

CERTIFICATION OF ENROLLMENT

SENATE BILL 5088

68th Legislature
2023 Regular Session

Passed by the Senate February 22,
2023

Yeas 49 Nays 0

President of the Senate

Passed by the House April 5, 2023

Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5088** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5088

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senators Keiser and King; by request of Department of Labor & Industries

Prefiled 12/22/22. Read first time 01/09/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to adding references to contractor registration
2 and licensing laws in workers' compensation, public works, and
3 prevailing wage statutes; and amending RCW 39.04.350, 39.06.020,
4 39.12.050, 39.12.055, 39.12.065, 39.12.100, 51.08.070, 51.08.180,
5 51.08.181, 51.12.070, 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, a plumbing
15 contractor license in compliance with chapter 18.106 RCW, an elevator
16 contractor license in compliance with chapter 70.87 RCW, or an
17 electrical contractor license in compliance with chapter 19.28 RCW,
18 as required under the provisions of those chapters;

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

20 (c) If applicable, have industrial insurance coverage for the
21 bidder's employees working in Washington as required in Title 51 RCW;

1 an employment security department number as required in Title 50 RCW;
2 and a state excise tax registration number as required in Title 82
3 RCW;

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

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

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

29 (g) Within the three-year period immediately preceding the date
30 of the bid solicitation, not have been determined by a final and
31 binding citation and notice of assessment issued by the department of
32 labor and industries or through a civil judgment entered by a court
33 of limited or general jurisdiction to have willfully violated, as
34 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or
35 49.52 RCW.

36 (2) Before award of a public works contract, a bidder shall
37 submit to the contracting agency a signed statement in accordance
38 with chapter 5.50 RCW verifying under penalty of perjury that the
39 bidder is in compliance with the responsible bidder criteria
40 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~~
27 ~~hundred dollars))~~ \$500 for each false filing or failure to file or
28 post, and shall not be permitted to bid, or have a bid considered, on
29 any public works contract until the penalty has been paid in full to
30 the director. The civil penalty under this subsection does not apply
31 to a violation determined by the director to be an inadvertent filing
32 or 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,
26 18.106, 19.28, or 70.87 RCW for performing work as an unregistered or
27 unlicensed 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~~) 60 days from the acceptance date of the public works
15 project. The department may not charge a contractor or subcontractor
16 with a violation of this section when responding to a complaint filed
17 after the (~~sixty-day~~) 60-day limit. The failure to timely file such
18 a complaint does not prohibit the department from investigating the
19 matter and recovering unpaid wages for the worker(s) within two years
20 from the acceptance of the public works contract. The department may
21 not investigate or recover unpaid wages if the complaint is filed
22 after two years from the acceptance of a public works contract. The
23 failure to timely file such a complaint also does not prohibit a
24 claimant from pursuing a private right of action against a contractor
25 or 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~~) \$5,000 or an amount equal to
18 (~~fifty~~) 50 percent of the total prevailing wage violation found on
19 the contract, whichever is greater, interest on all wages owed at one
20 percent per month, and is not permitted to bid, or have a bid
21 considered, on any public works contract until such civil penalty has
22 been paid in full to the director. If a contractor or subcontractor
23 is found to have participated in a violation of the requirement to
24 pay the prevailing rate of wage for a second time within a five-year
25 period, the contractor or subcontractor is subject to the sanctions
26 prescribed in this subsection and as an additional sanction is not
27 allowed to bid on any public works contract for two years. Civil
28 penalties shall be deposited in the public works administration
29 account. If a previous or subsequent violation of a requirement to
30 pay a prevailing rate of wage under federal or other state law is
31 found against the contractor or subcontractor within five years from
32 a violation under this section, the contractor or subcontractor shall
33 not be allowed to bid on any public works contract for two years. The
34 two-year period runs from the date of notice by the director of the
35 determination of noncompliance. When an appeal is taken from the
36 director's determination, the two-year period commences from the date
37 the notice of violation becomes final. A contractor or subcontractor
38 is not barred from bidding on any public works contract if the
39 contractor or subcontractor relied upon written information from the
40 department to pay a prevailing rate of wage that is later determined

1 to be in violation of this chapter. The civil penalty and sanctions
2 under this subsection do not apply to a violation determined by the
3 director to be an inadvertent filing or reporting error. The burden
4 of proving, by a preponderance of the evidence, that an error is
5 inadvertent rests with the contractor or subcontractor charged with
6 the error. To the extent that a contractor or subcontractor has not
7 paid the prevailing wage rate under a determination issued as
8 provided in subsection (1) of this section, the unpaid wages
9 constitute a lien against the bonds and retainage as provided herein
10 and in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and
11 60.28.011.

