

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1555

61st Legislature
2009 Regular Session

Passed by the House April 23, 2009
Yeas 95 Nays 1

Speaker of the House of Representatives

Passed by the Senate April 16, 2009
Yeas 31 Nays 16

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1555** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1555

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy, and Wood)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the recommendations of the joint legislative
2 task force on the underground economy in the construction industry;
3 amending RCW 60.28.021, 60.28.040, 60.28.051, 60.28.060, and 50.12.070;
4 amending 2008 c 120 s 10 (uncodified); reenacting and amending RCW
5 60.28.011; adding a new section to chapter 18.27 RCW; adding a new
6 section to chapter 35.21 RCW; adding a new section to chapter 35A.21
7 RCW; adding a new section to chapter 36.01 RCW; adding a new section to
8 chapter 51.04 RCW; creating a new section; prescribing penalties;
9 providing an effective date; and providing an expiration date.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 18.27 RCW
12 to read as follows:

13 A contractor must maintain and have available for inspection by the
14 department a list of all direct subcontractors and a copy of their
15 certificate of registration.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
17 to read as follows:

18 A city that issues a business license to a person required to be

1 registered under chapter 18.27 RCW may verify that the person is
2 registered under chapter 18.27 RCW and report violations to the
3 department of labor and industries. The department of licensing shall
4 conduct the verification for cities that participate in the master
5 license system.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.21 RCW
7 to read as follows:

8 A city that issues a business license to a person required to be
9 registered under chapter 18.27 RCW may verify that the person is
10 registered under chapter 18.27 RCW and report violations to the
11 department of labor and industries. The department of licensing shall
12 conduct the verification for cities that participate in the master
13 license system.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.01 RCW
15 to read as follows:

16 A county that issues a business license to a person required to be
17 registered under chapter 18.27 RCW may verify that the person is
18 registered under chapter 18.27 RCW and report violations to the
19 department of labor and industries.

20 **Sec. 5.** RCW 60.28.011 and 2007 c 494 s 504 and 2007 c 218 s 92 are
21 each reenacted and amended to read as follows:

22 (1) Public improvement contracts shall provide, and public bodies
23 shall reserve, a contract retainage not to exceed five percent of the
24 moneys earned by the contractor as a trust fund for the protection and
25 payment of: (a) The claims of any person arising under the contract;
26 and (b) the state with respect to taxes imposed pursuant to Titles 50,
27 51, and 82 RCW which may be due from such contractor.

28 (2) Every person performing labor or furnishing supplies toward the
29 completion of a public improvement contract shall have a lien upon
30 moneys reserved by a public body under the provisions of a public
31 improvement contract. However, the notice of the lien of the claimant
32 shall be given within forty-five days of completion of the contract
33 work, and in the manner provided in RCW 39.08.030.

34 (3) The contractor at any time may request the contract retainage

1 be reduced to one hundred percent of the value of the work remaining on
2 the project.

3 (a) After completion of all contract work other than landscaping,
4 the contractor may request that the public body release and pay in full
5 the amounts retained during the performance of the contract, and sixty
6 days thereafter the public body must release and pay in full the
7 amounts retained (other than continuing retention of five percent of
8 the moneys earned for landscaping) subject to the provisions of
9 chapters 39.12 and 60.28 RCW.

10 (b) Sixty days after completion of all contract work the public
11 body must release and pay in full the amounts retained during the
12 performance of the contract subject to the provisions of chapters 39.12
13 and 60.28 RCW.

14 (4) The moneys reserved by a public body under the provisions of a
15 public improvement contract, at the option of the contractor, shall be:

16 (a) Retained in a fund by the public body;

17 (b) Deposited by the public body in an interest bearing account in
18 a bank, mutual savings bank, or savings and loan association. Interest
19 on moneys reserved by a public body under the provision of a public
20 improvement contract shall be paid to the contractor;

21 (c) Placed in escrow with a bank or trust company by the public
22 body. When the moneys reserved are placed in escrow, the public body
23 shall issue a check representing the sum of the moneys reserved payable
24 to the bank or trust company and the contractor jointly. This check
25 shall be converted into bonds and securities chosen by the contractor
26 and approved by the public body and the bonds and securities shall be
27 held in escrow. Interest on the bonds and securities shall be paid to
28 the contractor as the interest accrues.

