

SB 5066 - S AMD 13

By Senator Holmquist Newbry

NOT CONSIDERED 05/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 18.27.250 and 2007 c 436 s 14 are each amended to
4 read as follows:

5 A violation designated as an infraction under this chapter shall be
6 heard and determined by an administrative law judge of the office of
7 administrative hearings. If a party desires to contest the notice of
8 infraction, the party shall file a notice of appeal with the department
9 specifying the grounds of the appeal within (~~twenty~~) thirty days of
10 service of the infraction in a manner provided by this chapter. The
11 appeal must be accompanied by a certified check for two hundred
12 dollars, which shall be returned to the assessed party if the decision
13 of the department is not sustained following the final decision in the
14 appeal. If the final decision sustains the decision of the department,
15 the department must apply the two hundred dollars to the payment of the
16 expenses of the appeal, including costs charged by the office of
17 administrative hearings. The administrative law judge shall conduct
18 hearings in these cases at locations in the county where the infraction
19 occurred.

20 **Sec. 2.** RCW 18.27.270 and 2007 c 436 s 15 are each amended to read
21 as follows:

22 (1) A contractor who is issued a notice of infraction shall respond
23 within (~~twenty~~) thirty days of the date of issuance of the notice of
24 infraction.

25 (2) If the contractor named in the notice of infraction does not
26 elect to contest the notice of infraction, then the contractor shall
27 pay to the department, by check or money order, the amount of the
28 penalty prescribed for the infraction. When a response which does not

1 contest the notice of infraction is received by the department with the
2 appropriate penalty, the department shall make the appropriate entry in
3 its records.

4 (3) If the contractor named in the notice of infraction elects to
5 contest the notice of infraction, the contractor shall respond by
6 filing an appeal to the department in the manner specified in RCW
7 18.27.250.

8 (4) If any contractor issued a notice of infraction fails to
9 respond within the prescribed response period, the contractor shall be
10 guilty of a misdemeanor and prosecuted in the county where the
11 infraction occurred.

12 (5) After final determination by an administrative law judge that
13 an infraction has been committed, a contractor who fails to pay a
14 monetary penalty within thirty days, that is not waived pursuant to RCW
15 18.27.340(2), and who fails to file an appeal pursuant to RCW
16 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the
17 county where the infraction occurred.

18 (6) A contractor who fails to pay a monetary penalty within thirty
19 days after exhausting appellate remedies pursuant to RCW 18.27.310(4),
20 shall be guilty of a misdemeanor and be prosecuted in the county where
21 the infraction occurred.

22 (7) If a contractor who is issued a notice of infraction is a
23 contractor who has failed to register as a contractor under this
24 chapter, the contractor is subject to a monetary penalty per infraction
25 as provided in the schedule of penalties established by the department,
26 and each day the person works without becoming registered is a separate
27 infraction.

28 **Sec. 3.** RCW 18.27.370 and 2001 c 159 s 6 are each amended to read
29 as follows:

30 ~~(1) ((If an unregistered contractor defaults in a payment, penalty,~~
31 ~~or fine due to the department, the director or the director's designee~~
32 ~~may issue a notice of assessment certifying the amount due. The notice~~
33 ~~must be served upon the unregistered contractor by mailing the notice~~
34 ~~to the unregistered contractor by certified mail to the unregistered~~
35 ~~contractor's last known address or served in the manner prescribed for~~
36 ~~the service of a summons in a civil action.)) A notice of infraction~~

1 issued under this chapter constitutes a notice of assessment for
2 purposes of this section.

3 (2) A notice of (~~(assessment)~~) infraction becomes final thirty days
4 from the date (~~(the notice was)~~) it is served upon the (~~(unregistered)~~)
5 contractor unless (~~(a written request for reconsideration is filed with~~
6 ~~the department or an appeal is filed in a court of competent~~
7 ~~jurisdiction in the manner specified in RCW 34.05.510 through~~
8 ~~34.05.598. The request for reconsideration must set forth with~~
9 ~~particularity the reason for the unregistered contractor's request.~~
10 ~~The department, within thirty days after receiving a written request~~
11 ~~for reconsideration, may modify or reverse a notice of assessment, or~~
12 ~~may hold a notice of assessment in abeyance pending further~~
13 ~~investigation. If a final decision of a court in favor of the~~
14 ~~department is not appealed within the time allowed by law, then the~~
15 ~~amount of the unappealed assessment, or such amount of the assessment~~
16 ~~as is found due by the final decision of the court, is final)) a timely
17 appeal of the infraction is received as provided in RCW 18.27.270.~~