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

20 (5) If, after the department of labor and industries initiates an
21 investigation and before a notice of violation of unpaid wages, the
22 contractor or subcontractor pays the unpaid wages identified in the
23 investigation, interest on all wages owed at one percent per month,
24 and penalties in the amount of (~~one thousand dollars~~) \$1,000 or
25 (~~twenty~~) 20 percent of the total prevailing wage violation
26 determined by the department of labor and industries, whichever is
27 greater, then the violation is considered resolved without further
28 penalty under subsection (3) of this section.

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

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

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

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

9 (2) The service is either outside the usual course of business
10 for the contractor or contractors for whom the individual performs
11 services, or the service is performed outside all of the places of
12 business of the enterprise for which the individual performs
13 services, or the individual is responsible, both under the contract
14 and in fact, for the costs of the principal place of business from
15 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 of
30 service, the individual has an active and valid certificate of
31 registration with the department of revenue, and an active and valid
32 account with any other state agencies as required by the particular
33 case, for the business the individual is conducting for the payment
34 of all state taxes normally paid by employers and businesses and has
35 registered for and received a unified business identifier number from
36 the state 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, if the
2 nature of the work performed requires registration under chapter
3 18.27 RCW or licensure under chapter 18.106, 19.28, or 70.87 RCW, the
4 individual has (~~(a valid contractor registration pursuant to)~~) the
5 contractor registration and contractor licenses required by the laws
6 of this state including chapters 18.27 (~~(RCW or an electrical~~
7 ~~contractor license pursuant to chapter)~~), 18.106, 19.28, and 70.87
8 RCW.

9 **Sec. 7.** RCW 51.08.070 and 2022 c 281 s 9 are each amended to
10 read as follows:

11 (1) "Employer" means any person, body of persons, corporate or
12 otherwise, and the legal representatives of a deceased employer, all
13 while engaged in this state in any work covered by the provisions of
14 this title, by way of trade or business, or who contracts with one or
15 more workers, the essence of which is the personal labor of such
16 worker or workers. Or as an exception to the definition of employer,
17 persons or entities are not employers when they contract or agree to
18 remunerate the services performed by an individual who meets the
19 tests set forth in RCW 51.08.195 (1) through (6) or the separate
20 tests set forth in RCW 51.08.181 for work performed that requires
21 registration under chapter 18.27 RCW or licensing under chapter
22 18.106 or 19.28 RCW.

23 (2) Notwithstanding subsection (1) of this section, and for
24 purposes of this title only, a transportation network company, as
25 defined in RCW 49.46.300, shall have the same rights and obligations
26 of an "employer" under this title with respect to a driver, as
27 defined in RCW 49.46.300, only while the driver is engaged in
28 passenger platform time and dispatch platform time.

29 **Sec. 8.** RCW 51.08.180 and 2022 c 281 s 10 are each amended to
30 read as follows:

31 (1) "Worker" means every person in this state who is engaged in
32 the employment of an employer under this title, whether by way of
33 manual labor or otherwise in the course of his or her employment;
34 also every person in this state who is engaged in the employment of
35 or who is working under an independent contract, the essence of which
36 is his or her personal labor for an employer under this title,
37 whether by way of manual labor or otherwise, in the course of his or
38 her employment, or as an exception to the definition of worker, a

1 person is not a worker if he or she meets the tests set forth in
2 (~~subsections (1) through (6) of~~) RCW 51.08.195 (1) through (6) or
3 the separate tests set forth in RCW 51.08.181 for work performed that
4 requires registration under chapter 18.27 RCW or licensing under
5 chapter 18.106 or 19.28 RCW: PROVIDED, That a person is not a worker
6 for the purpose of this title, with respect to his or her activities
7 attendant to operating a truck which he or she owns, and which is
8 leased to a common or contract carrier.

9 (2) Notwithstanding subsection (1) of this section, and for
10 purposes of this title only, a driver, as defined in RCW 49.46.300,
11 shall have the same rights and obligations of a "worker" under this
12 title with respect to a transportation network company, as defined in
13 RCW 49.46.300, only while the driver is engaged in passenger platform
14 time and dispatch platform time.

