

2 SSB 6638 - S AMD - 764
3 By Senators Horn and Heavey

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 18.27.010 and 1997 c 314 s 2 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Contractor" means any person, firm, or corporation who or
12 which, in the pursuit of an independent business undertakes to, or
13 offers to undertake, or submits a bid to, construct, alter, repair, add
14 to, subtract from, improve, move, wreck or demolish, for another, any
15 building, highway, road, railroad, excavation or other structure,
16 project, development, or improvement attached to real estate or to do
17 any part thereof including the installation of carpeting or other floor
18 covering, the erection of scaffolding or other structures or works in
19 connection therewith or who installs or repairs roofing or siding; or,
20 who, to do similar work upon his or her own property, employs members
21 of more than one trade upon a single job or project or under a single
22 building permit except as otherwise provided herein. "Contractor"
23 includes any person, firm, or corporation covered by this subsection,
24 whether or not registered as required under this chapter.

25 (2) "General contractor" means a contractor whose business
26 operations require the use of more than two unrelated building trades
27 or crafts whose work the contractor shall superintend or do in whole or
28 in part. "General contractor" shall not include an individual who does
29 all work personally without employees or other "specialty contractors"
30 as defined in this section. The terms "general contractor" and
31 "builder" are synonymous.

32 (3) "Specialty contractor" means a contractor whose operations do
33 not fall within the foregoing definition of "general contractor".

34 (4) "Substantial completion" means the earliest occurrence of
35 either: (a) The date upon which the work of improvement has been
36 completed as specified under the contract; (b) the date upon which the

1 improvement becomes usable or fit for the purposes for which it was
2 intended; (c) the date of issuance of a certificate of occupancy; or
3 (d) the date of occupation or use of the improvement by the owner or an
4 agent of the owner.

5 (5) "Unregistered contractor" means a person, firm, or corporation
6 doing work as a contractor without being registered in compliance with
7 this chapter. "Unregistered contractor" (~~includes contractors whose~~
8 ~~registration is expired for more than thirty days beyond the renewal~~
9 ~~date or has been suspended~~) does not include those contractors who
10 have complied with all the requirements for registration but have not
11 had their application processed by the department.

12 (~~(+5)~~) (6) "Work of improvement" means work performed or provided,
13 including labor, materials, equipment, and professional services, that
14 led to the improvement of real property for a private or public owner.
15 Work of improvement includes incremental improvements that are in
16 themselves complete but do not necessarily bring a property improvement
17 to a state of substantial completion.

18 (7) "Department" means the department of labor and industries.

19 (~~(+6)~~) (8) "Director" means the director of the department of
20 labor and industries.

21 (~~(+7)~~) (9) "Verification" means the receipt and duplication by the
22 city, town, or county of a contractor registration card that is current
23 on its face, checking the department's contractor registration data
24 base, or calling the department to confirm that the contractor is
25 registered.

26 (10) "Residential homeowner" means an individual person or persons
27 owning real property upon which one single-family residence is to be
28 built or upon which there is a single-family residence to which
29 construction improvements are to be made and in which the owner intends
30 to reside upon completion of any construction.

31 (11) "Partnership" means any business formed under Title 25 RCW.

32 **Sec. 2.** RCW 18.27.030 and 1997 c 314 s 4 are each amended to read
33 as follows:

34 (1) An applicant for registration as a contractor shall submit an
35 application under oath upon a form to be prescribed by the director and
36 which shall include the following information pertaining to the
37 applicant:

38 (a) Employer social security number.

1 (b) As applicable: (i) The industrial insurance account number
2 covering employees domiciled in Washington; and (ii) evidence of
3 workers' compensation coverage in the applicant's state of domicile for
4 the applicant's employees working in Washington who are not domiciled
5 in Washington.

6 (c) Employment security department number.

7 (d) State excise tax registration number.

8 (e) Unified business identifier (UBI) account number may be
9 substituted for the information required by (b), (c), and (d) of this
10 subsection.

11 (f) Type of contracting activity, whether a general or a specialty
12 contractor and if the latter, the type of specialty.

13 (g) The name and address of each partner if the applicant be a firm
14 or partnership, or the name and address of the owner if the applicant
15 be an individual proprietorship, or the name and address of the
16 corporate officers and statutory agent, if any, if the applicant be a
17 corporation. The information contained in such application shall be a
18 matter of public record and open to public inspection.

19 (2) The department may verify the workers' compensation coverage
20 information provided by the applicant under subsection (1)(b) of this
21 section, including but not limited to information regarding the
22 coverage of an individual employee of the applicant. If coverage is
23 provided under the laws of another state, the department may notify the
24 other state that the applicant is employing employees in Washington.

25 (3)(a) The department shall deny an application for registration
26 if: (i) The applicant has been previously registered as a sole
27 proprietor, partnership, or corporation and the department has notice
28 that the applicant has an unsatisfied final judgment against him or her
29 in an action based on this chapter that was incurred during a previous
30 registration under this chapter; or (ii) the applicant was a principal
31 or officer named on a previous application of a previously registered
32 partnership or corporation that has an unsatisfied final judgment
33 against it in an action based on this chapter that was incurred during
34 a previous registration under this chapter.

35 (b) The department shall suspend any active registration if the
36 department has notice that the registrant is a sole proprietor or a
37 principal or officer named in the application of another registered
38 entity that has an unsatisfied final judgment against it.

1 (c) The department shall not deny an application or suspend a
2 registration because of an unsatisfied final judgment if the
3 applicant's or registrant's unsatisfied final judgment was the result
4 of the fraud or negligence of another party.

5 (4) For the purposes of this section, "an unsatisfied final
6 judgment" includes a judgment assigned under RCW 19.72.070.

