

HOUSE BILL REPORT

HB 1323

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to requiring a training and certification program for individuals who apply fire-resistant materials.

Brief Description: Requiring a training and certification program for individuals who apply fire-resistant materials.

Sponsors: Representatives Bronoske, Berry, Leavitt, Morgan, Taylor, Senn, Bateman, Reed, Lekanoff and Doglio.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/31/23, 2/15/23 [DPS].

Brief Summary of Substitute Bill

- Requires individuals applying fire-resistant materials to be certified by the Department of Labor and Industries after receiving training from an approved trainer.
- Requires contractors, beginning January 1, 2026, to use only certified fire-resistant material applicators.
- Imposes civil penalties and debarment on public works contracts on contractors violating the requirements.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Bronoske, Connors, Doglio, Ormsby and Ortiz-Self.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Trudes Tango (786-7384).

Background:

The Washington Industrial Safety and Health Act.

The Washington Industrial Safety and Health Act (WISHA) requires employers to provide a safe and healthy work environment to its employees. The Department of Labor and Industries (Department) administers WISHA. The Department has adopted general health and safety standards, pursuant to WISHA, that apply to most industries, and has safety standards that apply only to specific industries.

If the Director of the Department believes that an employer has committed a WISHA violation, the Director issues a citation and, depending on the violation, may impose civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors. The Director must impose penalties for violations that are serious or willful. The minimum civil penalty for a serious violation is \$100. Maximum penalties are \$7,000, or \$70,000 for willful or repeated violations. The maximum penalties will be adjusted annually in accordance with federal penalty levels.

Contractor Debarment.

There are various reasons a contractor may be debarred from bidding on public works contracts. A contractor will be debarred for one year if the contractor has two violations within a five-year period, of any of the following: misreporting hours worked or misreporting premiums paid for workers' compensation; failing to obtain workers' compensation coverage; failing to comply with contractor registration requirements; or failing to comply with certain apprenticeship standards. A contractor will be debarred for two years if the contractor has two violations within a five-year period for failing to pay prevailing wages.

Summary of Substitute Bill:

The Legislature recognizes that fire protection measures are critical design elements to control the spread of fire and that fire-resistant materials help protect structural steel, contain fire, and limit damage. The Legislature declares that it is important that individuals installing these materials are properly trained.

Every individual applying fire-resistant material for or as a contractor must be certified by the Department. To qualify for certification, the individual must complete initial training and submit an application to the Department. The individual must complete refresher training every five years for recertification. Training must be through a state-registered apprenticeship program or manufacturer or other certified training provider approved by the Department. If a manufacturer provides training, the applicator must be trained in the application of at least four different types of products.

Beginning January 1, 2026, contractors must ensure all fire-resistant material is applied by certified fire-resistant material applicators. A contractor must obtain written documentation of the individual's certification, and must keep records of the documentation for 10 years. A contractor that violates these requirements is subject to the following penalties:

- for a first violation, a minimum of \$2,500;
- for a second violation, a minimum of \$3,000 and automatic debarment from bidding on public works for one year; and
- for a third violation, a minimum of \$5,000 and a permanent debarment from bidding on public works projects.

Unless otherwise specified, the Department must enforce the provisions under the WISHA. After 2032, the Department may adjust the penalties for inflation. The Department may increase penalties for repeat, willful, and serious violations. The Department must implement the provisions and must include procedures for appeal of penalties and enforcement.

"Fire-resistant material" means: (a) wet or dry mix materials, cementitious material, and fibrous materials applied to achieve an hourly fire-resistant rating for buildings classified as construction types I through V, as defined by the International Building Code (IBC); and (b) sealants, putty, and caulking used for firestop systems applied to risk category III and IV buildings, as defined by the IBC.

"Certified fire-resistant material applicator" means an individual certified by the Department to apply fire-resistant material, and does not include an individual applying such material in or to the individual's own residence.

The Department must adopt rules to develop and administer a certification process and a process for approving trainers.

Substitute Bill Compared to Original Bill:

The substitute bill:

- amends the definition of "fire-resistant material" to: (1) add "wet or dry mix materials" and "sealants"; (2) specify that it refers to materials applied to achieve an hourly fire-resistant rating for buildings classified as construction types I through V, as defined by the IBC; (3) specify that it refers to sealants, putty, and caulking used for firestop systems applied to risk category III and IV buildings, as defined by the IBC;
- amends the definition of "fire-resistant material applicator" to specify that it refers to "certified" applicators and does not include individuals working on their own residence;
- adds a definition of "contractor";
- directs the Department to develop and administer a certification process and approval

- process for trainers;
- provides a date of January 1, 2026, by which contractors must begin verifying that their applicators are certified;
- makes clarifying changes to what contractors must do to verify that an applicator is certified;
- specifies that enforcement of the provisions is pursuant to the WISHA;
- requires the Department to post on its website all violations, rather than just the first violation;
- creates a new chapter under Title 49 RCW, rather than codifying the provisions under WISHA; and
- cross-references the contractor debarment statute and makes other clarifying changes for consistency.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 15, 2023.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Fire-proofing a building is a primary way to fight fire. It protects the primary structure of the building. If fire-proofing materials are applied incorrectly, the building will fall. The intent of the bill is to have consistent training standards of these life-saving products. There are precise specifications for applying these products and inconsistencies occur across the state. Applicators need to know what products they are applying and why they are applying them. People should not be allowed to apply these materials without being trained.

(Opposed) The definitions in the bill are too broad and include caulking in residential construction and working on cement boards in residential patio hearths and fireplaces. Requiring registered apprenticeship programs to provide training is an issue because there is already not enough capacity and not enough contractors doing this work. The bill needs to be narrowed. It is unclear what problem the bill is trying to solve. The training requirements could be costly for a business and make it difficult to hire or retain employees. Certification should be attached to the individual not the employer.

Persons Testifying: (In support) Representative Dan Bronoske, prime sponsor; Ray Dumas, Operative Plasterers' and Cement Masons' International Association Local 528; Brian Sykes; AJ Johnson, Washington State Council of Firefighters; Erin Frasier, Washington State Building and Construction Trades Council; and Todd Mitchell, Heat and

Frost Insulators Local 7.

(Opposed) Josie Cummings, Building Industry Association of Washington; Carolyn Logue, Northwest Hearth, Patio and Barbecue Association, Washington Air Conditioning Contractors Association; and Rob Cook.

Persons Signed In To Testify But Not Testifying: None.