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**SENATE BILL 5604**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Keiser, Conway, and C. Wilson; by request of Department of Labor & Industries

Prefiled 12/28/21. Read first time 01/10/22. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to adding references to contractor licensing laws  
2 in workers' compensation, public works, and prevailing wage statutes;  
3 and amending RCW 39.04.350, 39.06.020, 39.12.050, 39.12.055,  
4 39.12.065, 39.12.100, 51.08.070, 51.08.180, 51.08.181, 51.12.070,  
5 51.12.120, 51.16.070, and 51.48.022.

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

7 **Sec. 1.** RCW 39.04.350 and 2020 c 255 s 2 are each amended to  
8 read as follows:

9 (1) Before award of a public works contract, a bidder must meet  
10 the following responsibility criteria to be considered a responsible  
11 bidder and qualified to be awarded a public works project. The bidder  
12 must:

13 (a) At the time of bid submittal, (~~have a certificate of~~  
14 ~~registration in compliance with chapter 18.27 RCW~~) be registered or  
15 licensed as may be required by the laws of this state including  
16 contractor registration in compliance with chapter 18.27 RCW, and  
17 contractor licensing in compliance with chapter 18.106 RCW;

18 (b) Have a current state unified business identifier number;

19 (c) If applicable, have industrial insurance coverage for the  
20 bidder's employees working in Washington as required in Title 51 RCW;  
21 an employment security department number as required in Title 50 RCW;

1 and a state excise tax registration number as required in Title 82  
2 RCW;

3 (d) Not be disqualified from bidding on any public works contract  
4 under RCW 39.06.010 or 39.12.065(3);

5 (e) If bidding on a public works project subject to the  
6 apprenticeship utilization requirements in RCW 39.04.320, not have  
7 been found out of compliance by the Washington state apprenticeship  
8 and training council for working apprentices out of ratio, without  
9 appropriate supervision, or outside their approved work processes as  
10 outlined in their standards of apprenticeship under chapter 49.04 RCW  
11 for the one-year period immediately preceding the date of the bid  
12 solicitation;

13 (f) Have received training on the requirements related to public  
14 works and prevailing wage under this chapter and chapter 39.12 RCW.  
15 The bidder must designate a person or persons to be trained on these  
16 requirements. The training must be provided by the department of  
17 labor and industries or by a training provider whose curriculum is  
18 approved by the department. The department, in consultation with the  
19 prevailing wage advisory committee, must determine the length of the  
20 training. Bidders that have completed three or more public works  
21 projects and have had a valid business license in Washington for  
22 three or more years are exempt from this subsection. The department  
23 of labor and industries must keep records of entities that have  
24 satisfied the training requirement or are exempt and make the records  
25 available on its website. Responsible parties may rely on the records  
26 made available by the department regarding satisfaction of the  
27 training requirement or exemption; and

28 (g) Within the three-year period immediately preceding the date  
29 of the bid solicitation, not have been determined by a final and  
30 binding citation and notice of assessment issued by the department of  
31 labor and industries or through a civil judgment entered by a court  
32 of limited or general jurisdiction to have willfully violated, as  
33 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or  
34 49.52 RCW.

35 (2) Before award of a public works contract, a bidder shall  
36 submit to the contracting agency a signed statement in accordance  
37 with chapter 5.50 RCW verifying under penalty of perjury that the  
38 bidder is in compliance with the responsible bidder criteria  
39 requirement of subsection (1)(g) of this section. A contracting

1 agency may award a contract in reasonable reliance upon such a sworn  
2 statement.

3 (3) In addition to the bidder responsibility criteria in  
4 subsection (1) of this section, the state or municipality may adopt  
5 relevant supplemental criteria for determining bidder responsibility  
6 applicable to a particular project which the bidder must meet.

7 (a) Supplemental criteria for determining bidder responsibility,  
8 including the basis for evaluation and the deadline for appealing a  
9 determination that a bidder is not responsible, must be provided in  
10 the invitation to bid or bidding documents.

11 (b) In a timely manner before the bid submittal deadline, a  
12 potential bidder may request that the state or municipality modify  
13 the supplemental criteria. The state or municipality must evaluate  
14 the information submitted by the potential bidder and respond before  
15 the bid submittal deadline. If the evaluation results in a change of  
16 the criteria, the state or municipality must issue an addendum to the  
17 bidding documents identifying the new criteria.

18 (c) If the bidder fails to supply information requested  
19 concerning responsibility within the time and manner specified in the  
20 bid documents, the state or municipality may base its determination  
21 of responsibility upon any available information related to the  
22 supplemental criteria or may find the bidder not responsible.