7 **Sec. 3.** RCW 18.27.040 and 1997 c 314 s 5 are each amended to read
8 as follows:

9 (1) Each applicant shall file with the department a surety bond
10 issued by a surety insurer who meets the requirements of chapter 48.28
11 RCW in the sum of (~~six~~) twelve thousand dollars if the applicant is
12 a general contractor and (~~four~~) six thousand dollars if the applicant
13 is a specialty contractor. If no valid bond is already on file with
14 the department at the time the application is filed, a bond must
15 accompany the registration application. The bond shall have the state
16 of Washington named as obligee with good and sufficient surety in a
17 form to be approved by the department. The bond shall be continuous
18 and may be canceled by the surety upon the surety giving written notice
19 to the director of its intent to cancel the bond. A cancellation or
20 revocation of the bond or withdrawal of the surety from the bond
21 suspends the registration issued to the registrant until a new bond or
22 reinstatement notice has been filed and approved as provided in this
23 section. The bond shall be conditioned that the applicant will pay all
24 persons performing labor, including employee benefits, for the
25 contractor, will pay all taxes and contributions due to the state of
26 Washington, and will pay all persons furnishing labor or material or
27 renting or supplying equipment to the contractor and will pay all
28 amounts that may be adjudged against the contractor by reason of breach
29 of contract including negligent or improper work in the conduct of the
30 contracting business. A change in the name of a business or a change
31 in the type of business entity shall not impair a bond for the purposes
32 of this section so long as one of the original applicants for such bond
33 maintains partial ownership in the business covered by the bond.

34 (2) Any contractor registered as of July 1, 1997, who maintains
35 such registration in accordance with this chapter shall be in
36 compliance with this chapter until the next annual renewal of the
37 contractor's certificate of registration. At that time, the contractor
38 shall provide a bond, cash deposit, or other security deposit as

1 required by this chapter and comply with all of the other provisions of
2 this chapter before the department shall renew the contractor's
3 certificate of registration.

4 (3) The total amount paid from a bond or deposit to claimants other
5 than residential homeowners shall not exceed in the aggregate fifty
6 percent of the statutory bond required by this section.

7 (4) Any person, firm, or corporation having a claim against the
8 contractor for any of the items referred to in this section may bring
9 suit upon the bond or deposit in the superior court of the county in
10 which the work was done or of any county in which jurisdiction of the
11 contractor may be had. The surety issuing the bond shall be named as
12 a party to any suit upon the bond. Action upon the bond or deposit
13 shall be commenced by filing the summons and complaint with the clerk
14 of the appropriate superior court within one year from the date of
15 expiration of the certificate of registration in force at the time the
16 claimed labor was performed and benefits accrued, taxes and
17 contributions owing the state of Washington became due, materials and
18 equipment were furnished, or the claimed contract work was completed,
19 substantially completed, or abandoned. Service of process in an action
20 against the contractor, the contractor's bond, or the deposit shall be
21 exclusively by service upon the department. Three copies of the
22 summons and complaint and a fee of ten dollars to cover the handling
23 costs shall be served by registered or certified mail upon the
24 department at the time suit is started and the department shall
25 maintain a record, available for public inspection, of all suits so
26 commenced. Service is not complete until the department receives the
27 ten-dollar fee and three copies of the summons and complaint. The
28 service shall constitute service on the registrant and the surety for
29 suit upon the bond or deposit and the department shall transmit the
30 summons and complaint or a copy thereof to the registrant at the
31 address listed in the registrant's application and to the surety within
32 forty-eight hours after it shall have been received.

33 ~~((+4))~~ (5) The surety upon the bond shall not be liable in an
34 aggregate amount in excess of the amount named in the bond nor for any
35 monetary penalty assessed pursuant to this chapter for an infraction.
36 The liability of the surety shall not cumulate where the bond has been
37 renewed, continued, reinstated, reissued or otherwise extended. The
38 surety upon the bond may, upon notice to the department and the
39 parties, tender to the clerk of the court having jurisdiction of the

1 action an amount equal to the claims thereunder or the amount of the
2 bond less the amount of judgments, if any, previously satisfied
3 therefrom and to the extent of such tender the surety upon the bond
4 shall be exonerated but if the actions commenced and pending at any one
5 time exceed the amount of the bond then unimpaired, claims shall be
6 satisfied from the bond in the following order:

7 (a) Employee labor and claims of laborers, including employee
8 benefits;

9 (b) Claims for breach of contract by a party to the construction
10 contract;

11 (c) Registered subcontractors, material, and equipment;

12 (d) Taxes and contributions due the state of Washington;

13 (e) Any court costs, interest, and attorney's fees plaintiff may be
14 entitled to recover. The surety is not liable for any amount in excess
15 of the penal limit of its bond.

16 A payment made by the surety in good faith exonerates the bond to
17 the extent of any payment made by the surety.

18 ~~((+5))~~ (6) If a final judgment impairs the liability of the surety
19 upon the bond so furnished that there shall not be in effect a bond
20 undertaking in the full amount prescribed in this section, the
21 department shall suspend the registration of the contractor until the
22 bond liability in the required amount unimpaired by unsatisfied
23 judgment claims is furnished. If the bond becomes fully impaired, a
24 new bond must be furnished at the rates prescribed by this section.

25 ~~((+6))~~ (7) In lieu of the surety bond required by this section the
26 contractor may file with the department a deposit consisting of cash or
27 other security acceptable to the department.