29 (5) The contractor or subcontractor may withhold payment of not
30 more than five percent from the moneys earned by any subcontractor or
31 sub-subcontractor or supplier contracted with by the contractor to
32 provide labor, materials, or equipment to the public project. Whenever
33 the contractor or subcontractor reserves funds earned by a
34 subcontractor or sub-subcontractor or supplier, the contractor or
35 subcontractor shall pay interest to the subcontractor or sub-
36 subcontractor or supplier at a rate equal to that received by the
37 contractor or subcontractor from reserved funds.

1 (6) A contractor may submit a bond for all or any portion of the
2 contract retainage in a form acceptable to the public body and from a
3 bonding company meeting standards established by the public body. The
4 public body shall accept a bond meeting these requirements unless the
5 public body can demonstrate good cause for refusing to accept it. This
6 bond and any proceeds therefrom are subject to all claims and liens and
7 in the same manner and priority as set forth for retained percentages
8 in this chapter. The public body shall release the bonded portion of
9 the retained funds to the contractor within thirty days of accepting
10 the bond from the contractor. Whenever a public body accepts a bond in
11 lieu of retained funds from a contractor, the contractor shall accept
12 like bonds from any subcontractors or suppliers from which the
13 contractor has retained funds. The contractor shall then release the
14 funds retained from the subcontractor or supplier to the subcontractor
15 or supplier within thirty days of accepting the bond from the
16 subcontractor or supplier.

17 (7) If the public body administering a contract, after a
18 substantial portion of the work has been completed, finds that an
19 unreasonable delay will occur in the completion of the remaining
20 portion of the contract for any reason not the result of a breach
21 thereof, it may, if the contractor agrees, delete from the contract the
22 remaining work and accept as final the improvement at the stage of
23 completion then attained and make payment in proportion to the amount
24 of the work accomplished and in this case any amounts retained and
25 accumulated under this section shall be held for a period of sixty days
26 following the completion. In the event that the work is terminated
27 before final completion as provided in this section, the public body
28 may thereafter enter into a new contract with the same contractor to
29 perform the remaining work or improvement for an amount equal to or
30 less than the cost of the remaining work as was provided for in the
31 original contract without advertisement or bid. The provisions of this
32 chapter are exclusive and shall supersede all provisions and
33 regulations in conflict herewith.

34 (8) Whenever the department of transportation has contracted for
35 the construction of two or more ferry vessels, sixty days after
36 completion of all contract work on each ferry vessel, the department
37 must release and pay in full the amounts retained in connection with
38 the construction of the vessel subject to the provisions of RCW

1 60.28.020 and chapter 39.12 RCW. However, the department of
2 transportation may at its discretion condition the release of funds
3 retained in connection with the completed ferry upon the contractor
4 delivering a good and sufficient bond with two or more sureties, or
5 with a surety company, in the amount of the retained funds to be
6 released to the contractor, conditioned that no taxes shall be
7 certified or claims filed for work on the ferry after a period of sixty
8 days following completion of the ferry; and if taxes are certified or
9 claims filed, recovery may be had on the bond by the department of
10 revenue, the employment security department, the department of labor
11 and industries, and the material suppliers and laborers filing claims.

12 (9) Except as provided in subsection (1) of this section,
13 reservation by a public body for any purpose from the moneys earned by
14 a contractor by fulfilling its responsibilities under public
15 improvement contracts is prohibited.

16 (10) Contracts on projects funded in whole or in part by farmers
17 home administration and subject to farmers home administration
18 regulations are not subject to subsections (1) through (9) of this
19 section.

20 (11) This subsection applies only to a public body that has
21 contracted for the construction of a facility using the general
22 contractor/construction manager procedure, as defined under RCW
23 39.10.210. If the work performed by a subcontractor on the project has
24 been completed within the first half of the time provided in the
25 general contractor/construction manager contract for completing the
26 work, the public body may accept the completion of the subcontract.
27 The public body must give public notice of this acceptance. After a
28 forty-five day period for giving notice of liens, and compliance with
29 the retainage release procedures in RCW 60.28.021, the public body may
30 release that portion of the retained funds associated with the
31 subcontract. Claims against the retained funds after the forty-five
32 day period are not valid.

33 (12) Unless the context clearly requires otherwise, the definitions
34 in this subsection apply throughout this section.

35 (a) "Contract retainage" means an amount reserved by a public body
36 from the moneys earned by a person under a public improvement contract.

37 (b) "Person" means a person or persons, mechanic, subcontractor, or
38 materialperson who performs labor or provides materials for a public

1 improvement contract, and any other person who supplies the person with
2 provisions or supplies for the carrying on of a public improvement
3 contract.