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

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

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

24 (2) The service is either outside the usual course of business
25 for which the service is performed, or the service is performed
26 outside all of the places of business of the enterprise for which the
27 service is performed, or the individual is responsible, both under
28 the contract and in fact, for the costs of the principal place of
29 business from which the service is performed;

30 (3) The individual is customarily engaged in an independently
31 established trade, occupation, profession, or business, of the same
32 nature as that involved in the contract of service, or the individual
33 has a principal place of business for the business the individual is
34 conducting that is eligible for a business deduction for federal
35 income tax purposes other than that furnished by the employer for
36 which the business has contracted to furnish services;

37 (4) On the effective date of the contract of service, the
38 individual is responsible for filing at the next applicable filing
39 period, both under the contract of service and in fact, a schedule of

1 expenses with the internal revenue service for the type of business
2 the individual is conducting;

3 (5) On the effective date of the contract of service, or within a
4 reasonable period after the effective date of the contract, the
5 individual has an active and valid certificate of registration with
6 the department of revenue, and an active and valid account with any
7 other state agencies as required by the particular case, for the
8 business the individual is conducting for the payment of all state
9 taxes normally paid by employers and businesses and has registered
10 for and received a unified business identifier number from the state
11 of Washington;

12 (6) On the effective date of the contract of service, the
13 individual is maintaining a separate set of books or records that
14 reflect all items of income and expenses of the business which the
15 individual is conducting; and

16 (7) On the effective date of the contract of service, the
17 individual has a valid contractor registration pursuant to chapter
18 18.27 RCW, a plumbing contractor license pursuant to chapter 18.106
19 RCW, or an electrical contractor license pursuant to chapter 19.28
20 RCW.

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

23 The provisions of this title apply to all work done by contract;
24 the person, firm, or corporation who lets a contract for such work is
25 responsible primarily and directly for all premiums upon the work,
26 except as provided in subsection (2) of this section. The contractor
27 and any subcontractor are subject to the provisions of this title and
28 the person, firm, or corporation letting the contract is entitled to
29 collect from the contractor the full amount payable in premiums and
30 the contractor in turn is entitled to collect from the subcontractor
31 his or her proportionate amount of the payment.

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

36 (a) The subcontractor is currently engaging in a business which
37 is registered under chapter 18.27 RCW or licensed under chapter
38 18.106 or 19.28 RCW;

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

5 (c) The subcontractor maintains a separate set of books or
6 records that reflect all items of income and expenses of the
7 business;

8 (d) The subcontractor has contracted to perform:

9 (i) The work of a contractor as defined in RCW 18.27.010; ((~~or~~))

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

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

15 (e) The subcontractor has an industrial insurance account in good
16 standing with the department or is a self-insurer. For the purposes
17 of this subsection (1)(e), a contractor may consider a
18 subcontractor's account to be in good standing if, within a year
19 prior to letting the contract or master service agreement, and at
20 least once a year thereafter, the contractor has verified with the
21 department that the account is in good standing and the contractor
22 has not received written notice from the department that the
23 subcontractor's account status has changed. Acceptable documentation
24 of verification includes a department document which includes an
25 issued date or a dated printout of information from the department's
26 internet website showing a subcontractor's good standing. The
27 department shall develop an approach to provide contractors with
28 verification of the date of inquiries validating that the
29 subcontractor's account is in good standing.

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

35 (2) Nonemergency transportation brokers that operate as not-for-
36 profit businesses are not liable for any premiums of a subcontractor
37 if the provisions of subsection (1)(c) and (e) of this section are
38 met throughout the term of the contract. For purposes of this
39 section, nonemergency transportation brokers are those organizations
40 or entities that contract with the state health care authority, or

1 its successor, to arrange nonemergency transportation for qualified
2 clients.

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

5 (1) If a worker, while working outside the territorial limits of
6 this state, suffers an injury on account of which he or she, or his
7 or her beneficiaries, would have been entitled to compensation under
8 this title had the injury occurred within this state, the worker, or
9 his or her beneficiaries, shall be entitled to compensation under
10 this title if at the time of the injury:

11 (a) His or her employment is principally localized in this state;
12 or

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

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

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

21 (2) The payment or award of compensation or other recoveries,
22 including settlement proceeds, under the workers' compensation law of
23 another state, territory, province, or foreign nation to a worker or
24 his or her beneficiaries otherwise entitled on account of such injury
25 to compensation under this title shall not be a bar to a claim for
26 compensation under this title if that claim under this title is
27 timely filed. If compensation is paid or awarded under this title,
28 the total amount of compensation or other recoveries, including
29 settlement proceeds, paid or awarded the worker or beneficiary under
30 such other workers' compensation law shall be credited against the
31 compensation due the worker or beneficiary under this title.

