

CHAPTER 2

[Engrossed Substitute Senate Bill No. 3056]
CONTRACTOR REGISTRATION

AN ACT Relating to contractor registration; amending section 2, chapter 77, Laws of 1963 as amended by section 2, chapter 153, Laws of 1973 1st ex. sess. and RCW 18.27.020; amending section 4, chapter 77, Laws of 1963 as last amended by section 1, chapter 11, Laws of 1977 ex. sess. and RCW 18.27.040; amending section 6, chapter 77, Laws of 1963 as amended by section 1, chapter 61, Laws of 1977 ex. sess. and RCW 18.27.060; amending section 5, chapter 118, Laws of 1972 ex. sess. as amended by section 7, chapter 153, Laws of 1973 1st ex. sess. and RCW 18.27.120; amending section 2, chapter 161, Laws of 1973 1st ex. sess. and RCW 18.27.140; adding new sections to chapter 18.27 RCW; repealing section 6, chapter 126, Laws of 1967 and RCW 18.27.085; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. An offer to do work, submission of a bid, or performance of any work by a contractor who is not registered with the department of labor and industries as required by this chapter is an infraction. Each day that a contractor works without being registered as required by this chapter is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter is a separate infraction.

NEW SECTION. Sec. 2. An authorized representative of the department may investigate alleged or apparent violations of this chapter. If the name of the contractor allegedly or apparently in violation of this chapter is not known, or if the name of the contractor does not appear on the latest list of registered contractors compiled under RCW 18.27.120(1), upon presentation of credentials, an authorized representative of the department may inspect sites at which a contractor is working to determine whether the contractor is registered in accordance with this chapter. Upon request of the authorized representative of the department, a contractor or an employee of the contractor shall provide information identifying the contractor.

NEW SECTION. Sec. 3. The department may issue a notice of infraction if the department reasonably believes that the contractor required to be registered by this chapter has failed to do so. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by an authorized representative of the department. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the contractor if the department is able to obtain the contractor's address.

NEW SECTION. Sec. 4. A violation designated as an infraction under this chapter shall be heard and determined by a district court. A notice of infraction shall be filed in the district court district in which the infraction is alleged to have occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party.

NEW SECTION. Sec. 5. (1) The form of the notice of infraction issued under this chapter shall be prescribed by the supreme court following consultation with the department. To the extent practicable, the notice of infraction issued under this chapter shall conform to the notice of traffic infraction prescribed by the supreme court pursuant to RCW 46.63.060.

(2) The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement that a one hundred dollar monetary penalty has been established for each infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

(g) A statement, which the person who has been served with the notice of infraction shall sign, that the contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

(h) A statement that refusal to sign the infraction as directed in subsection (2)(g) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and

(i) A statement that a contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

NEW SECTION. Sec. 6. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the contractor to whom the notice was issued committed the infraction.

NEW SECTION. Sec. 7. (1) A contractor who receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served.

(2) If the contractor named in the notice of infraction does not want to contest the determination, the contractor shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department.

(3) If the contractor named in the notice of infraction wants to contest the determination, the contractor shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the contractor in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen days from the date of the notice of hearing, except by agreement of the parties.

(4) If any contractor issued a notice of infraction:

(a) Fails to respond to the notice of infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure of the contractor to respond to the notice of infraction or to appear at a requested hearing.

(5) An order entered by the court under subsection (4)(b) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions in courts of limited jurisdiction.

NEW SECTION. Sec. 8. A contractor subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in any proceeding under this chapter.

NEW SECTION. Sec. 9. (1) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of infraction and any sworn statement submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The contractor named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the

notice was issued, the defendant was registered by the department or was exempt from registration.

(4) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.

(5) An appeal from the court's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

NEW SECTION. Sec. 10. It is a misdemeanor for any person who has been personally served with a notice of infraction to refuse to sign a written promise to respond to the notice.

NEW SECTION. Sec. 11. It is a misdemeanor for a contractor who has been personally served with a notice of infraction to wilfully violate the written promise to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction.

NEW SECTION. Sec. 12. Wilful refusal to provide information identifying a contractor as required by section 2 of this act is a misdemeanor.

NEW SECTION. Sec. 13. The court shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered at the time the notice of infraction was issued.

NEW SECTION. Sec. 14. The court shall, within thirty days after entry of an order under this chapter, forward a record of the court's order to the department on a form prescribed by the department.

NEW SECTION. Sec. 15. (1) A contractor found to have committed an infraction under section 1 of this act shall be assessed a monetary penalty of one hundred dollars.

(2) The court may waive, reduce, or suspend the monetary penalty imposed for the infraction.

(3) Monetary penalties collected under this chapter shall be remitted as provided in chapter 3.62 RCW.

NEW SECTION. Sec. 16. A partnership or joint venture shall be deemed registered under this chapter if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered.