28 ~~((+7))~~ (8) Any person having filed and served a summons and
29 complaint as required by this section having an unsatisfied final
30 judgment against the registrant for any items referred to in this
31 section may execute upon the security held by the department by serving
32 a certified copy of the unsatisfied final judgment by registered or
33 certified mail upon the department within one year of the date of entry
34 of such judgment. Upon the receipt of service of such certified copy
35 the department shall pay or order paid from the deposit, through the
36 registry of the superior court which rendered judgment, towards the
37 amount of the unsatisfied judgment. The priority of payment by the
38 department shall be the order of receipt by the department, but the

1 department shall have no liability for payment in excess of the amount
2 of the deposit.

3 ~~((+8))~~ (9) The director may adopt rules necessary for the proper
4 administration of the security.

5 **Sec. 4.** RCW 18.27.050 and 1987 c 303 s 1 are each amended to read
6 as follows:

7 (1) At the time of registration and subsequent reregistration, the
8 applicant shall furnish insurance or financial responsibility in the
9 form of an assigned account in the amount of ~~((twenty))~~ fifty thousand
10 dollars for injury or damages to property, and ~~((fifty))~~ one hundred
11 thousand dollars for injury or damage including death to any one
12 person, and ~~((one))~~ two hundred thousand dollars for injury or damage
13 including death to more than one person ~~((or financial responsibility~~
14 ~~to satisfy these amounts))~~.

15 (2) Failure to maintain insurance or financial responsibility
16 relative to the contractor's activities shall be cause to suspend or
17 deny the contractor his or her or their registration.

18 (3)(a) Proof of financial responsibility authorized in this section
19 may be given by providing, in the amount required by subsection (1) of
20 this section, an assigned account acceptable to the department. The
21 assigned account shall be held by the department to satisfy any
22 execution on a judgment issued against the contractor for damage to
23 property or injury or death to any person occurring in the contractor's
24 contracting operations, according to the provisions of the assigned
25 account agreement. The department shall have no liability for payment
26 in excess of the amount of the assigned account.

27 (b) The assigned account filed with the director as proof of
28 financial responsibility shall be canceled at the expiration of three
29 years after:

30 (i) The contractor's registration has expired or been revoked; or

31 (ii) The contractor has furnished proof of insurance as required by
32 subsection (1) of this section;

33 if, in either case, no legal action has been instituted against the
34 contractor or on the account at the expiration of the three-year
35 period.

36 (c) If a contractor chooses to file an assigned account as
37 authorized in this section, the contractor shall, on any contracting
38 project, notify each person with whom the contractor enters into a

1 contract or to whom the contractor submits a bid that the contractor
2 has filed an assigned account in lieu of insurance and that recovery
3 from the account for any claim against the contractor for property
4 damage or personal injury or death occurring in the project requires
5 the claimant to obtain a court judgment.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.27 RCW
7 to read as follows:

8 (1) Any moneys released to or obtained by an owner, developer,
9 prime contractor, subcontractor, or person in charge of a construction
10 project in connection with a work of improvement, shall be regarded and
11 held in trust for the benefit of those persons making the payment and
12 those who provided the labor or furnished materials, equipment, or
13 professional services in connection with the work of improvement giving
14 rise to the receipt of the moneys. Nothing in this section shall be
15 interpreted to create any obligation on the part of a lender that has
16 advanced such moneys to insure that they are properly disbursed. The
17 use of trust moneys for any other purpose than to first pay when due
18 those persons for whom the money is held in trust is a violation of
19 this chapter and chapter 19.86 RCW. The filing of a lien by a person
20 for whom the money is held in trust creates the presumption that the
21 obligations of this section have not been met, and any person holding
22 the money in trust shall then have the burden of showing that their
23 obligations under this section have been met.

24 (2) Nothing contained in this section shall be construed as
25 requiring moneys held in trust by an owner, contractor, or
26 subcontractor under subsection (1) of this section to be placed in a
27 separate account. If an owner, contractor, or subcontractor commingles
28 moneys held in trust under this section with other moneys, the mere
29 commingling of the moneys does not constitute a violation of this
30 chapter.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.27 RCW
32 to read as follows:

33 The prime contractor shall pay amounts due subcontractors and
34 suppliers for a work of improvement, and the subcontractor shall pay
35 amounts due their suppliers and lower tier subcontractors for a work of
36 improvement, no later than thirty days after the due date contractually
37 specified or, if there is no due date specified contractually, thirty

1 days after receipt of draws, progress payments, or final payment for
2 that work of improvement. If there is a written notice of a dispute
3 over all or any portion of the amount due from the prime contractor to
4 a subcontractor, subcontractor to a subcontractor, or contractor to a
5 supplier, then the prime contractor or subcontractor may withhold no
6 more than one hundred fifty percent of the disputed amount. Others not
7 party to a dispute are entitled to full and prompt payment of the
8 amounts due them.

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 18.27 RCW
10 to read as follows:

11 Sections 5 and 6 of this act shall apply only to works of
12 improvement for residential homeowners.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.27 RCW
14 to read as follows:

15 (1) If any contractor, whether registered or not, defaults in any
16 payment, penalty, or fine due to the department, the director or the
17 director's designee may issue a notice of assessment certifying the
18 amount due, which notice shall be served upon the contractor by mailing
19 such notice to the contractor by certified mail to the contractor's
20 last known address or served in the manner prescribed for the service
21 of a summons in a civil action.

22 (2) A notice of assessment becomes final thirty days from the date
23 the notice was served upon the contractor unless a written request for
24 reconsideration is filed with the department or an appeal is filed in
25 superior court in the manner specified in RCW 34.05.510 through
26 34.05.598. The request for reconsideration shall set forth with
27 particularity the reason for the contractor's request. The department,
28 within thirty days after receiving a written request for
29 reconsideration, may modify, or reverse any notice of assessment, or
30 may hold any such notice of assessment in abeyance pending further
31 investigation. If a final decision of any court in favor of the
32 department is not appealed within the time allowed by law, then the
33 amount of the unappealed assessment, or such amount of the assessment
34 as is found due by the final decision of the court, shall be deemed
35 final.