23 (d) If the state or municipality determines a bidder to be not  
24 responsible, the state or municipality must provide, in writing, the  
25 reasons for the determination. The bidder may appeal the  
26 determination within the time period specified in the bidding  
27 documents by presenting additional information to the state or  
28 municipality. The state or municipality must consider the additional  
29 information before issuing its final determination. If the final  
30 determination affirms that the bidder is not responsible, the state  
31 or municipality may not execute a contract with any other bidder  
32 until two business days after the bidder determined to be not  
33 responsible has received the final determination.

34 (e) If the bidder has a history of receiving monetary penalties  
35 for not achieving the apprentice utilization requirements pursuant to  
36 RCW 39.04.320, or is habitual in utilizing the good faith effort  
37 exception process, the bidder must submit an apprenticeship  
38 utilization plan within ten business days immediately following the  
39 notice to proceed date.

1 (4) The capital projects advisory review board created in RCW  
2 39.10.220 shall develop suggested guidelines to assist the state and  
3 municipalities in developing supplemental bidder responsibility  
4 criteria. The guidelines must be posted on the board's website.

5 **Sec. 2.** RCW 39.06.020 and 2007 c 133 s 3 are each amended to  
6 read as follows:

7 A public works contractor must verify responsibility criteria for  
8 each first tier subcontractor, and a subcontractor of any tier that  
9 hires other subcontractors must verify responsibility criteria for  
10 each of its subcontractors. Verification shall include that each  
11 subcontractor, at the time of subcontract execution, meets the  
12 responsibility criteria listed in RCW 39.04.350(1) and possesses an  
13 electrical contractor license, if required by chapter 19.28 RCW,  
14 ((~~or~~)) an elevator contractor license, if required by chapter 70.87  
15 RCW, or a plumbing contractor license if required by chapter 18.106  
16 RCW. This verification requirement, as well as the responsibility  
17 criteria, must be included in every public works contract and  
18 subcontract of every tier.

19 **Sec. 3.** RCW 39.12.050 and 2019 c 242 s 3 are each amended to  
20 read as follows:

21 (1) Any contractor or subcontractor who files a false statement  
22 or fails to file any statement or record required to be filed or  
23 fails to post a document required to be posted under this chapter and  
24 the rules adopted under this chapter, shall, after a determination to  
25 that effect has been issued by the director after hearing under  
26 chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred  
27 dollars for each false filing or failure to file or post, and shall  
28 not be permitted to bid, or have a bid considered, on any public  
29 works contract until the penalty has been paid in full to the  
30 director. The civil penalty under this subsection does not apply to a  
31 violation determined by the director to be an inadvertent filing or  
32 reporting error. The burden of proving, by a preponderance of the  
33 evidence, that an error is inadvertent rests with the contractor or  
34 subcontractor charged with the error. Civil penalties shall be  
35 deposited in the public works administration account.

36 To the extent that a contractor or subcontractor has not paid  
37 wages at the rate due pursuant to RCW 39.12.020, and a finding to  
38 that effect has been made as provided by this subsection, such unpaid

1 wages constitute a lien against the bonds and retainage as provided  
2 in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

3 (2) If a contractor or subcontractor is found to have violated  
4 the provisions of subsection (1) of this section for a second time  
5 within a five year period, the contractor or subcontractor is subject  
6 to the sanctions prescribed in subsection (1) of this section and  
7 shall not be allowed to bid on any public works contract for one  
8 year. The one year period runs from the date of notice by the  
9 director of the determination of noncompliance. When an appeal is  
10 taken from the director's determination, the one year period  
11 commences from the date the notice of violation becomes final.

12 The director shall issue his or her findings that a contractor or  
13 subcontractor has violated the provisions of this subsection after a  
14 hearing held subject to the provisions of chapter 34.05 RCW, unless a  
15 notice of violation is not timely appealed. A notice of violation not  
16 timely appealed is final and binding, and not subject to further  
17 appeal.

18 **Sec. 4.** RCW 39.12.055 and 2009 c 197 s 3 are each amended to  
19 read as follows:

20 A contractor shall not be allowed to bid on any public works  
21 contract for one year from the date of a final determination that the  
22 contractor has committed any combination of two of the following  
23 violations or infractions within a five-year period:

24 (1) Violated RCW 51.48.020(1) or 51.48.103;

25 (2) Committed an infraction or violation under chapter 18.27 or  
26 18.106 RCW for performing work as an unregistered or unlicensed  
27 contractor; or

28 (3) Determined to be out of compliance by the Washington state  
29 apprenticeship and training council for working apprentices out of  
30 ratio, without appropriate supervision, or outside their approved  
31 work processes as outlined in their standards of apprenticeship under  
32 chapter 49.04 RCW.