4 (c) "Public body" means the state, or a county, city, town,
5 district, board, or other public body.

6 (d) "Public improvement contract" means a contract for public
7 improvements or work, other than for professional services, or a work
8 order as defined in RCW 39.10.210.

9 **Sec. 6.** RCW 60.28.021 and 2007 c 218 s 94 are each amended to read
10 as follows:

11 After the expiration of the forty-five day period for giving notice
12 of lien provided in RCW 60.28.011(2), and after receipt of the
13 ((~~department of revenue's~~)) certificates of the department of revenue,
14 the employment security department, and the department of labor and
15 industries, and the public body is satisfied that the taxes certified
16 as due or to become due by the department of revenue, the employment
17 security department, and the department of labor and industries are
18 discharged, and the claims of material suppliers and laborers who have
19 filed their claims, together with a sum sufficient to defray the cost
20 of foreclosing the liens of such claims, and to pay attorneys' fees,
21 have been paid, the public body may withhold from the remaining
22 retained amounts for claims the public body may have against the
23 contractor and shall pay the balance, if any, to the contractor the
24 fund retained by it or release to the contractor the securities and
25 bonds held in escrow.

26 If such taxes have not been discharged or the claims, expenses, and
27 fees have not been paid, the public body shall either retain in its
28 fund, or in an interest bearing account, or retain in escrow, at the
29 option of the contractor, an amount equal to such unpaid taxes and
30 unpaid claims together with a sum sufficient to defray the costs and
31 attorney fees incurred in foreclosing the lien of such claims, and
32 shall pay, or release from escrow, the remainder to the contractor.

33 **Sec. 7.** RCW 60.28.040 and 1985 c 80 s 1 are each amended to read
34 as follows:

35 (1) Subject to subsection (5) of this section, the amount of all
36 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 twenty thousand dollars or more, shall be a lien prior to all other
4 liens upon the amount of the retained percentage withheld by the
5 disbursing officer under such contract(~~(, except that)~~).

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 thousand dollars or more, the amount of all other taxes,
11 increases, and penalties under Title 82 RCW, due and owing from the
12 contractor, shall be a lien prior to all other liens upon the amount of
13 the retained percentage withheld by the disbursing officer under such
14 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 thousand dollars or more shall be
21 a lien prior to all other liens upon the amount of the retained
22 percentage withheld by the disbursing officer under such contract.

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

28 (5) The employees of a contractor or the contractor's successors or
29 assignees who have not been paid the prevailing wage under such a
30 public improvement contract shall have a first priority lien against
31 the bond or retainage prior to all other liens. (~~The amount of all~~
32 other taxes, increases and penalties due and owing from the contractor
33 shall be a lien upon the balance of such retained percentage remaining
34 in the possession of the disbursing officer after all other statutory
35 lien claims have been paid.))

36 **Sec. 8.** RCW 60.28.051 and 2007 c 210 s 2 are each amended to read
37 as follows:

1 Upon completion of a contract, the state, county, or other
2 municipal officer charged with the duty of disbursing or authorizing
3 disbursement or payment of such contracts shall forthwith notify the
4 department of revenue, the employment security department, and the
5 department of labor and industries of the completion of contracts over
6 thirty-five thousand dollars. Such officer shall not make any payment
7 from the retained percentage fund or release any retained percentage
8 escrow account to any person, until he or she has received from the
9 department of revenue ~~((a)), the employment security department, and~~
10 the department of labor and industries certificates that all taxes,
11 increases, and penalties due from the contractor, and all taxes due and
12 to become due with respect to such contract have been paid in full or
13 that they are, in ~~((the))~~ each department's opinion, readily
14 collectible without recourse to the state's lien on the retained
15 percentage.

16 **Sec. 9.** RCW 60.28.060 and 1967 ex.s. c 26 s 25 are each amended to
17 read as follows:

18 If within thirty days after receipt of notice by the department of
19 revenue, the employment security department, and the department of
20 labor and industries of the completion of the contract, the amount of
21 all taxes, increases and penalties due from the contractor or any of
22 his successors or assignees or to become due with respect to such
23 contract have not been paid, the department of revenue, the employment
24 security department, and the department of labor and industries may
25 certify to the disbursing officer the amount of all taxes, increases
26 and penalties due from the contractor, together with the amount of all
27 taxes due and to become due with respect to the contract and may
28 request payment thereof ~~((to the department of revenue))~~ in accordance
29 with the priority provided by this chapter. The disbursing officer
30 shall within ten days after receipt of such certificate and request pay
31 to the department of revenue, the employment security department, and
32 the department of labor and industries the amount of all taxes,
33 increases and penalties certified to be due or to become due ~~((with~~
34 ~~respect to the particular contract, and, after payment of))~~ and all
35 claims which by statute are a lien upon the retained percentage
36 withheld by the disbursing officer ~~((, shall pay to the department of~~
37 ~~revenue the balance, if any, or so much thereof as shall be necessary~~