36 (3) The director or the director's designee may file with the clerk
37 of any county within the state a warrant in the amount of the notice of

1 assessment. The clerk of the county wherein the warrant is filed shall
2 immediately designate a superior court cause number for such warrant,
3 and the clerk shall cause to be entered in the judgment docket under
4 the superior court cause number assigned to the warrant, the name of
5 such contractor mentioned in the warrant, the amount of payment,
6 penalty, or fine due thereon, and the date when such warrant was filed.
7 The aggregate amount of such warrant as docketed shall become a lien
8 upon the title to, and interest in all real and personal property of
9 the contractor against whom the warrant is issued, the same as a
10 judgment in a civil case duly docketed in the office of such clerk.
11 The sheriff shall thereupon proceed upon the same in all respects and
12 with like effect as prescribed by law with respect to execution or
13 other process issued against rights or property upon judgment in the
14 superior court. Such warrant so docketed shall be sufficient to
15 support the issuance of writs of garnishment in favor of the state in
16 a manner provided by law in case of judgment, wholly or partially
17 unsatisfied. The clerk of the court shall be entitled to a filing fee
18 of five dollars, which shall be added to the amount of the warrant. A
19 copy of such warrant shall be mailed to the contractor within three
20 days of filing with the clerk.

21 (4) The director or the director's designee is hereby authorized to
22 issue to any person, firm, corporation, municipal corporation,
23 political subdivision of the state, a public corporation, or any agency
24 of the state, a notice and order to withhold and deliver property of
25 any kind whatsoever when he or she has reason to believe that there is
26 in the possession of such person, firm, corporation, municipal
27 corporation, political subdivision of the state, public corporation, or
28 any agency of the state, property which is or shall become due, owing,
29 or belonging to any contractor upon whom a notice of assessment has
30 been served by the department for payments, penalties, or fines due to
31 the department. The effect of a notice and order to withhold and
32 deliver shall be continuous from the date such notice and order to
33 withhold and deliver is first made until the liability out of which
34 such notice and order to withhold and deliver arose is satisfied or
35 becomes unenforceable because of lapse of time. The department shall
36 release the notice and order to withhold and deliver when the liability
37 out of which the notice and order to withhold and deliver arose is
38 satisfied or becomes unenforceable by reason of lapse of time and shall
39 notify the person against whom the notice and order to withhold and

1 deliver was made that such notice and order to withhold and deliver has
2 been released.

3 The notice and order to withhold and deliver shall be served by the
4 sheriff of the county or by the sheriff's deputy, by certified mail,
5 return receipt requested, or by any duly authorized representatives of
6 the director. Any person, firm, corporation, municipal corporation,
7 political subdivision of the state, public corporation, or any agency
8 of the state upon whom service has been made is hereby required to
9 answer the notice within twenty days exclusive of the day of service,
10 under oath and in writing, and shall make true answers to the matters
11 inquired of in the notice and order to withhold and deliver. In the
12 event there is in the possession of the party named and served with a
13 notice and order to withhold and deliver, any property which may be
14 subject to the claim of the department, such property shall be
15 delivered forthwith to the director or the director's duly authorized
16 representative upon service of the notice to withhold and deliver which
17 will be held in trust by the director for application on the
18 contractor's indebtedness to the department, or for return without
19 interest, in accordance with a final determination of a petition for
20 review, or in the alternative such party shall furnish a good and
21 sufficient surety bond satisfactory to the director conditioned upon
22 final determination of liability. Should any party served and named in
23 the notice to withhold and deliver fail to make answer to such notice
24 and order to withhold and deliver, within the time prescribed herein,
25 it shall be lawful for the court, after the time to answer such order
26 has expired, to render judgment by default against the party named in
27 the notice to withhold and deliver for the full amount claimed by the
28 director in the notice to withhold and deliver together with costs. In
29 the event that a notice to withhold and deliver is served upon a
30 contractor and the property found to be subject thereto is wages, then
31 the contractor shall be entitled to assert in the answer to all
32 exemptions provided for by chapter 6.27 RCW to which the wage earner
33 may be entitled.

34 (5) In addition to the procedure for collection of any payment,
35 penalty, or fine due to the department as set forth in this section,
36 the department may recover civil penalties imposed under this chapter
37 in a civil action in the name of the department brought in the superior
38 court of the county where the violation is alleged to have occurred.

1 **Sec. 9.** RCW 18.27.100 and 1997 c 314 s 9 are each amended to read
2 as follows:

3 (1) Except as provided in RCW 18.27.065 for partnerships and joint
4 ventures, no person who has registered under one name as provided in
5 this chapter shall engage in the business, or act in the capacity, of
6 a contractor under any other name unless such name also is registered
7 under this chapter.

8 (2) All advertising and all contracts, correspondence, cards,
9 signs, posters, papers, and documents which show a contractor's name or
10 address shall show the contractor's name or address as registered under
11 this chapter.

12 (3)(a) All advertising that shows the contractor's name or address
13 shall show the contractor's current registration number. The
14 registration number may be omitted in an alphabetized listing of
15 registered contractors stating only the name, address, and telephone
16 number: PROVIDED, That signs on motor vehicles subject to RCW
17 46.16.010 and on-premise signs shall not constitute advertising as
18 provided in this section. All materials used to directly solicit
19 business from retail customers who are not businesses shall show the
20 contractor's current registration number. A contractor shall not use
21 a false or expired registration number in purchasing or offering to
22 purchase an advertisement for which a contractor registration number is
23 required. Advertising by airwave transmission shall not be subject to
24 this subsection (3)(a).

