



Washington State Department of  
Labor & Industries

# **Senate Bill 5795 Work Group**

## **Increasing Contractor Bonding Requirements**

*Discussion Report to the Legislature*

*December 2021*

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# Introduction

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The legislature unanimously approved, and the governor signed, the Department of Labor & Industries' (L&I) agency request legislation [Senate Bill 5795](#) in 2019 (*Chapter 155, Laws of 2019*). This bill & its companion, House Bill (HB) 1752, were the result of significant stakeholder work before and during the 2019 legislative session.

The primary purpose of the bill was to authorize the director of L&I to increase a contractor's required surety bond or security deposit to as much as three times the base amount, if the contractor had one final judgment against it in a legal proceeding involving a single-family residential dwelling during the prior five years. Previously, the law allowed the director to take such action only once a contractor had three final judgments against it, involving at least two different residential structures, during the preceding five years.

General contractors are required to obtain a surety bond or make a security deposit of \$12,000. Specialty contractors, such as; plumbers, roofers, or drywallers, must obtain a bond or make a security deposit of \$6,000. For simplicity, this report shall refer to surety bonds and security deposits collectively as "bond" or "bonds."

Since these bonds are not reserved exclusively to compensate aggrieved homeowners, Senate Bill (SB) 5795 also directed the department to form a work group to explore additional options for improving consumer protections in residential construction.

## Statutory Direction

This legislation specified that the work group must address whether:

- Bond amounts are sufficient and appropriate to protect consumers, workers, suppliers, and meet tax obligations.
- Additional criteria for contractors would provide a greater level of protection.
- Strategies to discourage the transfer of a business to a different entity for the purpose of evading penalties or judgments under this chapter should be implemented.
- Any other registration requirements or options for consumer recovery under this chapter should be changed to increase protections for consumers.
- Incentives to adopt industry best practices would increase consumer protections.

In addition, the work group was briefed on several of the department's existing consumer education activities, leading the group to consider an additional question: "Are existing consumer education efforts sufficient, or are there enhancements or changes that could increase consumer protections?"

## Work Group Participants

SB 5795 required the department to convene a work group composed of:

- Department staff;
- Large and small contractors that primarily contract with residential homeowners, those that build new and rehabilitate residences, and other interested contractors;
- Surety bond companies; realtors or their representatives;
- Workers and/or their representatives;
- Representatives from the consumer protection division of the office of the attorney general;
- Consumers and/or advocates representing them; and
- Local building officials.

In total, 40 work group members were selected. Organizations such as the Department of Labor and Industries, Attorney General's Office, Building Industry Association of Washington, and Washington Association of Building Officials had multiple representatives serve as work group members.

The department wishes to thank State Rep. Tina Orwall for her contributions to this important work to better protect consumers and workers in Washington State.

## Work Group Discussions

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Over the course of 15 meetings, the work group was briefed on topics related to the five statutorily required report components. In a few instances, subcommittees were formed to delve deeper into issues that appeared to have widespread support among work group members. Their goal was reaching agreement on specific recommendations that could be implemented either under the department's existing authority, or that could form the basis for future legislation.

While the report was approved by the majority of the work group members, one organization did not feel the report represented all points of view. The organization did submit a minority report, attached.

**Question 1:** Are contractor bond amounts sufficient and appropriate to protect customers, workers, and suppliers, and meet tax obligations?

**Background**

As stated above, general contractors are required to maintain a surety bond or security deposit of \$12,000. The bond or deposit requirement for specialty contractors, such as plumbers, roofers, or drywallers, is \$6,000. Notably, the current bond amounts have not changed since 2001.

Homeowners may file a claim against a general or specialty contractor’s bond for up to two years from the date work was substantially completed or abandoned.

In addition, other parties are also able to pursue claims against these bonds to satisfy debts owed. In order of priority, these include claims for:

- Worker pay and benefit contributions;
- Breach of contract by parties to the construction contract;
- Subcontractors and material and equipment suppliers;
- State taxes; and
- Court costs, attorney fees, and interest.

These other parties must file claims within one year of the debt being incurred or the project being substantially completed or abandoned, whichever occurs first. However, these parties typically have greater experience, and often dedicated staff, which homeowners’ lack, allowing them to secure a timely claim on the bond. This may leave only a portion of the bond available for homeowners filing claims for the same project a year or more later than other interested parties.