32 (3) (a) An employer not domiciled in this state who is employing
33 workers in this state in work for which the employer must be
34 registered under chapter 18.27 RCW (~~(\oplus)~~), licensed under chapter
35 18.106 RCW, licensed under chapter 19.28 RCW, or prequalified under
36 RCW 47.28.070, must secure the payment of compensation under this
37 title by:

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

1 (ii) Being qualified as a self-insurer under this title; or
2 (iii) For employers domiciled in a state or province of Canada
3 subject to an agreement entered into under subsection (7) of this
4 section, as permitted by the agreement, filing with the department a
5 certificate of coverage issued by the agency that administers the
6 workers' compensation law in the employer's state or province of
7 domicile certifying that the employer has secured the payment of
8 compensation under the other state's or province's workers'
9 compensation law.

10 (b) The department shall adopt rules to implement this
11 subsection.

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

16 (a) Is not subject to subsection (3) of this section and has
17 neither opened an account with the department nor qualified as a
18 self-insurer under this title, the employer or his or her insurance
19 carrier shall file with the director a certificate issued by the
20 agency that administers the workers' compensation law in the state of
21 the employer's domicile, certifying that the employer has secured the
22 payment of compensation under the workers' compensation law of the
23 other state and that with respect to the injury the worker or
24 beneficiary is entitled to the benefits provided under the other
25 state's law.

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

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

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

37 (iii) If the employer is a self-insurer under the workers'
38 compensation law of the other state or province of Canada, the
39 employer shall, upon submission of evidence or security, satisfactory
40 to the director, of his or her ability to meet his or her liability

1 to the claimant under this title, be deemed to be a qualified self-
2 insurer under this title; and

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

5 (A) The employer's carrier, as to such claimant only, shall be
6 deemed to be subject to this title. However, unless the insurer's
7 contract with the employer requires the insurer to pay an amount
8 equivalent to the compensation benefits provided by this title, the
9 insurer's liability for compensation shall not exceed the insurer's
10 liability under the workers' compensation law of the other state or
11 province; and

12 (B) If the total amount for which the employer's insurer is
13 liable under (b)(iv)(A) of this subsection is less than the total of
14 the compensation to which the claimant is entitled under this title,
15 the director may require the employer to file security satisfactory
16 to the director to secure the payment of compensation under this
17 title.

18 (c) If subject to subsection (3) of this section, has not
19 complied with subsection (3) of this section or, if not subject to
20 subsection (3) of this section, has neither qualified as a self-
21 insurer nor secured insurance coverage under the workers'
22 compensation law of another state or province of Canada, the claimant
23 shall be paid compensation by the department and the employer shall
24 have the same rights and obligations, and is subject to the same
25 penalties, as other employers subject to this title.

26 (5) As used in this section:

27 (a) A person's employment is principally localized in this or
28 another state when: (i) His or her employer has a place of business
29 in this or the other state and he or she regularly works at or from
30 the place of business; or (ii) if (a)(i) of this subsection is not
31 applicable, he or she is domiciled in and spends a substantial part
32 of his or her working time in the service of his or her employer in
33 this or the other state;

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

36 (6) A worker whose duties require him or her to travel regularly
37 in the service of his or her employer in this and one or more other
38 states may agree in writing with his or her employer that his or her
39 employment is principally localized in this or another state, and,
40 unless the other state refuses jurisdiction, the agreement shall

1 govern as to any injury occurring after the effective date of the
2 agreement.

3 (7) The director is authorized to enter into agreements with the
4 appropriate agencies of other states and provinces of Canada that
5 administer their workers' compensation law with respect to conflicts
6 of jurisdiction and the assumption of jurisdiction in cases where the
7 contract of employment arises in one state or province and the injury
8 occurs in another. If the other state's or province's law requires
9 Washington employers to secure the payment of compensation under the
10 other state's or province's workers' compensation laws for work
11 performed in that state or province, then employers domiciled in that
12 state or province must purchase compensation covering their workers
13 engaged in that work in this state under this state's industrial
14 insurance law. When an agreement under this subsection has been
15 executed and adopted as a rule of the department under chapter 34.05
16 RCW, it binds all employers and workers subject to this title and the
17 jurisdiction of this title is governed by this rule.