33 **Sec. 5.** RCW 39.12.065 and 2019 c 242 s 4 are each amended to  
34 read as follows:

35 (1) Upon complaint by an interested party, the director of labor  
36 and industries shall cause an investigation to be made to determine  
37 whether there has been compliance with this chapter and the rules  
38 adopted hereunder, and if the investigation indicates that a

1 violation may have occurred, the department of labor and industries  
2 may issue a notice of violation for unpaid wages, penalties, and  
3 interest on all wages owed at one percent per month. A hearing shall  
4 be held following a timely appeal of the notice of violation in  
5 accordance with chapter 34.05 RCW. The director shall issue a written  
6 determination including his or her findings after the hearing unless  
7 a notice of violation is not timely appealed. A notice of violation  
8 not timely appealed is final and binding, and not subject to further  
9 appeal. A judicial appeal from the director's determination may be  
10 taken in accordance with chapter 34.05 RCW, with the prevailing party  
11 entitled to recover reasonable costs and attorneys' fees.

12 A complaint concerning nonpayment of the prevailing rate of wage  
13 shall be filed with the department of labor and industries no later  
14 than sixty days from the acceptance date of the public works project.  
15 The department may not charge a contractor or subcontractor with a  
16 violation of this section when responding to a complaint filed after  
17 the sixty-day limit. The failure to timely file such a complaint does  
18 not prohibit the department from investigating the matter and  
19 recovering unpaid wages for the worker(s) within two years from the  
20 acceptance of the public works contract. The department may not  
21 investigate or recover unpaid wages if the complaint is filed after  
22 two years from the acceptance of a public works contract. The failure  
23 to timely file such a complaint also does not prohibit a claimant  
24 from pursuing a private right of action against a contractor or  
25 subcontractor for unpaid prevailing wages. The remedy provided by  
26 this section is not exclusive and is concurrent with any other remedy  
27 provided by law.

28 (2) To the extent that a contractor or subcontractor has not paid  
29 the prevailing rate of wage under a determination issued as provided  
30 in subsection (1) of this section, the director shall notify the  
31 agency awarding the public works contract of the amount of the  
32 violation found, and the awarding agency shall withhold, or in the  
33 case of a bond, the director shall proceed against the bond in  
34 accordance with the applicable statute to recover, such amount from  
35 the following sources in the following order of priority until the  
36 total of such amount is withheld:

37 (a) The retainage or bond in lieu of retainage as provided in RCW  
38 60.28.011;

39 (b) If the claimant was employed by the contractor or  
40 subcontractor on the public works project, the bond filed by the

1 contractor or subcontractor with the department of labor and  
2 industries as provided in RCW 18.27.040, 18.106.410, and 19.28.041;

3 (c) A surety bond, or at the contractor's or subcontractor's  
4 option an escrow account, running to the director in the amount of  
5 the violation found; and

6 (d) That portion of the progress payments which is properly  
7 allocable to the contractor or subcontractor who is found to be in  
8 violation of this chapter. Under no circumstances shall any portion  
9 of the progress payments be withheld that are properly allocable to a  
10 contractor, subcontractor, or supplier, that is not found to be in  
11 violation of this chapter.

12 The amount withheld shall be released to the director to  
13 distribute in accordance with the director's determination.

14 (3) A contractor or subcontractor that is found, in accordance  
15 with subsection (1) of this section, to have violated the requirement  
16 to pay the prevailing rate of wage is subject to a civil penalty of  
17 not less than five thousand dollars or an amount equal to fifty  
18 percent of the total prevailing wage violation found on the contract,  
19 whichever is greater, interest on all wages owed at one percent per  
20 month, and is not permitted to bid, or have a bid considered, on any  
21 public works contract until such civil penalty has been paid in full  
22 to the director. If a contractor or subcontractor is found to have  
23 participated in a violation of the requirement to pay the prevailing  
24 rate of wage for a second time within a five-year period, the  
25 contractor or subcontractor is subject to the sanctions prescribed in  
26 this subsection and as an additional sanction is not allowed to bid  
27 on any public works contract for two years. Civil penalties shall be  
28 deposited in the public works administration account. If a previous  
29 or subsequent violation of a requirement to pay a prevailing rate of  
30 wage under federal or other state law is found against the contractor  
31 or subcontractor within five years from a violation under this  
32 section, the contractor or subcontractor shall not be allowed to bid  
33 on any public works contract for two years. The two-year period runs  
34 from the date of notice by the director of the determination of  
35 noncompliance. When an appeal is taken from the director's  
36 determination, the two-year period commences from the date the notice  
37 of violation becomes final. A contractor or subcontractor is not  
38 barred from bidding on any public works contract if the contractor or  
39 subcontractor relied upon written information from the department to  
40 pay a prevailing rate of wage that is later determined to be in