Existing law does give some preference to homeowner recovery by limiting the amount of the bond other parties may encumber. The amount reserved for homeowner claims is one-half (\$6,000) of a general contractor’s bond. Payments from a specialty contractor’s bond sought by claimants other than homeowners are capped at the greater of either one-half the bond or \$4,000.

**Data for Fiscal Years 2017 through 2020**

For clarification, a claim is the amount the claimant is requesting in the suit. This number tends to be significantly lower than the judgment amount, on average, because some claimants do not specify a dollar amount in the claim. A judgment is what the claimant is awarded by the court. These awards tend to be significantly higher than the claim amount, because they are not limited to actual damages, but tend to include attorney fees and other costs.

<b>Homeowner claims against a general or specialty contractor bond</b>				
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Total Claims	423	515	597	604
Claims w/ specified dollar amount	206	263	320	297
Total amount requested	\$5,442,321.82	\$7,038,296.56	\$9,596,185.13	\$6,949,137.23
Average amount requested	\$26,419.04	\$26,761.58	\$29,998.08	\$23,397.77
No dollar amount specified	217	252	277	307
Resulting in judgement	49	83	99	91
Total judgement	\$1,007,275.32	\$1,895,661.80	\$3,663,030.17	\$2,507,603.47
Average judgement	\$20,556.64	\$22,839.30	\$37,000.30	\$27,556.08
Settled out of court	149	169	182	187

Claims resulting in a judgment are not a clear depiction of the annual count. Many claims carry over into subsequent years, making it difficult to allocate specific judgments to specific years.

The department received a total of 3,718 summons and complaints (lawsuits) in the two years spanning 2018 and 2019. The department is unable to provide a total count of final judgments, since claimants often fail to provide the department with a copy of the final judgment.

In fiscal years 2018 and 2019, an average of roughly 75% of the above claims were against registered contractors who had just one summons and complaint on file with the department during the previous five years. Some 20% of these contractors had two summons and complaints in the previous five years. Only 5% of contractors had three summons and complaints on file.

The department's summons and complaint data might be viewed as a benchmark for evaluating the success of future efforts intended to reduce claims filed by homeowners for construction defects, or by other interested parties for failure of a contractor to pay debts owed on a project.

It should also be noted the work group briefly discussed the potential for claims to be made against a contractor's general liability insurance policy, which is required for state registration, as well as the ability of homeowners to demand contractors obtain project-specific performance bonds. In both cases, the work group sensed consumers are largely unaware of these options, and that these are complicated processes. Performance bonds would also add costs to a project.

## Discussion Findings

In a presentation on underwriting practices and bond costs, it was estimated that doubling general contractor bonds to \$24,000 and specialty contractor bonds to \$12,000 would result in a cost increase to contractors of \$120 to \$240 each time they renew their bond. The current average annual cost for a \$12,000 bond is \$120 a year.

In addition to increasing funds available to satisfy claims against a bond, it was also suggested that doubling the bond requirement might encourage bonding companies (sureties) to adopt more stringent underwriting requirements, placing greater scrutiny on contractors.

Work group members, particularly those representing homebuilders and small businesses, warned that increasing bond requirements could result in a number of unintended consequences, such as:

- Higher costs would almost certainly be passed along to homeowners.
- Creditworthiness would likely be one of the first factors considered by sureties when deciding whether to bond an applicant. This would likely disadvantage or disqualify lower-income, immigrant, and first-time business-owner applicants.
- Higher costs and more stringent underwriting requirements would likely create a higher barrier to entry into the residential construction market, especially for applicants from historically disadvantaged communities. This may reduce the number of new firms and jobs created, as well as forcing some existing businesses to exit the residential housing market.
- Contractors unable to qualify for or afford these higher bonds may seek work in the underground economy, creating unfair competition with bonded contractors, reducing tax and premium revenues, and potentially exposing consumers to greater risk of harm from fraud, shoddy or incomplete workmanship, or other defects.
- Other groups that are in favor of raising the bond amounts are consumers, material and equipment suppliers, laborers, the Bankruptcy and Collections Unit of the Attorney General's Office, and bond companies. They noted that:
  - Current bond amounts are woefully insufficient to cover the average consumer judgment of \$28,180.00. An increased bond amount would provide greater protection to consumers who are victims of fraud, breach of contract, and defective construction work. Cost of construction has increased dramatically over the last 20 years. Current bond amounts are insufficient to cover costs to remediate defective construction.
  - A higher bond amount is necessary to cover claims by material suppliers, subcontractors, laborer claims, and tax claims, which often consume available bond proceeds before a consumer asserts their claim, leaving the consumer without financial protection.