Sec. 17. Section 2, chapter 77, Laws of 1963 as amended by section 2, chapter 153, Laws of 1973 1st ex. sess. and RCW 18.27.020 are each amended to read as follows:

~~((1) It shall be unlawful for any person to submit any bid or do any work as a contractor until such person shall have been issued a certificate of registration by the state department of labor and industries. A partnership or joint venture shall be deemed registered if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business shall be registered. A violation of this section shall be a misdemeanor.~~

~~(2) In addition to any criminal penalties which may be imposed under the provisions of subsection (1) of this section, any person who is found to be in violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.04 RCW, shall be required to pay a late registration penalty of not more than one hundred dollars, such amount to be set by the director, in addition to the registration fee provided in RCW 18.27.070, as now or hereafter amended:)) It is a misdemeanor for any contractor having knowledge of the registration requirements of this chapter to offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter.~~

Sec. 18. Section 4, chapter 77, Laws of 1963 as last amended by section 1, chapter 11, Laws of 1977 ex. sess. and RCW 18.27.040 are each amended to read as follows:

(1) Each applicant shall, at the time of applying for or renewing a certificate of registration, file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the department running to the state of Washington if a general contractor, in the sum of ((four)) six thousand dollars; if a specialty contractor, in the sum of ((two)) four thousand dollars, conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. ((Any registered contractor with an unimpaired bond in effect on the day immediately preceding September 21, 1977, is hereby authorized to maintain such bond until the next annual renewal of such bond at which time the terms of this 1977 amendatory act must be complied with: PROVIDED, That)) A change in the name of a business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

(2) Any contractor registered as of the effective date of this 1983 act who maintains such registration in accordance with this chapter shall be in compliance with this chapter until the next annual renewal of the contractor's certificate of registration. At that time, the contractor shall provide a

bond, cash deposit, or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall renew the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond in the superior court of the county in which the work is done or of any county in which jurisdiction of the contractor may be had. Action upon such bond or deposit shall be commenced by ~~((serving and))~~ filing ~~((of))~~ the complaint with the clerk of the appropriate superior court within one year from the date of expiration of the certificate of registration in force at the time the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was completed. Service of process in an action upon such bond shall be exclusively by service upon the department. Three copies of the complaint and a fee of ten dollars to cover the handling costs shall be served by registered or certified mail upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the ten-dollar fee and three copies of the complaint. Such service shall constitute service on the registrant and the surety for suit upon the bond and the department shall transmit the complaint or a copy thereof to the registrant at the address listed in his application and to the surety within forty-eight hours after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- ~~((1))~~ (a) Labor, including employee benefits;
- ~~((2))~~ (b) Claims for breach of contract by a party to the construction contract;
- ~~((3))~~ (c) Material and equipment;
- ~~((4))~~ (d) Taxes and contributions due the state of Washington;
- ~~((5))~~ (e) Any court costs, interest, and attorney's fees plaintiff may be entitled to recover.

(5) In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the department

shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished. If such bond becomes fully impaired, a new bond must be furnished at the increased rates prescribed by this section as now or hereafter amended.

(6) In lieu of the surety bond required by this section the contractor may file with the department a deposit consisting of cash or other security acceptable to the department.

(7) Any person having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

(8) The director may promulgate rules (~~(and regulations)~~) necessary for the proper administration of the security.

Sec. 19. Section 6, chapter 77, Laws of 1963 as amended by section 1, chapter 61, Laws of 1977 ex. sess. and RCW 18.27.060 are each amended to read as follows:

(1) A certificate of registration shall be valid for one year and shall be renewed on or before the expiration date. The (~~(director)~~) department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. The certificate shall be valid for:

(a) One year;

(b) Until the bond expires; or

(c) Until the insurance expires, whichever comes first. The department shall place the expiration date on the certificate.

(3) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full one year.

(4) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.

Sec. 20. Section 5, chapter 118, Laws of 1972 ex. sess. as amended by section 7, chapter 153, Laws of 1973 1st ex. sess. and RCW 18.27.120 are each amended to read as follows:

(1) The department shall (~~annually, starting July 1, 1973;~~) compile a list of all contractors registered (~~pursuant to the provisions of~~) under this chapter and update ((such)) the list at least bimonthly. ((Such)) The list shall be considered as public record information and shall be available to the public upon request: PROVIDED, That the department may charge a reasonable ((reproduction)) fee under RCW 42.17.300.

(2) The department shall inform any person, firm, or corporation, if a contractor is registered, and if a contractor is bonded or insured, without charge except for a reasonable fee under RCW 42.17.300 for copies made.

Sec. 21. Section 2, chapter 161, Laws of 1973 1st ex. sess. and RCW 18.27.140 are each amended to read as follows:

It is the purpose of this chapter to afford protection to the public including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors.

NEW SECTION. Sec. 22. Section 6, chapter 126, Laws of 1967 and RCW 18.27.085 are each hereby repealed.

NEW SECTION. Sec. 23. Sections 1 through 16 of this act are added to chapter 18.27 RCW.

NEW SECTION. Sec. 24. Sections 1 through 17 of this of this act shall take effect January 1, 1984.

Passed the Senate April 26, 1983.

Passed the House April 28, 1983.

Approved by the Governor May 6, 1983.

Filed in Office of Secretary of State May 6, 1983.

CHAPTER 3

[Engrossed Substitute Senate Bill No. 3266]

JOINT OPERATING AGENCIES—COMPENSATION—OPEN PUBLIC MEETINGS ACT COMPLIANCE

AN ACT Relating to operating agencies; amending section 43.52.290, chapter 8, Laws of 1965 as last amended by section 5, chapter 43, Laws of 1982 1st ex. sess. and RCW 43.52.290; amending section 43.52.370, chapter 8, Laws of 1965 as last amended by section 2, chapter 43, Laws of 1982 1st ex. sess. and RCW 43.52.370; and amending section 2, chapter 3, Laws of 1981 1st ex. sess. as amended by section 3, chapter 43, Laws of 1982 1st ex. sess. and RCW 43.52.374; and adding a new section to chapter 43.52 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 43.52.290, chapter 8, Laws of 1965 as last amended by section 5, chapter 43, Laws of 1982 1st ex. sess. and RCW 43.52.290 are each amended to read as follows:

Members of the board of directors of an operating agency shall be paid the sum of fifty dollars per day as compensation for each day or major part thereof devoted to the business of the operating agency, together with their