25 (b) The director may issue a subpoena to any person or entity
26 selling any advertising subject to this section for the name, address,
27 and telephone number provided to the seller of the advertising by the
28 purchaser of the advertising. The subpoena must have enclosed a
29 stamped, self-addressed envelope and blank form to be filled out by the
30 seller of the advertising. If the seller of the advertising has the
31 information on file, the seller shall, within a reasonable time, return
32 the completed form to the department. The subpoena must be issued
33 before forty-eight hours after the expiration of the issue or
34 publication containing the advertising or after the broadcast of the
35 advertising. The good-faith compliance by a seller of advertising with
36 a written request of the department for information concerning the
37 purchaser of advertising shall constitute a complete defense to any
38 civil or criminal action brought against the seller of advertising

1 arising from such compliance. Advertising by airwave or electronic
2 transmission is subject to this subsection (3)(b).

3 ~~(4) ((No contractor shall advertise that he or she is bonded and
4 insured because of the bond required to be filed and sufficiency of
5 insurance as provided in this chapter.~~

6 ~~(5))~~ A contractor shall not falsify a registration number and use
7 it, or use an expired registration number, in connection with any
8 solicitation or identification as a contractor. All individual
9 contractors and all partners, associates, agents, salesmen, solicitors,
10 officers, and employees of contractors shall use their true names and
11 addresses at all times while engaged in the business or capacity of a
12 contractor or activities related thereto.

13 ~~((+6))~~ (5) Any advertising by a person, firm, or corporation
14 soliciting work as a contractor when that person, firm, or corporation
15 is not registered pursuant to this chapter is a violation of this
16 chapter.

17 ~~((+7))~~ (6)(a) The finding of a violation of this section by the
18 director at a hearing held in accordance with the Administrative
19 Procedure Act, chapter 34.05 RCW, shall subject the person committing
20 the violation to a penalty of not more than ~~((five))~~ ten thousand
21 dollars as determined by the director.

22 (b) Penalties under this section shall not apply to a violation
23 determined to be an inadvertent error.

24 **Sec. 10.** RCW 18.27.110 and 1997 c 314 s 11 are each amended to
25 read as follows:

26 (1) No city, town or county shall issue a construction building
27 permit for work which is to be done by any contractor required to be
28 registered under this chapter without verification that such contractor
29 is currently registered as required by law. When such verification is
30 made, nothing contained in this section is intended to be, nor shall be
31 construed to create, or form the basis for any liability under this
32 chapter on the part of any city, town or county, or its officers,
33 employees or agents. However, failure to verify the contractor
34 registration number results in liability to the city, town, or county
35 to a penalty to be imposed according to RCW 18.27.100~~((+7))~~ (6)(a).

36 (2) At the time of issuing the building permit, all cities, towns,
37 or counties are responsible for:

1 (a) Printing the contractor registration number on the building
2 permit; and

3 (b) Providing a written notice to the building permit applicant
4 informing them of contractor registration laws and the potential risk
5 and monetary liability to the homeowner for using an unregistered
6 contractor.

7 (3) If a building permit is obtained by an applicant or contractor
8 who falsifies information to obtain an exemption provided under RCW
9 18.27.090, the building permit shall be forfeited.

10 **Sec. 11.** RCW 18.27.114 and 1997 c 314 s 12 are each amended to
11 read as follows:

12 (1) Any contractor agreeing to perform any contracting project:

13 (a) For the repair, alteration, or construction of four or fewer
14 residential units or accessory structures on such residential property
15 when the bid or contract price totals one thousand dollars or more; or

16 (b) for the repair, alteration, or construction of a commercial
17 building when the bid or contract price totals one thousand dollars or
18 more but less than sixty thousand dollars, must provide the customer
19 with the following disclosure statement in substantially the following
20 form using lower case and upper case twelve-point and bold type where
21 appropriate, prior to starting work on the project:

22 "NOTICE TO CUSTOMER

23 (~~This contractor is registered with the state of Washington,~~
24 ~~registration no., as a general/specialty contractor and~~
25 ~~has posted with the state a bond or cash deposit of~~
26 ~~\$6,000/\$4,000 for the purpose of satisfying claims against the~~
27 ~~contractor for negligent or improper work or breach of contract~~
28 ~~in the conduct of the contractor's business. The expiration~~
29 ~~date of this contractor's registration is This~~
30 ~~bond or cash deposit may not be sufficient to cover a claim~~
31 ~~which might arise from the work done under your contract. If~~
32 ~~any supplier of materials used in your construction project or~~
33 ~~any employee of the contractor or subcontractor is not paid by~~
34 ~~the contractor or subcontractor on your job, your property may~~
35 ~~be liened to force payment. If you wish additional protection,~~
36 ~~you may request the contractor to provide you with original~~
37 ~~"lien release" documents from each supplier or subcontractor on~~

1 ~~your project. The contractor is required to provide you with~~
2 ~~further information about lien release documents if you request~~
3 ~~it. General information is also available from the department~~
4 ~~of labor and industries."))~~

5 This contractor is registered with the state of Washington,
6 registration no. . . . , and has posted with the state a bond or
7 cash deposit of for the purpose of satisfying claims
8 against the contractor for breach of contract including
9 negligent or improper work in the conduct of the contractor's
10 business. The expiration date of this contractor's
11 registration is

12 **THIS BOND OR CASH DEPOSIT MAY NOT BE SUFFICIENT TO COVER A**
13 **CLAIM WHICH MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

14 This bond or deposit is not for your exclusive use because it
15 covers all work performed by this contractor. The bond or
16 deposit is intended to pay valid claims up to that
17 you and other customers, suppliers, subcontractors, or taxing
18 authorities may have.