- An increased bond amount may result in bond companies tightening their underwriting standards, which will weed out the incompetent and financially irresponsible contractors.
- Other states have higher bond amounts:
  - Oregon – \$20,000 for residential contractor’s bond;
  - Alaska – \$25,000 for contractor’s bond;
  - Utah – \$25,000 for residential contractor’s bond.
- The additional cost for increasing the bond amount may be transferred to the customer; however, the cost is minimal and would reduce the amount of money that a recovery fund would pay out to individuals, if established. Increasing bonds would transfer risk of loss resulting from “bad” contractors to bond companies instead of consumers or Washington taxpayers.
- Creditworthiness is a major factor in running any business. Not many people are rejected on the basis of credit; they are subject to higher rates depending on a number of factors. As these people increase their credit score, their rate will be reduced accordingly.
- Research shows an annual bond amount of \$24,000 would equate to a bond premium of \$240 for someone with good credit; for someone with less than perfect credit, it could double to approximately \$480.
- The risk is low that higher bond amounts will drive contractors to work unlicensed. If a \$120 annual increase in bond premiums is going to push someone underground, they are already unlicensed and working underground. We are in favor of raising the penalties and citations for companies caught performing work without the proper registrations and certifications to encourage contractors to become registered and bonded.
- Even with an increased bond amount of \$24,000, there is insufficient financial recourse to satisfy the average consumer judgment, for example, for FY 2017-2020 it was \$28,180. Keeping current bond amounts intact leaves harmed consumers without adequate financial recourse.

## **Recommendation**

The answer to the question of whether the bond is sufficient is, no. However, the work group was unable to reach a consensus on any changes to the current contractor bond requirements. Therefore, it is an open policy decision for the Legislature to consider.

## **Question 2: Would additional criteria for contractors provide greater protection?**

### **Background**

Considerable time was spent weighing the differences between registering and licensing contractors.

Washington state has a registration process which requires a contractor to obtain a Unified Business Identification number from the Department of Revenue, secure a bond for \$12,000 (general contractor) or \$6,000 (specialty contractor), and purchase general liability insurance coverage of at least \$250,000. Once those items have been obtained, a contractor may apply to the Department of Labor and Industries for a contractor registration number.

States with licensing systems often require some combination of certain training, years of relevant experience, and an examination to demonstrate proficiency in construction practices, business or contract law, building codes, applicable state regulations, or similar knowledge.

There was little or no discussion of background checks, which are performed by most southwestern states.

### **Discussion Findings**

While building official representatives strongly favored moving to a licensing system, construction industry and small business representatives opposed it. A presentation by officials from the Arizona Registrar of Contractors, which has analyzed decades of registration and complaint data, showed no correlation between contractor experience and the number of claims filed. The correlation between examinations and complaints was not statistically significant.

### **Recommendation**

The work group did not agree on changing from a contractor registration to a licensing structure. Therefore, it is an open policy decision for the Legislature to consider.

**Question 3:** Are there strategies that could be implemented to discourage the transfer of a business to a different individual or entity for the purpose of evading penalties or judgments against a contractor?

## Background

Under existing law, contractors with an unsatisfied judgment against them are not eligible to renew their state contractor registration. However, there is no legal barrier to a contractor with an unsatisfied judgment against them serving in a key management position or being otherwise employed by the same or another construction firm.

The department is aware of situations where a contractor in default has reconstituted a business by listing a spouse, parent, child, other relative, or even an employee as the “new” business owner in order to escape paying a judgment.

## Discussion Findings

State law does not specifically address successorship in its contractor registration statutes. This limits the department’s ability to attach an unsatisfied judgment to a new or reorganized firm claiming different ownership, even where the previous owner(s) remain in key management positions or effectively control its operations.

While not universal for all of the work group’s small-business representatives, the majority suggested the department review its existing statutory authority, as well as its data-sharing and other agreements with fellow agencies that investigate underground economy complaints, to:

1. Determine what tools currently exist to identify joint or otherwise related ownership interests of existing firms when a summons and complaint is filed, and
2. Propose statutory changes to authorize the department to pursue collection of unsatisfied judgments in those instances where a contractor has transferred a business to evade lawful penalties or judgments.