18 (8) Washington employers who are not self-insured under chapter
19 51.14 RCW shall obtain workers' compensation coverage from the state
20 fund for temporary and incidental work performed on jobs or at
21 jobsites in another state by their Washington workers. The department
22 is authorized to adopt rules governing premium liability and
23 reporting requirements for hours of work in excess of temporary and
24 incidental as defined in this chapter.

25 (9) "Temporary and incidental" means work performed by Washington
26 employers on jobs or at jobsites in another state for (~~thirty~~) 30
27 or fewer consecutive or nonconsecutive full or partial days within a
28 calendar year. Temporary and incidental days are considered on a per
29 state basis.

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

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

35 (1)(a) Every employer shall keep at his or her place of business
36 a record of his or her employment from which the information needed
37 by the department may be obtained and such record shall at all times
38 be open to the inspection of the director, supervisor of industrial

1 insurance, or the traveling auditors, agents, or assistants of the
2 department, as provided in RCW 51.48.040.

3 (b) An employer who contracts with another person or entity for
4 work subject to chapter 18.27, 18.106, or 19.28 RCW shall obtain and
5 preserve a record of the unified business identifier account number
6 for and the compensation paid to the person or entity performing the
7 work. Failure to obtain or maintain the record is subject to RCW
8 39.06.010 and to a penalty under RCW 51.48.030.

9 (2) Information obtained from employing unit records under the
10 provisions of this title shall be deemed confidential and shall not
11 be open to public inspection (other than to public employees in the
12 performance of their official duties), but any interested party shall
13 be supplied with information from such records to the extent
14 necessary for the proper presentation of the case in question:
15 PROVIDED, That any employing unit may authorize inspection of its
16 records by written consent.

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

19 (1) In addition to the penalties provided by this chapter, an
20 employer performing services that require registration under chapter
21 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW who violates
22 RCW 51.14.010 may be subject to a stop work order issued under this
23 section.

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

29 (3) When a stop work order is served on a worksite by posting a
30 copy of the stop work order in a conspicuous location at the
31 worksite, it is effective as to the employer's operations on that
32 worksite. When a stop work order is served on the employer, the order
33 is effective to all employer worksites for which the employer is not
34 in compliance. Business operations of the employer must cease
35 immediately upon service consistent with the stop work order. The
36 order remains in effect until the director issues an order releasing
37 the stop work order upon finding that the employer has come into
38 compliance and has paid any premiums, penalties, and interest under

1 this title or issues an order of conditional release pursuant to
2 subsection (6) of this section.

3 (4) An employer who violates a stop work order is subject to a
4 (~~one thousand dollar~~) \$1,000 penalty for each day not in
5 compliance.

6 (5) An employer against whom a stop work order has been issued
7 may request reconsideration from the department or may appeal to the
8 board of industrial insurance appeals. The request must be made in
9 writing to the department or the board within (~~ten~~) 10 days of
10 receiving the stop work order at the worksite or in person. If the
11 department conducts a reconsideration, it must be concluded within
12 (~~ten~~) 10 days of receiving the request for reconsideration by the
13 employer. The stop work order remains in effect during the period of
14 reconsideration or appeal, unless the employer furnishes to the
15 department a cash deposit or bond in the amount of (~~five thousand~~
16 ~~dollars~~) \$5,000 or (~~one thousand dollars~~) \$1,000 per covered
17 worker identified, whichever is greater. At time of a final order
18 upholding a stop work order, the bond or cash deposit will be seized
19 and applied to the premium, penalty, and interest balance of that
20 employer. In an appeal before the board, the appellant has the burden
21 of proceeding with the evidence to establish a prima facie case for
22 the relief sought in such appeal. RCW 51.52.080 through 51.52.106
23 govern appeals under this section. Further appeals taken from a final
24 decision of the board under this section are governed by the
25 provisions relating to judicial review of administrative decisions
26 contained in RCW 34.05.510 through 34.05.598, and the department has
27 the same right of review from the board's decisions as do employers.

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

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

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

--- **END** ---