19 **FOR GREATER PROTECTION YOU MAY REQUEST YOUR CONTRACTOR TO**
20 **PROVIDE YOU WITH A PERFORMANCE BOND FOR YOUR JOB.**

21 Your contractor may obtain a performance bond for an additional
22 fee. A performance bond would give you greater protection in
23 the event your contractor fails to perform as agreed.

24 **YOUR PROPERTY MAY BE LIENED.**

25 If any supplier of materials used in your construction project
26 or any employee or subcontractor of your contractor or
27 subcontractors is not paid, your property may be liened to
28 force payment and you could pay twice for the same work.

29 **FOR ADDITIONAL PROTECTION, YOU SHOULD MAKE CHECKS PAYABLE**
30 **JOINTLY TO THE CONTRACTOR AND SUPPLIERS OR SUBCONTRACTORS AND**
31 **REQUIRE THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN**
32 **RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR**
33 **PROJECT.**

34 The contractor is required to provide you with further
35 information about lien release documents if you request it.

1 General information is also available from the department of
2 labor and industries by phoning (360) 902-5578."

3 (2) A contractor subject to this section shall notify any consumer
4 to whom notice is required under subsection (1) of this section if the
5 contractor's registration has expired or is revoked or suspended by the
6 department prior to completion or other termination of the contract
7 with the consumer.

8 (3) No contractor subject to this section may bring or maintain any
9 lien claim under chapter 60.04 RCW based on any contract to which this
10 section applies without alleging and proving that the contractor has
11 provided the customer with a copy of the disclosure statement as
12 required in subsection (1) of this section.

13 (4) This section does not apply to contracts authorized under
14 chapter 39.04 RCW or to contractors contracting with other contractors.

15 (5) Failure to comply with this section shall constitute an
16 infraction under the provisions of this chapter.

17 (6) The department shall produce model disclosure statements, and
18 public service announcements detailing the information needed to assist
19 contractors and contractors' customers to comply under this section.
20 As necessary, the department shall periodically update these education
21 materials.

22 **Sec. 12.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to
23 read as follows:

24 (1) Except as otherwise provided in subsection (3) of this section,
25 a contractor found to have committed an infraction under RCW 18.27.200
26 shall be assessed a monetary penalty of not less than two hundred
27 dollars and not more than five thousand dollars.

28 (2) The director may waive collection in favor of payment of
29 restitution to a consumer complainant.

30 (3) A contractor found to have committed an infraction under RCW
31 18.27.200 for failure to register shall be assessed a fine of not less
32 than one thousand dollars, nor more than ~~((five))~~ ten thousand dollars.
33 The director may reduce the penalty for failure to register, but in no
34 case below five hundred dollars, if the person becomes registered
35 within ten days of receiving a notice of infraction and the notice of
36 infraction is for a first offense.

37 (4) ~~((Monetary penalties collected under this chapter shall be~~
38 ~~deposited in the general fund.))~~ Revenue generated through fines and

1 penalties for infractions of this chapter shall be retained by the
2 department for the purposes of administering and enforcing this
3 chapter.

4 NEW SECTION. Sec. 13. A new section is added to chapter 18.27 RCW
5 to read as follows:

6 There is created in the department of labor and industries the
7 professional contractors' board.

8 (1) The board shall consist of:

9 (a) Five contractors who have been actively engaged in the
10 contracting business for a minimum of five years, two of whom are
11 contractors primarily engaged in commercial construction, two of whom
12 are contractors primarily engaged in residential construction, and one
13 of whom is a specialty contractor. At least three of the contractor
14 members shall be general contractors and at least one of the contractor
15 members shall be a specialty contractor;

16 (b) One member of a labor organization representing the building
17 trades;

18 (c) One local building official; and

19 (d) Four public members who are knowledgeable of and represent
20 consumer's interests in construction issues but do not meet any of the
21 qualifications of (a) through (c) of this subsection.

22 (2) All board members shall be appointed by the governor except the
23 four public members, one of whom shall be appointed by the speaker of
24 the house of representatives, one of whom shall be appointed by the
25 minority leader of the house of representatives, one of whom shall be
26 appointed by the majority leader of the senate, and one of whom shall
27 be appointed by the minority leader of the senate. The term of office
28 for each board member shall be for four years. The governor may remove
29 any member of the board for misconduct, incompetency, or neglect of
30 duty. Vacancies shall be filled by appointment by the appropriate
31 person under this subsection for the balance of the unexpired term.

32 (3) The board shall meet at least quarterly. The officers of the
33 board shall be selected by the board at the first board meeting of each
34 fiscal year. The chair of the board shall be selected by the board
35 from among the public members. The board shall adopt bylaws consistent
36 with this section and chapter 34.05 RCW. Six members constitute a
37 quorum at a board meeting. Due notice of the time and place of each
38 meeting must be given each member.

1 (4) Each member of the board shall receive compensation in
2 accordance with RCW 43.03.240 and shall be reimbursed for travel
3 expenses in accordance with RCW 43.03.050 and 43.03.060.

4 (5) The board is vested with all functions and duties relating to
5 the administration of this chapter, except those functions and duties
6 vested in the department or the director. Notwithstanding any other
7 provision of state law, the department shall set registration fees
8 sufficient to meet the obligations of this chapter. A member or
9 committee of the board may administer oaths and may take testimony and
10 proofs concerning all matters within the jurisdiction of the board.