The department is not averse to this request, but does not believe its existing statutory authority provides the ability to take such action. Legislation would be needed to provide specific authority. Below is a way to address successorship.

**DRAFT CONCEPT – CONTRACTOR REGISTRATION SUCCESSORSHIP**  
**RCW 18.27.030**

**Application for registration—Grounds for denial and suspension.**

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

(a) Employer social security number.

(b) Unified business identifier number.

(c) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

(d) Employment security department number.

(e) Unified business identifier (UBI) account number may be substituted for the information required by (c) and (d) of this subsection if the applicant will not employ employees in Washington.

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

(g) The name and address of each partner if the applicant is a firm or partnership, or the name and address of the owner if the applicant is an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant is a corporation or the name and address of all members of other business entities. The information contained in such application is a matter of public record and open to public inspection.

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

(3)(a) The department shall deny an application for registration if: (i) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on work performed subject to this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; (ii) the applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; (iii) the applicant is a successor to a business entity with an outstanding citation and notice of assessment or penalty as described under (5) of this section; (iv) the applicant does not have a valid unified business identifier number; (v) the department determines that the applicant has falsified information on the application, unless the error was inadvertent; (vi) the applicant does not have an active and valid certificate of registration with the department of revenue or (vii) the applicant or the owner, principal or officers are under 18 years old at the time of application.

(b) The department shall suspend an active registration if (i) the department has determined that the registrant has an unsatisfied final judgment against it for work within the scope of this chapter; (ii) the department has determined that the registrant is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter; (iii) the registrant does not maintain a valid unified business identifier number; (iv) the department has determined that the registrant falsified information on the application, unless the error was inadvertent; or (v) the registrant does not have an active and valid certificate of registration with the department of revenue.

(c) The department may suspend an active registration if the department has determined that an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

(5) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has: (a) Actual knowledge of the fact and amount of the outstanding citation and notice of assessment or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding citation and notice of assessment from the department. If the citation and notice of assessment or penalty is not paid in full by the employer within ten days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the citation and notice of assessment or penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the employer.

[ 2008 c 120 § 1; 2007 c 436 § 3; 2001 c 159 § 2; 1998 c 279 § 3; 1997 c 314 § 4; 1996 c 147 § 1; 1992 c 217 § 1; 1988 c 285 § 1. Prior: 1987 c 362 § 2; 1987 c 111 § 9; 1973 1st ex.s. c 153 § 3; 1963 c 77 § 3.]

#### NOTES:

**Conflict with federal requirements—2008 c 120:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [ 2008 c 120 § 15.]

**Severability—2008 c 120:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 2008 c 120 § 16.].

**Finding—Intent—1998 c 279:** See note following RCW 51.12.120.

**Conflict with federal requirements—Severability—Effective date—1987 c 111:** See notes following RCW 50.12.220.

#### Recommendation

The work group agrees with updating statutory language as needed to discourage the transfer of a business for the purpose of evading penalties or judgments.

## **Question 4:** Would additional contractor registration requirements or other options for consumer recovery increase protections for consumers?

### **Background**

While evaluating contractor registration, licensing, and other requirements employed by different states, work group members expressed interest in further researching contractor recovery funds.

A subcommittee was formed to develop recommendations for the work group's consideration.

### **Discussion Findings**

Nine states currently administer accounts established to provide some financial relief to homeowners suffering certain losses on residential construction projects. In general, covered losses include those involving fraud, gross negligence, unlawful acts or omissions, misconduct, abandonment, and incompetence. These funds do not reimburse homeowners for attorney fees, court costs, personal injury, or emotional distress. Recovery is generally limited to claims against participating contractors, not unregistered or unlicensed firms. Funding sources tend to fall into two categories: assessments on contractors and additional building permit fees. Almost all of these states require a final legal judgment be issued by a court in order for a homeowner to file a claim with the fund. Each state limits the amount a homeowner may be awarded. Contractors are typically required to repay the fund for awards made on judgments against them (some states also charge interest). Contractor licenses or registrations are often suspended or revoked until the fund is repaid.

### **Recommendation**

The work group recommends the legislature consider establishing a homeowner recovery fund. Prior bill drafts may be available for consideration.

## **Question 5: Would incentives to adopt industry best practices increase consumer protections?**

### **Background**

Work group members from the construction industry presented information about voluntary continuing education and certification programs on a variety of residential construction topics available to all interested contractors in the state.