1 violation of this chapter. The civil penalty and sanctions under this  
2 subsection do not apply to a violation determined by the director to  
3 be an inadvertent filing or reporting error. The burden of proving,  
4 by a preponderance of the evidence, that an error is inadvertent  
5 rests with the contractor or subcontractor charged with the error. To  
6 the extent that a contractor or subcontractor has not paid the  
7 prevailing wage rate under a determination issued as provided in  
8 subsection (1) of this section, the unpaid wages constitute a lien  
9 against the bonds and retainage as provided herein and in RCW  
10 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

11 (4) The director may waive or reduce a penalty or additional  
12 sanction under this section including, but not limited to, when the  
13 director determines the contractor or subcontractor paid all wages  
14 and interest or there was an inadvertent filing or reporting error.  
15 The director may not waive or reduce interest. The department of  
16 labor and industries shall submit a report of the waivers made under  
17 this section, including a justification for any waiver made, upon  
18 request of an interested party.

19 (5) If, after the department of labor and industries initiates an  
20 investigation and before a notice of violation of unpaid wages, the  
21 contractor or subcontractor pays the unpaid wages identified in the  
22 investigation, interest on all wages owed at one percent per month,  
23 and penalties in the amount of one thousand dollars or twenty percent  
24 of the total prevailing wage violation determined by the department  
25 of labor and industries, whichever is greater, then the violation is  
26 considered resolved without further penalty under subsection (3) of  
27 this section.

28 (6) A contractor or subcontractor may only utilize the process  
29 outlined in subsection (5) of this section if the department of labor  
30 and industries has not issued a notice of violation that resulted in  
31 final judgment under this section against that contractor or  
32 subcontractor in the last five-year period. If a contractor or  
33 subcontractor utilizes the process outlined in subsection (5) of this  
34 section for a second time within a five-year period, the contractor  
35 or subcontractor is subject to the sanctions prescribed in subsection  
36 (3) of this section and may not be allowed to bid on any public works  
37 contract for two years.

38 **Sec. 6.** RCW 39.12.100 and 2009 c 63 s 1 are each amended to read  
39 as follows:



1 For the purposes of this chapter, an individual employed on a  
2 public works project is not considered to be a laborer, worker, or  
3 mechanic when:

4 (1) The individual has been and is free from control or direction  
5 over the performance of the service, both under the contract of  
6 service and in fact;

7 (2) The service is either outside the usual course of business  
8 for the contractor or contractors for whom the individual performs  
9 services, or the service is performed outside all of the places of  
10 business of the enterprise for which the individual performs  
11 services, or the individual is responsible, both under the contract  
12 and in fact, for the costs of the principal place of business from  
13 which the service is performed;

14 (3) The individual is customarily engaged in an independently  
15 established trade, occupation, profession, or business, of the same  
16 nature as that involved in the contract of service, or the individual  
17 has a principal place of business for the business the individual is  
18 conducting that is eligible for a business deduction for federal  
19 income tax purposes other than that furnished by the employer for  
20 which the business has contracted to furnish services;

21 (4) On the effective date of the contract of service, the  
22 individual is responsible for filing at the next applicable filing  
23 period, both under the contract of service and in fact, a schedule of  
24 expenses with the internal revenue service for the type of business  
25 the individual is conducting;

26 (5) On the effective date of the contract of service, or within a  
27 reasonable period after the effective date of the contract of  
28 service, the individual has an active and valid certificate of  
29 registration with the department of revenue, and an active and valid  
30 account with any other state agencies as required by the particular  
31 case, for the business the individual is conducting for the payment  
32 of all state taxes normally paid by employers and businesses and has  
33 registered for and received a unified business identifier number from  
34 the state of Washington;

35 (6) On the effective date of the contract of service, the  
36 individual is maintaining a separate set of books or records that  
37 reflect all items of income and expenses of the business which the  
38 individual is conducting; and

39 (7) On the effective date of the contract of service, if the  
40 nature of the work performed requires registration under chapter

1 18.27 RCW or licensure under chapter 18.106 or 19.28 RCW, the  
2 individual has (~~(a valid contractor registration pursuant to)~~) the  
3 contractor registration and contractor licenses required by the laws  
4 of this state including chapters 18.27 (~~(RCW or an electrical~~  
5 ~~contractor license pursuant to chapter)~~), 18.106, and 19.28 RCW.

6 **Sec. 7.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to  
7 read as follows:

8 "Employer" means any person, body of persons, corporate or  
9 otherwise, and the legal representatives of a deceased employer, all  
10 while engaged in this state in any work covered by the provisions of  
11 this title, by way of trade or business, or who contracts with one or  
12 more workers, the essence of which is the personal labor of such  
13 worker or workers. Or as an exception to the definition of employer,  
14 persons or entities are not employers when they contract or agree to  
15 remunerate the services performed by an individual who meets the  
16 tests set forth in (~~(subsections (1) through (6) of)~~) RCW 51.08.195  
17 (1) through (6) or the separate tests set forth in RCW 51.08.181 for  
18 work performed that requires registration under chapter 18.27 RCW or  
19 licensing under chapter 18.106 or 19.28 RCW.