11 (6) The board shall, with the approval of the director, appoint a
12 registrar of contractors and fix the registrar's compensation. The
13 registrar shall be the executive officer and secretary of the board and
14 shall carry out all of the administrative duties as provided in this
15 chapter and as delegated to him or her by the board. Upon the
16 recommendation of the registrar, the board may appoint, with the
17 approval of the director, such other administrative officers or staff
18 as are necessary to carry out the administration of this chapter.

19 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.27 RCW
20 to read as follows:

21 The professional contractors' board shall:

22 (1) Examine the potential benefits to consumers of establishing a
23 licensing process for contractors and make recommendations to the
24 legislature on: (a) Whether there should be a licensing process; (b)
25 whether any licensing process should be optional; (c) whether there
26 should be more than one category of licenses; and (d) if a licensing
27 process is recommended, what the licensing requirements should be;

28 (2) Review practices of the department relating to enforcement of
29 contractor requirements and make recommendations to the director
30 regarding the need for the development of a comprehensive enforcement
31 program and the need for additional inspectors, enforcement staff, and
32 compliance officers;

33 (3) Review practices of the department relating to consumer
34 awareness and contractor education and determine the best methods for:
35 (a) Educating consumers on ways to protect themselves from financial
36 loss when using contractors; and (b) informing contractors of the
37 contractors' obligations under this chapter;

1 (4) Examine current dispute resolution mechanisms available for
2 construction disputes and develop such alternative processes as the
3 board determines will best meet consumers' needs;

4 (5) Manage a consumer complaint process, investigate consumer
5 complaints, and maintain a computerized enforcement tracking system for
6 consumer complaints;

7 (6) Make recommendations to the director on such rules as the board
8 determines are necessary to carry out the intent and purposes of this
9 chapter; and

10 (7) Make a report available to the public by December 1st, of each
11 year. The report must include any findings, recommendations, or action
12 taken by the board. A copy of the report must be sent to the director
13 and to the legislature.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131
15 RCW to read as follows:

16 The professional contractors' board shall be terminated on June 30,
17 2003, as provided in section 16 of this act.

18 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.131
19 RCW to read as follows:

20 The following acts or parts of acts, as now existing or hereafter
21 amended, are each repealed, effective June 30, 2004:

22 (1) RCW 18.27.--- and 1998 c . . . s 13 (section 13 of this act);
23 and

24 (2) RCW 18.27.--- and 1998 c . . . s 14 (section 14 of this act).

25 **Sec. 17.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read
26 as follows:

27 Except as provided in RCW 60.04.031, any person furnishing labor,
28 professional services, materials, or equipment for the improvement of
29 real property shall have a lien upon the improvement for the contract
30 price of labor, professional services, materials, or equipment
31 furnished at the instance of the owner, or the agent or construction
32 agent of the owner. With the exception of lien claims by laborers, the
33 right to claim a lien upon the improvement of residential property may
34 not be exercised if the prime contractor is not registered or licensed
35 as required by law.

1 **Sec. 18.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
2 as follows:

3 (1) Except as otherwise provided in this section, every person
4 furnishing professional services, materials, or equipment for the
5 improvement of real property shall give the owner or reputed owner
6 notice in writing of the right to claim a lien. If the prime
7 contractor is in compliance with the requirements of RCW 19.27.095,
8 60.04.230, and 60.04.261, this notice shall also be given to the prime
9 contractor as described in this subsection unless the potential lien
10 claimant has contracted directly with the prime contractor. The notice
11 may be given at any time but only protects the right to claim a lien
12 for professional services, materials, or equipment supplied after the
13 date which is sixty days before:

14 (a) Mailing the notice by certified or registered mail to the owner
15 or reputed owner; or

16 (b) Delivering or serving the notice personally upon the owner or
17 reputed owner and obtaining evidence of delivery in the form of a
18 receipt or other acknowledgement signed by the owner or reputed owner
19 or an affidavit of service.

20 In the case of new construction of a single-family residence, the
21 notice of a right to claim a lien may be given at any time but only
22 protects the right to claim a lien for professional services,
23 materials, or equipment supplied after a date which is ten days before
24 the notice is given as described in this subsection.

25 (2) Notices of a right to claim a lien shall not be required of:

26 (a) Persons who contract directly with the owner or the owner's
27 common law agent;

28 (b) Laborers whose claim of lien is based solely on performing
29 labor; or

30 (c) Subcontractors who contract for the improvement of real
31 property directly with the prime contractor, except as provided in
32 subsection (3)(b) of this section.

33 (3) Persons who furnish professional services, materials, or
34 equipment in connection with the repair, alteration, or remodel of an
35 existing owner-occupied single-family residence or appurtenant garage
36 or in connection with the new construction of a single-family residence
37 for a residential homeowner:

38 (a) Who contract directly with the (~~owner-occupier~~) owner or
39 (~~their~~) the owner's common law agent shall not be required to send a

1 written notice of the right to claim a lien and shall have a lien for
2 the full amount due under their contract, as provided in RCW 60.04.021;
3 or

4 (b) Who do not contract directly with the (~~owner-occupier~~) owner
5 or (~~their~~) the owner's common law agent shall give notice of the
6 right to claim a lien to the (~~owner-occupier~~) owner. Liens of
7 persons furnishing professional services, materials, or equipment who
8 do not contract directly with the (~~owner-occupier~~) owner or (~~their~~)
9 the owner's common law agent may only be satisfied from amounts not yet
10 paid to the prime contractor by the owner at the time the notice
11 described in this section is received, regardless of whether amounts
12 not yet paid to the prime contractor are due. For the purposes of this
13 subsection "received" means actual receipt of notice by personal
14 service, or registered or certified mail, or three days after mailing
15 by registered or certified mail, excluding Saturdays, Sundays, or legal
16 holidays.