The work group also reviewed the department's "Verify a Contractor" online service. That website does include a heading for "Certifications & Endorsements." Currently, that information is limited to certification from the state's Office of Minority and Women's Business Enterprises and participation as a state-approved "Apprentice Training Agent." There is no mention of or link to any other training, certification, or professional credentialing a contractor may have earned.

There was significant support for providing consumers more information about contractors' training, education, and certification by reputable organizations. Similarly, there seemed to be a shared sense that not only would it be helpful for consumers to evaluate this type of information when selecting a contractor, but contractors themselves may be motivated to pursue additional training, education, and certification to gain an advantage over their competitors.

### **Discussion Findings**

The work group met with industry educators and stakeholders to discuss voluntary programs currently available to contractors. Many options to incentivize contractors to pursue higher levels of training or education that could enhance their level of knowledge and skill were discussed. The work group believes increased contractor participation in voluntary education programs could enhance consumer protection by creating a more competitive business environment and a higher industry standard.

A subcommittee was created to further discuss this topic and provide guidance on suggested parameters. The subcommittee believes that publishing contractors' approved, voluntary education and training achievements on the department's [Verify a Contractor](#) website could better inform consumers, helping them make better decisions. Providing this additional opportunity to publicize contractors who have distinguished themselves from their competitors through specified certifications or endorsements may also help drive industry standards to a higher level. Each registered contractor's profile could also include their years of experience, and any relevant legal judgments. Since some legal actions are related to minor disagreements between the contractor and the client, it was suggested that a link to pending or adjudicated judgments be included so the public could decide for themselves the severity and scope of these judgments.

The Building Industry Association of Washington and its affiliates offer several different continuing education and certification programs for residential homebuilding and remodeling contractors. These are open to all contractors, regardless of membership in the organization.

Other groups also offer training and certification programs relevant to the homebuilding and remodeling industry, as do some educational institutions. The department has been reluctant to provide information about outside training and certification programs such as these for fear of appearing to endorse or approve curriculum or entities sponsoring the programs, particularly those it does not register or regulate. Understanding this concern, work group members suggested the department explore whether any limitations apply to linking to trusted third parties that administer these types of programs.

The subcommittee is in favor of creating a balanced stakeholder group or council made up of volunteers from relevant constituencies. This council would work very similarly to an apprenticeship council. They would establish guidelines for curriculum and training as “preferred providers.” Certification from these preferred providers that contractors completed additional education or training programs could be included on L&I’s [Verify a Contractor](#) website.

Methods to confirm a contractor completed the specified training would need to be established. Durations for training endorsements, years of experience, and judgments to remain on the contractor’s profile would also need to be determined by the council. This could provide consumers with additional information to help make an informed decision about hiring a contractor. Although the programs would be completely voluntary for all contractors, consumers would likely have greater confidence they are hiring the right contractor. This incentive-based program should enhance consumer protections and encourage higher industry standards.

While increasing consumer access to reliable information about additional education, training, and certification a contractor may have completed is a goal shared by many work group members, others object to the department or a council setting or approving curricula established by reputable, independent trade groups, businesses or business organizations, or educational institutions, especially given the strong likelihood that the department and a hand-picked council has insufficient expertise to do so.

## **Recommendation**

The work group recommends the department and stakeholders develop criteria to identify reputable organizations that provide relevant, quality instructional opportunities, including training and certification, to all interested contractors. The department could then link from its [Verify a Contractor](#) website to those approved organizations, or their online listing of contractors completing the relevant training. The department should not create or pre-approve curricula or the training activities of private entities, but should have the ability to review coursework and certification processes, if necessary, to ensure relevance to homebuilding and remodeling activities. The objective of this review should be to confirm the training and certification is more than simply a payment in exchange for a certificate or online listing.

## **Question 6:** Are existing consumer education efforts sufficient, or are there enhancements or changes that could increase consumer protections?

### **Background**

Department staff briefed the work group on current and potential future consumer education efforts. Work group members raised questions about the relevance, efficacy, metrics and monitoring, accessibility, and quality of these efforts.

The department's existing consumer education activities include a number of initiatives, such as:

- Home shows and virtual events.
- The [Protect My Home](#) paid advertising campaign and website, and consumer messages in department news releases and social media posts, etc.
- Working with reporters on high-profile news stories about contractor scams and how homeowners can protect themselves.
- The [Verify a Contractor](#) website and video for consumers,
- Online contractor overview training,

In addition, the department is looking into other options, including:

- Adjusting education activities to accommodate home show cancellations
- A "Hiring Smart" video, eLearning, and webinar program.

