International Carpenters Union; Dan Sexton, Washington State Association of Plumbers and Steamfitters; Patrick Woods, Department of Labor and Industries; and Sally Gustafson, Office of the Attorney General.

(Opposed, original bill) Brian Minnich, Building Industry Association of Washington; Larry Stevens, Contractors Bonding and Insurance Company and the National Electrical Contractors Association; Janis Lucas, National Association of Credit Management; Rick Slunaker, Associated General Contractors of Washington; Bob Gee, Western Building Materials Association; and Gary Smith, Independent Business Association.