1 ~~to satisfy the claim of the department of revenue for the balance of~~
2 ~~all taxes, increases or penalties shown to be due by the certificate of~~
3 ~~the department of revenue)) in accordance with the priority provided by~~
4 ~~this chapter.~~ If the contractor owes no taxes imposed pursuant to
5 Titles 50, 51, and 82 RCW, the department of revenue, the employment
6 security department, and the department of labor and industries shall
7 so certify to the disbursing officer.

8 NEW SECTION. Sec. 10. A new section is added to chapter 51.04 RCW
9 to read as follows:

10 The department shall conduct education and outreach to employers on
11 workers' compensation requirements and premium responsibilities,
12 including independent contractor issues. The department shall work
13 with new employers on an individual basis and also establish mass
14 education campaigns.

15 **Sec. 11.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read
16 as follows:

17 (1)(a) Each employing unit shall keep true and accurate work
18 records, containing such information as the commissioner may prescribe.
19 Such records shall be open to inspection and be subject to being copied
20 by the commissioner or his or her authorized representatives at any
21 reasonable time and as often as may be necessary. The commissioner may
22 require from any employing unit any sworn or unsworn reports with
23 respect to persons employed by it, which he or she deems necessary for
24 the effective administration of this title.

25 (b) An employer who contracts with another person or entity for
26 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
27 record of the unified business identifier account number for and
28 compensation paid to the person or entity performing the work. In
29 addition to the penalty in subsection (3) of this section, failure to
30 obtain or maintain the record is subject to RCW 39.06.010 ((and to a
31 penalty determined by the commissioner, but not to exceed two hundred
32 fifty dollars, to be collected as provided in RCW 50.24.120)).

33 (2)(a) Each employer shall register with the department and obtain
34 an employment security account number. Registration must include the
35 names and social security numbers of the owners, partners, members, or
36 corporate officers of the business, as well as their mailing addresses

1 and telephone numbers and other information the commissioner may by
2 rule prescribe. Registration of corporations must also include the
3 percentage of stock ownership for each corporate officer, delineated by
4 zero percent, less than ten percent, or ten percent or more. Any
5 changes in the owners, partners, members, or corporate officers of the
6 business, and changes in percentage of ownership of the outstanding
7 shares of stock of the corporation, must be reported to the department
8 at intervals prescribed by the commissioner under (b) of this
9 subsection.

10 (b) Each employer shall make periodic reports at such intervals as
11 the commissioner may by regulation prescribe, setting forth the
12 remuneration paid for employment to workers in its employ, the full
13 names and social security numbers of all such workers, and the total
14 hours worked by each worker and such other information as the
15 commissioner may by regulation prescribe.

16 (c) If the employing unit fails or has failed to report the number
17 of hours in a reporting period for which a worker worked, such number
18 will be computed by the commissioner and given the same force and
19 effect as if it had been reported by the employing unit. In computing
20 the number of such hours worked, the total wages for the reporting
21 period, as reported by the employing unit, shall be divided by the
22 dollar amount of the state's minimum wage in effect for such reporting
23 period and the quotient, disregarding any remainder, shall be credited
24 to the worker: PROVIDED, That although the computation so made will
25 not be subject to appeal by the employing unit, monetary entitlement
26 may be redetermined upon request if the department is provided with
27 credible evidence of the actual hours worked. Benefits paid using
28 computed hours are not considered an overpayment and are not subject to
29 collections when the correction of computed hours results in an invalid
30 or reduced claim; however:

31 (i) A contribution paying employer who fails to report the number
32 of hours worked will have its experience rating account charged for all
33 benefits paid that are based on hours computed under this subsection;
34 and

35 (ii) An employer who reimburses the trust fund for benefits paid to
36 workers and fails to report the number of hours worked shall reimburse
37 the trust fund for all benefits paid that are based on hours computed
38 under this subsection.

1 (3) Any employer who fails to keep and preserve records required by
2 this section shall be subject to a penalty determined by the
3 commissioner but not to exceed two hundred fifty dollars or two hundred
4 percent of the quarterly tax for each offense, whichever is greater.