### **Discussion Findings**

Concerns were raised that the "Verify a Contractor" search function may return results for contractor registrations that have been terminated or revoked, along with listings for active registrations of firms with the same or similar names and owners. The information provided in "Verify a Contractor" is not visually appealing or easy to understand at a glance. Formatting changes have been suggested.

The site's "Workplace Safety & Health" section has two view options, list or grid. When viewed on a mobile device, the list feature may show a general regulatory description of a violation, but that description may not correctly identify the reason a citation was issued. The list view does not show the fine amount or whether the violation was corrected. Some stakeholders believe the list view ought to be removed altogether.

Recent enhancements to the department's website have not addressed the deficiencies in the "Verify a Contractor" portal.

Questions were raised about the message and efficacy of the "Protect My Home" campaign. Some members expressed concerns that it is misleading for the department to infer that simply checking whether a contractor is registered would somehow prevent shoddy workmanship.

While these consumer education efforts are commendable, the absence of any established metrics to determine whether these initiatives have an effect on reducing homeowner complaints filed with the department is confusing.

The department's communications and IT staff reviewed work group suggestions about specific improvements to the "Verify a Contractor" portal or changes to the "Protect My Home" campaign.

## **Recommendation**

The work group would like to see the department develop metrics beyond page view statistics to determine whether its consumer education initiatives have any impact on reducing homeowner complaints for residential construction projects.

The department, in collaboration with interested stakeholders, should redesign the "Verify a Contractor" portal and mobile device app to make it easy for consumers to visually evaluate contractor registration, workers' compensation, safety and health violations, summonses and complaints, judgments, and additional training or certification status, based on available public records the department already maintains and includes on this webpage. The list view for safety and health violations should be reviewed, and removed if found to be unhelpful.

The department, in collaboration with interested stakeholders, should review and modify the "Protect My Home" video and collateral materials to better inform consumers, without misleading them to believe that simply confirming a contractor is registered guarantees quality workmanship.

## Item 7: Enhanced Penalties

There was some discussion that the department should explore additional penalties against contractors found to have taken advantage of seniors or other vulnerable homeowners. It is unclear whether the work group favored a regulatory approach that would remove the director's discretion and require the director to increase bond requirements to three times the base for these contractors.

Such an approach may fall within the existing statutory authority granted the director in SB 5795, but may require rulemaking to waive the director's discretion.

Since this was not a topic the work group was statutorily required to consider, no recommendation will be offered here.

### **Continuing the Partnership**

SB 5795 calls for the work group to be disbanded once its report has been submitted to the legislature.

Several work group members have expressed an interest in continuing to assist the department in a volunteer, advisory capacity if the recommendations in this report are adopted. Many of these recommendations require or would greatly benefit from ongoing stakeholder involvement.

Work group members appreciate the department's willingness to continue these important discussions as recommendations are implemented, and to engage stakeholders in further conversations about how to better educate and protect consumers about residential construction projects and issues.

# Conclusion

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*The work group makes the following recommendations based on its statutory directives and related questions posed to it:*

**Question 1:** Are contractor bond amounts sufficient and appropriate to protect customers, workers, and suppliers, and meet tax obligations?

The work group agrees that the bond is not sufficient or appropriate to protect customers, workers, and suppliers, and meet tax obligations. However, the work group was unable to reach a consensus on any changes to the current contractor bond requirements. Therefore, it is an open policy decision for the legislature to consider.

**Question 2:** Would additional criteria for contractors provide greater protection?

The work group did not agree on any changes to the current contractor registration system.

**Question 3:** Are there strategies that could be implemented to discourage the transfer of a business to a different individual or entity for the purpose of evading penalties or judgments against a contractor?

The work group agrees with updating statutory language as needed to discourage the transfer of a business for the purpose of evading penalties or judgments.

**Question 4:** Would additional contractor registration requirements or other options for consumer recovery increase protections for consumers?

The work group recommends the legislature consider establishing a homeowner recovery fund.

**Question 5:** Would incentives to adopt industry best practices increase consumer protections?

The work group recommends the department and stakeholders develop criteria to identify reputable organizations that provide relevant, quality instructional opportunities, including training and certification, to all interested contractors for listing on the “Verify a Contractor” web portal.

**Question 6:** Are existing consumer education efforts sufficient, or are there changes that could increase consumer protections?