20 **Sec. 8.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to  
21 read as follows:

22 "Worker" means every person in this state who is engaged in the  
23 employment of an employer under this title, whether by way of manual  
24 labor or otherwise in the course of his or her employment; also every  
25 person in this state who is engaged in the employment of or who is  
26 working under an independent contract, the essence of which is his or  
27 her personal labor for an employer under this title, whether by way  
28 of manual labor or otherwise, in the course of his or her employment,  
29 or as an exception to the definition of worker, a person is not a  
30 worker if he or she meets the tests set forth in (~~(subsections (1)~~  
31 ~~through (6) of)~~) RCW 51.08.195 (1) through (6) or the separate tests  
32 set forth in RCW 51.08.181 for work performed that requires  
33 registration under chapter 18.27 RCW or licensing under chapter  
34 18.106 or 19.28 RCW: PROVIDED, That a person is not a worker for the  
35 purpose of this title, with respect to his or her activities  
36 attendant to operating a truck which he or she owns, and which is  
37 leased to a common or contract carrier.

1       **Sec. 9.** RCW 51.08.181 and 2008 c 102 s 5 are each amended to  
2 read as follows:

3       For the purposes of this title, any individual performing  
4 services that require registration under chapter 18.27 RCW or  
5 licensing under chapter 18.106 or 19.28 RCW for remuneration under an  
6 independent contract is not a worker when:

7       (1) The individual has been, and will continue to be, free from  
8 control or direction over the performance of the service, both under  
9 the contract of service and in fact;

10       (2) The service is either outside the usual course of business  
11 for which the service is performed, or the service is performed  
12 outside all of the places of business of the enterprise for which the  
13 service is performed, or the individual is responsible, both under  
14 the contract and in fact, for the costs of the principal place of  
15 business from which the service is performed;

16       (3) The individual is customarily engaged in an independently  
17 established trade, occupation, profession, or business, of the same  
18 nature as that involved in the contract of service, or the individual  
19 has a principal place of business for the business the individual is  
20 conducting that is eligible for a business deduction for federal  
21 income tax purposes other than that furnished by the employer for  
22 which the business has contracted to furnish services;

23       (4) On the effective date of the contract of service, the  
24 individual is responsible for filing at the next applicable filing  
25 period, both under the contract of service and in fact, a schedule of  
26 expenses with the internal revenue service for the type of business  
27 the individual is conducting;

28       (5) On the effective date of the contract of service, or within a  
29 reasonable period after the effective date of the contract, the  
30 individual has an active and valid certificate of registration with  
31 the department of revenue, and an active and valid account with any  
32 other state agencies as required by the particular case, for the  
33 business the individual is conducting for the payment of all state  
34 taxes normally paid by employers and businesses and has registered  
35 for and received a unified business identifier number from the state  
36 of Washington;

37       (6) On the effective date of the contract of service, the  
38 individual is maintaining a separate set of books or records that  
39 reflect all items of income and expenses of the business which the  
40 individual is conducting; and

1 (7) On the effective date of the contract of service, the  
2 individual has a valid contractor registration pursuant to chapter  
3 18.27 RCW, a plumbing contractor license pursuant to chapter 18.106  
4 RCW, or an electrical contractor license pursuant to chapter 19.28  
5 RCW.

6 **Sec. 10.** RCW 51.12.070 and 2014 c 193 s 1 are each amended to  
7 read as follows:

8 The provisions of this title apply to all work done by contract;  
9 the person, firm, or corporation who lets a contract for such work is  
10 responsible primarily and directly for all premiums upon the work,  
11 except as provided in subsection (2) of this section. The contractor  
12 and any subcontractor are subject to the provisions of this title and  
13 the person, firm, or corporation letting the contract is entitled to  
14 collect from the contractor the full amount payable in premiums and  
15 the contractor in turn is entitled to collect from the subcontractor  
16 his or her proportionate amount of the payment.