17 (4) The notice of right to claim a lien described in subsection (1)
18 of this section, shall include but not be limited to the following
19 information and shall substantially be in the following form, using
20 lower-case and upper-case ten-point type where appropriate.

21 NOTICE TO OWNER

22 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
23 CAREFULLY.

24 PROTECT YOURSELF FROM PAYING TWICE

25 To: Date:
26 Re: (description of property: Street address or general
27 location.)
28 From:
29 AT THE REQUEST OF: (Name of person ordering the professional
30 services, materials, or equipment)

31 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH
32 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:
33 This notice is sent to you to tell you who is providing professional
34 services, materials, or equipment for the improvement of your property
35 and to advise you of the rights of these persons and your

1 responsibilities. Also take note that laborers on your project may
2 claim a lien without sending you a notice.

3 OWNER/OCCUPIER OF EXISTING
4 RESIDENTIAL PROPERTY AND/OR
5 NEW RESIDENTIAL PROPERTY

6 Under Washington law, those who furnish labor, professional services,
7 materials, or equipment for the repair, remodel, or alteration of your
8 owner-occupied principal residence and who are not paid, have a right
9 to enforce their claim for payment against your property. This claim
10 is known as a construction lien.

11 The law limits the amount that a lien claimant can claim against your
12 property. If the improvement to your property is the construction of
13 a new single-family residence, a lien may be claimed for all
14 professional services, materials, or equipment furnished after ten days
15 before this notice was given to you or mailed to you. Claims may only
16 be made against that portion of the contract price you have not yet
17 paid to your prime contractor as of the time this notice was given to
18 you or three days after this notice was mailed to you. Review the back
19 of this notice for more information and ways to avoid lien claims.

20 COMMERCIAL ((~~AND/OR NEW~~
21 ~~RESIDENTIAL~~)) PROPERTY

22 We have or will be providing professional services, materials, or
23 equipment for the improvement of your commercial ((~~or new residential~~))
24 project. In the event you or your contractor fail to pay us, we may
25 file a lien against your property. A lien may be claimed for all
26 professional services, materials, or equipment furnished after a date
27 that is sixty days before this notice was given to you or mailed to
28 you(~~(, unless the improvement to your property is the construction of~~
29 ~~a new single-family residence, then ten days before this notice was~~
30 ~~given to you or mailed to you))~~).

31 Sender:
32 Address:
33 Telephone:

34 Brief description of professional services, materials, or equipment
35 provided or to be provided:

1 shall contain the professional service provider's name, address,
2 telephone number, legal description of the property, the owner or
3 reputed owner's name, and the general nature of the professional
4 services provided. If such notice is not recorded, the lien claimed
5 shall be subordinate to the interest of any subsequent mortgagee and
6 invalid as to the interest of any subsequent purchaser if the mortgagee
7 or purchaser acts in good faith and for a valuable consideration
8 acquires an interest in the property prior to the commencement of an
9 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of
10 the professional services being provided. The notice described in this
11 subsection shall be substantially in the following form:

12 NOTICE OF FURNISHING
13 PROFESSIONAL SERVICES

14 That on the ___(day)___ day of ___(month and year)___, ___(name of
15 provider)___ began providing professional services upon or for the
16 improvement of real property legally described as follows:

17 [Legal Description
18 is mandatory]

19 The general nature of the professional services provided is . . .
20
21 The owner or reputed owner of the real property is
22

23
24 (Signature)

25
26 (Name of Claimant)

27
28 (Street Address)

29
30 (City, State, Zip Code)

31
32 (Phone Number)

33 (6) A lien authorized by this chapter: (a) Shall not be enforced
34 against property after a new purchaser has acquired it; and (b) shall

1 not be enforced unless the lien claimant has complied with the
2 applicable provisions of this section.

3 (7) For the purposes of this section "commercial property" includes
4 residential property that is not owned by a residential homeowner.

5 **Sec. 19.** RCW 60.04.041 and 1992 c 126 s 4 are each amended to read
6 as follows:

7 A contractor or subcontractor required to be registered under
8 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise
9 required to be registered or licensed by law, shall be deemed the
10 construction agent of the owner for the purposes of establishing the
11 lien created by this chapter only if so registered or licensed.
12 Persons dealing with contractors or subcontractors may rely, for the
13 purposes of this section, upon a certificate of registration issued
14 pursuant to chapter 18.27 RCW or license issued pursuant to chapter
15 19.28 RCW, or other certificate or license issued pursuant to law,
16 covering the period when the labor, professional services, material, or
17 equipment shall be furnished, and the lien rights shall not be lost by
18 suspension or revocation of registration or license without their
19 knowledge. Except as provided in RCW 60.04.021, no lien rights
20 described in this chapter shall be lost or denied by virtue of the
21 absence, suspension, or revocation of such registration or license with
22 respect to any contractor or subcontractor not in immediate contractual
23 privity with the lien claimant."

24 **SSB 6638** - S AMD - 764
25 By Senators Horn and Heavey

26
27 On page 1, line 1 of the title, after "contractors;" strike the
28 remainder of the title and insert "amending RCW 18.27.010, 18.27.030,
29 18.27.040, 18.27.050, 18.27.100, 18.27.110, 18.27.114, 18.27.340,
30 60.04.021, 60.04.031, and 60.04.041; adding new sections to chapter
31 18.27 RCW; adding new sections to chapter 43.131 RCW; and prescribing
32 penalties."

--- END ---