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**SENATE BILL 5088**

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**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** ---