17 (1) For the purposes of this section, a contractor registered  
18 under chapter 18.27 RCW or licensed under chapter 18.106 or 19.28 RCW  
19 is not responsible for any premiums upon the work of any  
20 subcontractor if:

21 (a) The subcontractor is currently engaging in a business which  
22 is registered under chapter 18.27 RCW or licensed under chapter  
23 18.106 or 19.28 RCW;

24 (b) The subcontractor has a principal place of business which  
25 would be eligible for a business deduction for internal revenue  
26 service tax purposes other than that furnished by the contractor for  
27 which the business has contracted to furnish services;

28 (c) The subcontractor maintains a separate set of books or  
29 records that reflect all items of income and expenses of the  
30 business;

31 (d) The subcontractor has contracted to perform:

32 (i) The work of a contractor as defined in RCW 18.27.010; (~~(e)~~)

33 (ii) Plumbing work as described in chapter 18.106 RCW; or

34 (iii) The work of installing wires or equipment to convey  
35 electric current or installing apparatus to be operated by such  
36 current as it pertains to the electrical industry as described in  
37 chapter 19.28 RCW; and

38 (e) The subcontractor has an industrial insurance account in good  
39 standing with the department or is a self-insurer. For the purposes

1 of this subsection (1)(e), a contractor may consider a  
2 subcontractor's account to be in good standing if, within a year  
3 prior to letting the contract or master service agreement, and at  
4 least once a year thereafter, the contractor has verified with the  
5 department that the account is in good standing and the contractor  
6 has not received written notice from the department that the  
7 subcontractor's account status has changed. Acceptable documentation  
8 of verification includes a department document which includes an  
9 issued date or a dated printout of information from the department's  
10 internet website showing a subcontractor's good standing. The  
11 department shall develop an approach to provide contractors with  
12 verification of the date of inquiries validating that the  
13 subcontractor's account is in good standing.

14 It is unlawful for any county, city, or town to issue a  
15 construction building permit to any person who has not submitted to  
16 the department an estimate of payroll and paid premium thereon as  
17 provided by chapter 51.16 RCW of this title or proof of qualification  
18 as a self-insurer.

19 (2) Nonemergency transportation brokers that operate as not-for-  
20 profit businesses are not liable for any premiums of a subcontractor  
21 if the provisions of subsection (1)(c) and (e) of this section are  
22 met throughout the term of the contract. For purposes of this  
23 section, nonemergency transportation brokers are those organizations  
24 or entities that contract with the state health care authority, or  
25 its successor, to arrange nonemergency transportation for qualified  
26 clients.

27 **Sec. 11.** RCW 51.12.120 and 2008 c 88 s 1 are each amended to  
28 read as follows:

29 (1) If a worker, while working outside the territorial limits of  
30 this state, suffers an injury on account of which he or she, or his  
31 or her beneficiaries, would have been entitled to compensation under  
32 this title had the injury occurred within this state, the worker, or  
33 his or her beneficiaries, shall be entitled to compensation under  
34 this title if at the time of the injury:

35 (a) His or her employment is principally localized in this state;  
36 or

37 (b) He or she is working under a contract of hire made in this  
38 state for employment not principally localized in any state; or

1 (c) He or she is working under a contract of hire made in this  
2 state for employment principally localized in another state whose  
3 workers' compensation law is not applicable to his or her employer;  
4 or

5 (d) He or she is working under a contract of hire made in this  
6 state for employment outside the United States and Canada.

7 (2) The payment or award of compensation or other recoveries,  
8 including settlement proceeds, under the workers' compensation law of  
9 another state, territory, province, or foreign nation to a worker or  
10 his or her beneficiaries otherwise entitled on account of such injury  
11 to compensation under this title shall not be a bar to a claim for  
12 compensation under this title if that claim under this title is  
13 timely filed. If compensation is paid or awarded under this title,  
14 the total amount of compensation or other recoveries, including  
15 settlement proceeds, paid or awarded the worker or beneficiary under  
16 such other workers' compensation law shall be credited against the  
17 compensation due the worker or beneficiary under this title.

18 (3)(a) An employer not domiciled in this state who is employing  
19 workers in this state in work for which the employer must be  
20 registered under chapter 18.27 RCW (~~( $\oplus$ )~~), licensed under chapter  
21 18.106 RCW, licensed under chapter 19.28 RCW, or prequalified under  
22 RCW 47.28.070, must secure the payment of compensation under this  
23 title by:

24 (i) Insuring the employer's workers' compensation obligation  
25 under this title with the department;

26 (ii) Being qualified as a self-insurer under this title; or

27 (iii) For employers domiciled in a state or province of Canada  
28 subject to an agreement entered into under subsection (7) of this  
29 section, as permitted by the agreement, filing with the department a  
30 certificate of coverage issued by the agency that administers the  
31 workers' compensation law in the employer's state or province of  
32 domicile certifying that the employer has secured the payment of  
33 compensation under the other state's or province's workers'  
34 compensation law.

35 (b) The department shall adopt rules to implement this  
36 subsection.