5 **Sec. 12.** 2008 c 120 s 10 (uncodified) is amended to read as
6 follows:

7 (1) The joint legislative task force on the underground economy
8 (~~(in the Washington state construction industry)~~) is established. For
9 purposes of this section, "underground economy" means (~~(contracting and~~
10 ~~construction)~~) business activities in which payroll is unreported or
11 underreported with consequent nonpayment of payroll taxes to federal
12 and state agencies including nonpayment of workers' compensation and
13 unemployment compensation taxes.

14 (2) The purpose of the task force is to formulate a state policy to
15 establish cohesion and transparency between state agencies so as to
16 increase the oversight and regulation of the underground economy
17 practices (~~(in the construction industry)~~) in this state. To assist
18 the task force in achieving this goal and to determine the extent of
19 and projected costs to the state and workers of the underground economy
20 (~~(in the construction industry)~~), the task force shall contract with
21 the institute for public policy, or, if the institute is unavailable,
22 another entity with expertise capable of providing such assistance.

23 (3)(a) The task force shall consist of the following members:

24 (i) The chair and ranking minority member of the senate labor,
25 commerce, research and development committee;

26 (ii) The chair and ranking minority member of the house of
27 representatives commerce and labor committee;

28 (iii) Four members representing (~~(the construction)~~) business
29 interests, selected from nominations submitted by statewide
30 (~~(construction)~~) business organizations and appointed jointly by the
31 president of the senate and the speaker of the house of
32 representatives;

33 (iv) Four members representing (~~(construction laborers)~~) labor
34 interests, selected from nominations submitted by statewide labor
35 organizations and appointed jointly by the president of the senate and
36 the speaker of the house of representatives;

1 (v) One member representing cities, appointed by an association of
2 cities;

3 (vi) One member representing counties, appointed by an association
4 of counties.

5 (b) In addition, the employment security department, the department
6 of labor and industries, and the department of revenue shall cooperate
7 with the task force and shall each maintain a liaison representative,
8 who is a nonvoting member of the task force. The departments shall
9 cooperate with the task force and the institute for public policy, or
10 other entity as appropriate, and shall provide information and data as
11 the task force or the institute, or other entity as appropriate, may
12 reasonably request.

13 (c) The task force shall choose its chair or cochairs from among
14 its legislative membership. The chairs of the senate labor, commerce,
15 research and development committee and the house of representatives
16 commerce and labor committee shall convene the initial meeting of the
17 task force.

18 (4) In conducting its study in 2009, the task force may consider:

19 (a) Issues previously discussed by the joint legislative task force
20 on the underground economy in the construction industry and whether
21 these issues need to be addressed in nonconstruction industries;

22 (b) The role of local governments in monitoring the underground
23 economy;

24 (c) The need to establish additional benchmarks and measures for
25 purposes of section 13 of this act;

26 (d) Such other items the task force deems necessary.

27 (5)(a) The task force shall use legislative facilities and staff
28 support shall be provided by senate committee services and the house of
29 representatives office of program research. Within available funding,
30 the task force may hire additional staff with specific technical
31 expertise if such expertise is necessary to carry out the mandates of
32 this study.

33 (b) Legislative members of the task force shall be reimbursed for
34 travel expenses in accordance with RCW 44.04.120. Nonlegislative
35 members, except those representing an employer or organization, are
36 entitled to be reimbursed for travel expenses in accordance with RCW
37 43.03.050 and 43.03.060.

1 (c) The expenses of the task force will be paid jointly by the
2 senate and house of representatives. Task force expenditures are
3 subject to approval by the senate facilities and operations committee
4 and the house of representatives executive rules committee, or their
5 successor committees.

6 ~~((+5))~~ (6) The task force shall report its ~~((preliminary))~~
7 findings and recommendations to the legislature by ~~((January 1, 2008,~~
8 ~~and submit a final report to the legislature by))~~ December ~~((31, 2008))~~
9 1, 2009.

10 ~~((+6))~~ (7) This section expires ~~((July 1,))~~ December 15, 2009.

11 NEW SECTION. Sec. 13. The department of labor and industries, the
12 employment security department, and the department of revenue shall
13 coordinate and report to the appropriate committees of the legislature
14 by December 1st of each year on the effectiveness of efforts
15 implemented since July 1, 2008, to address the underground economy.
16 The agencies shall use benchmarks and measures established by the
17 institute for public policy and other measures it determines
18 appropriate.

19 NEW SECTION. Sec. 14. Section 11 of this act takes effect October
20 1, 2009.

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