18 (3) When a notice of infraction becomes final, the director or the
19 director's designee may file with the clerk of any county within the
20 state, a warrant in the amount of the notice of (~~(assessment)~~)
21 infraction, plus interest, penalties, and a filing fee of twenty
22 dollars. The clerk of the county in which the warrant is filed shall
23 immediately designate a superior court cause number for the warrant,
24 and the clerk shall cause to be entered in the judgment docket under
25 the superior court cause number assigned to the warrant, the name of
26 the (~~(unregistered)~~) contractor mentioned in the warrant, the amount of
27 payment, penalty, fine due on it, or filing fee, and the date when the
28 warrant was filed. The aggregate amount of the warrant as docketed
29 shall become a lien upon the title to, and interest in, all real and
30 personal property of the (~~(unregistered)~~) contractor against whom the
31 warrant is issued, the same as a judgment in a civil case docketed in
32 the office of the clerk. The sheriff shall proceed upon the warrant in
33 all respects and with like effect as prescribed by law with respect to
34 execution or other process issued against rights or property upon
35 judgment in a court of competent jurisdiction. The warrant so docketed
36 is sufficient to support the issuance of writs of garnishment in favor
37 of the state in a manner provided by law in case of judgment, wholly or
38 partially unsatisfied. The clerk of the court is entitled to a filing

1 fee which will be added to the amount of the warrant. A copy of the
2 warrant shall be mailed to the ((unregistered)) contractor within three
3 days of filing with the clerk.

4 (4) The director or the director's designee may issue to any
5 person, firm, corporation, other entity, municipal corporation,
6 political subdivision of the state, a public corporation, or any agency
7 of the state, a notice and order to withhold and deliver property of
8 any kind whatsoever when he or she has reason to believe that there is
9 in the possession of the person, firm, corporation, other entity,
10 municipal corporation, political subdivision of the state, public
11 corporation, or agency of the state, property that is or will become
12 due, owing, or belonging to ((an unregistered)) a contractor upon whom
13 a notice of ((assessment)) infraction has been served by the department
14 for payments, penalties, or fines due to the department. The effect of
15 a notice and order is continuous from the date the notice and order is
16 first made until the liability out of which the notice and order arose
17 is satisfied or becomes unenforceable because of lapse of time. The
18 department shall release the notice and order when the liability out of
19 which the notice and order arose is satisfied or becomes unenforceable
20 by reason of lapse of time and shall notify the person against whom the
21 notice and order was made that the notice and order has been released.

22 The notice and order to withhold and deliver must be served by the
23 sheriff of the county or by the sheriff's deputy, by certified mail,
24 return receipt requested, or by an authorized representative of the
25 director. A person, firm, corporation, other entity, municipal
26 corporation, political subdivision of the state, public corporation, or
27 agency of the state upon whom service has been made shall answer the
28 notice within twenty days exclusive of the day of service, under oath
29 and in writing, and shall make true answers to the matters inquired of
30 in the notice and order. Upon service of the notice and order, if the
31 party served possesses any property that may be subject to the claim of
32 the department, the party shall promptly deliver the property to the
33 director or the director's authorized representative. The director
34 shall hold the property in trust for application on the
35 ((unregistered)) contractor's indebtedness to the department, or for
36 return without interest, in accordance with a final determination of a
37 petition for review. In the alternative, the party shall furnish a
38 good and sufficient surety bond satisfactory to the director

1 conditioned upon final determination of liability. If a party served
2 and named in the notice fails to answer the notice within the time
3 prescribed in this section, the court may render judgment by default
4 against the party for the full amount claimed by the director in the
5 notice, together with costs. If a notice and order to withhold and
6 deliver wages is served upon (~~(an unregistered)~~) a contractor (~~(and the~~
7 ~~property subject to it is wages)~~), individual, or business upon whom a
8 notice of infraction has been served, the (~~(unregistered)~~) contractor,
9 individual, or business may assert in the answer all exemptions
10 provided for by chapter 6.27 RCW to which the wage earner is entitled.

11 (5) In addition to the procedure for collection of a payment,
12 penalty, or fine due to the department as set forth in this section,
13 the department may recover civil penalties imposed under this chapter
14 in a civil action in the name of the department brought in a court of
15 competent jurisdiction of the county where the violation is alleged to
16 have occurred."

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17 On page 1, line 1 of the title, after "appeals;" strike the
18 remainder of the title and insert "and amending RCW 18.27.250,
19 18.27.270, and 18.27.370."

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