37 (4) If a worker or beneficiary is entitled to compensation under  
38 this title by reason of an injury sustained in this state while in  
39 the employ of an employer who is domiciled in another state or  
40 province of Canada and the employer:

1 (a) Is not subject to subsection (3) of this section and has  
2 neither opened an account with the department nor qualified as a  
3 self-insurer under this title, the employer or his or her insurance  
4 carrier shall file with the director a certificate issued by the  
5 agency that administers the workers' compensation law in the state of  
6 the employer's domicile, certifying that the employer has secured the  
7 payment of compensation under the workers' compensation law of the  
8 other state and that with respect to the injury the worker or  
9 beneficiary is entitled to the benefits provided under the other  
10 state's law.

11 (b) Has filed a certificate under subsection (3)(a)(iii) of this  
12 section or (a) of this subsection (4):

13 (i) The filing of the certificate constitutes appointment by the  
14 employer or his or her insurance carrier of the director as its agent  
15 for acceptance of the service of process in any proceeding brought by  
16 any claimant to enforce rights under this title;

17 (ii) The director shall send to such employer or his or her  
18 insurance carrier, by registered or certified mail to the address  
19 shown on such certificate, a true copy of any notice of claim or  
20 other process served on the director by the claimant in any  
21 proceeding brought to enforce rights under this title;

22 (iii) If the employer is a self-insurer under the workers'  
23 compensation law of the other state or province of Canada, the  
24 employer shall, upon submission of evidence or security, satisfactory  
25 to the director, of his or her ability to meet his or her liability  
26 to the claimant under this title, be deemed to be a qualified self-  
27 insurer under this title; and

28 (iv) If the employer's liability under the workers' compensation  
29 law of the other state or province of Canada is insured:

30 (A) The employer's carrier, as to such claimant only, shall be  
31 deemed to be subject to this title. However, unless the insurer's  
32 contract with the employer requires the insurer to pay an amount  
33 equivalent to the compensation benefits provided by this title, the  
34 insurer's liability for compensation shall not exceed the insurer's  
35 liability under the workers' compensation law of the other state or  
36 province; and

37 (B) If the total amount for which the employer's insurer is  
38 liable under (b)(iv)(A) of this subsection is less than the total of  
39 the compensation to which the claimant is entitled under this title,  
40 the director may require the employer to file security satisfactory

1 to the director to secure the payment of compensation under this  
2 title.

3 (c) If subject to subsection (3) of this section, has not  
4 complied with subsection (3) of this section or, if not subject to  
5 subsection (3) of this section, has neither qualified as a self-  
6 insurer nor secured insurance coverage under the workers'  
7 compensation law of another state or province of Canada, the claimant  
8 shall be paid compensation by the department and the employer shall  
9 have the same rights and obligations, and is subject to the same  
10 penalties, as other employers subject to this title.

11 (5) As used in this section:

12 (a) A person's employment is principally localized in this or  
13 another state when: (i) His or her employer has a place of business  
14 in this or the other state and he or she regularly works at or from  
15 the place of business; or (ii) if (a)(i) of this subsection is not  
16 applicable, he or she is domiciled in and spends a substantial part  
17 of his or her working time in the service of his or her employer in  
18 this or the other state;

19 (b) "Workers' compensation law" includes "occupational disease  
20 law" for the purposes of this section.

21 (6) A worker whose duties require him or her to travel regularly  
22 in the service of his or her employer in this and one or more other  
23 states may agree in writing with his or her employer that his or her  
24 employment is principally localized in this or another state, and,  
25 unless the other state refuses jurisdiction, the agreement shall  
26 govern as to any injury occurring after the effective date of the  
27 agreement.

28 (7) The director is authorized to enter into agreements with the  
29 appropriate agencies of other states and provinces of Canada that  
30 administer their workers' compensation law with respect to conflicts  
31 of jurisdiction and the assumption of jurisdiction in cases where the  
32 contract of employment arises in one state or province and the injury  
33 occurs in another. If the other state's or province's law requires  
34 Washington employers to secure the payment of compensation under the  
35 other state's or province's workers' compensation laws for work  
36 performed in that state or province, then employers domiciled in that  
37 state or province must purchase compensation covering their workers  
38 engaged in that work in this state under this state's industrial  
39 insurance law. When an agreement under this subsection has been  
40 executed and adopted as a rule of the department under chapter 34.05



1 RCW, it binds all employers and workers subject to this title and the  
2 jurisdiction of this title is governed by this rule.

3 (8) Washington employers who are not self-insured under chapter  
4 51.14 RCW shall obtain workers' compensation coverage from the state  
5 fund for temporary and incidental work performed on jobs or at  
6 jobsites in another state by their Washington workers. The department  
7 is authorized to adopt rules governing premium liability and  
8 reporting requirements for hours of work in excess of temporary and  
9 incidental as defined in this chapter.

10 (9) "Temporary and incidental" means work performed by Washington  
11 employers on jobs or at jobsites in another state for thirty or fewer  
12 consecutive or nonconsecutive full or partial days within a calendar  
13 year. Temporary and incidental days are considered on a per state  
14 basis.

15 (10) By December 1, 2011, the department shall report to the  
16 workers' compensation advisory committee on the effect of this  
17 section on the revenue and costs to the state fund.

18 **Sec. 12.** RCW 51.16.070 and 2008 c 120 s 5 are each amended to  
19 read as follows:

20 (1)(a) Every employer shall keep at his or her place of business  
21 a record of his or her employment from which the information needed  
22 by the department may be obtained and such record shall at all times  
23 be open to the inspection of the director, supervisor of industrial  
24 insurance, or the traveling auditors, agents, or assistants of the  
25 department, as provided in RCW 51.48.040.

26 (b) An employer who contracts with another person or entity for  
27 work subject to chapter 18.27, 18.106, or 19.28 RCW shall obtain and  
28 preserve a record of the unified business identifier account number  
29 for and the compensation paid to the person or entity performing the  
30 work. Failure to obtain or maintain the record is subject to RCW  
31 39.06.010 and to a penalty under RCW 51.48.030.

32 (2) Information obtained from employing unit records under the  
33 provisions of this title shall be deemed confidential and shall not  
34 be open to public inspection (other than to public employees in the  
35 performance of their official duties), but any interested party shall  
36 be supplied with information from such records to the extent  
37 necessary for the proper presentation of the case in question:  
38 PROVIDED, That any employing unit may authorize inspection of its  
39 records by written consent.

1       **Sec. 13.** RCW 51.48.022 and 2009 c 196 s 1 are each amended to  
2 read as follows:

3       (1) In addition to the penalties provided by this chapter, an  
4 employer performing services that require registration under chapter  
5 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW who violates  
6 RCW 51.14.010 may be subject to a stop work order issued under this  
7 section.

8       (2) If the director determines after an investigation that an  
9 employer is in violation of RCW 51.14.010, the director may issue a  
10 stop work order against the employer requiring the cessation of  
11 business operations of the employer. Service of the order must be in  
12 accordance with subsection (3) of this section.

13       (3) When a stop work order is served on a worksite by posting a  
14 copy of the stop work order in a conspicuous location at the  
15 worksite, it is effective as to the employer's operations on that  
16 worksite. When a stop work order is served on the employer, the order  
17 is effective to all employer worksites for which the employer is not  
18 in compliance. Business operations of the employer must cease  
19 immediately upon service consistent with the stop work order. The  
20 order remains in effect until the director issues an order releasing  
21 the stop work order upon finding that the employer has come into  
22 compliance and has paid any premiums, penalties, and interest under  
23 this title or issues an order of conditional release pursuant to  
24 subsection (6) of this section.

25       (4) An employer who violates a stop work order is subject to a  
26 one thousand dollar penalty for each day not in compliance.

27       (5) An employer against whom a stop work order has been issued  
28 may request reconsideration from the department or may appeal to the  
29 board of industrial insurance appeals. The request must be made in  
30 writing to the department or the board within ten days of receiving  
31 the stop work order at the worksite or in person. If the department  
32 conducts a reconsideration, it must be concluded within ten days of  
33 receiving the request for reconsideration by the employer. The stop  
34 work order remains in effect during the period of reconsideration or  
35 appeal, unless the employer furnishes to the department a cash  
36 deposit or bond in the amount of five thousand dollars or one  
37 thousand dollars per covered worker identified, whichever is greater.  
38 At time of a final order upholding a stop work order, the bond or  
39 cash deposit will be seized and applied to the premium, penalty, and  
40 interest balance of that employer. In an appeal before the board, the

1 appellant has the burden of proceeding with the evidence to establish  
2 a prima facie case for the relief sought in such appeal. RCW  
3 51.52.080 through 51.52.106 govern appeals under this section.  
4 Further appeals taken from a final decision of the board under this  
5 section are governed by the provisions relating to judicial review of  
6 administrative decisions contained in RCW 34.05.510 through  
7 34.05.598, and the department has the same right of review from the  
8 board's decisions as do employers.

9 (6) The director may issue an order of conditional release from  
10 the stop work order if the employer has complied with the coverage  
11 requirements of this title and agreed to pay premiums, penalties, and  
12 interest through a payment schedule. If the terms of the schedule are  
13 not met, the stop work order may be reinstated and the unpaid balance  
14 will become due.

15 (7) Stop work orders and penalties assessed under this chapter  
16 remain in effect against any successor corporation or business entity  
17 that has one or more of the same principals or officers as the  
18 employer against whom the stop work order was issued and which is  
19 engaged in the same or equivalent trade or activity.

20 (8) The department may adopt rules to carry out this section.

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