The work group recommends the department:

1. Adopt metrics to determine whether its consumer education initiatives reduce homeowner complaints.
2. Redesign the “[Verify a Contractor](#)” portal to make it relevant and user friendly.
3. Update the “[Protect My Home](#)” video and collateral materials to avoid misleading consumers about the effectiveness of using the “Verify a Contractor” portal.

# Minority Report

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*Prepared by Jim King, Independent Business Association*

It is with great regret that Independent Business association must withhold its support for the report proposed by the department for the 5795 work group, and instead submit a minority report. A great opportunity for actions to effectively protect consumers, needed for decades, is being lost by the rush to finalize an inadequate report and send it to the Legislature, rather than complete the work of developing proposals that would be effective in protecting consumers.

The greatest failure is that of not placing an idea Independent Business Association embraced early, the recovery fund, on a sound fiscal foundation. The second real failure is to not propose effective tools to target the contractors behind the fraudulent contractor registrations- the very contractors who have for decades escaped accountability while setting up fronts for continuing to defraud. Beyond those two great failures are this misinformation included, and accurate information omitted from the report at the behest of certain interests more invested in their pet agendas than in finding effective ways to protect the consumer.

## **The Recovery Fund**

The recovery fund concept was enthusiastically embraced by Independent Business Association, with one major caveat- it could not be funded by taxes or assessments upon the general class of registered contractors. The “good actors” should not have to pay for the “bad actors” misdeeds. Being aware of the fines and penalties paid by contractors violating the law, and paid into the general fund, Independent Business Association suggested this as a source of funding.

Unfortunately, a different member of the work group proposed a total \$2 million dollar recovery fund from this source, funded at \$500,000 a year for four years- a number pulled out of the air with no analysis indicating this was an adequate level of funding. Despite protests from Independent Business Association that this was clearly insufficient, the \$2 million figure became the foundation of funding for the recovery fund proposal.

The department was requested to provide fiscal analysis by the group on October 22, 2020. No analysis has ever been presented. The department was repeatedly asked to provide what data was available regarding the number of judgments annually to help forecast the actual need. Some information was finally provided the evening of January 27th, 2021- the night before what turned into the final meeting of the work group.

What follows, then, is an attempt to provide some fiscal analysis from what information has been made available. The \$2 million is now proposed to come over three years rather than four, so that represents about \$667,000 per year the first three years. A \$3 increase in the contractor registration fee represents about \$100,000 per year in perpetuity. A 20% increase in unregistered contractor fines and penalties represents an unknown amount per year in perpetuity (and will be represented by “X” in the following equations). Based on the department’s history of a 30% success rate in collections, the repayment assumption will be 30% of the previous year’s payments from the recovery fund (even though some repayments may extend into subsequent years). It is also assumed the 20% limit on funds paid out will be met each year.

The yearly equation will thus be carry forward funds, plus new revenue, plus repayments, of which 20% will be available for payments.

#### Year One

No carry forward, plus \$667,000 + \$100,000 + X, plus no repayment equals \$767,000 + X, 20% of which is \$153,400 + 1/5 X available for claims.

#### Year Two

\$613,600 + 4/5 X, plus \$667,000 + \$100,000 + X, plus \$46,200 + 3/50 X equals \$1,426,800 + 1 43/50 X, 20% of which is \$285,360 + 18.6/50 X available for claims.

#### Year Three

\$1,141,440 + 1 24.4/50 X, plus \$667,000 + \$100,000 + X, plus \$85,608 + 5.58/50 X equals \$1,994,098 + 2 3/5 X [rounded] of which \$398,810 [rounded] + 1/2 X [rounded] is available for claims.

#### Year Four

\$1,595,288 + 2 1/10 X, plus \$100,000 + X, plus \$119,643 + .15X equals \$1,894,131 + 3.25 of which \$362,986 + .65X is available for claims.

Year Five

$\$1,531,145 + 2.6X$ , plus  $\$100,000 + X$ , plus  $\$108,896 + .2X$  equals  $\$1,740,041 + 3.8X$  of which  $\$348,008 + .76X$  is available for claims.

Year Six

$\$1,392,033 + 3.04X$ , plus  $\$100,000 + X$ , plus  $\$104,402 + .23X$  equals  $\$1,596,435 + 4.27X$  of which  $\$319,287 + .85X$  is available for claims.

If X (the higher unregistered contractor fines and penalties) generate \$300,000 per year- a generous estimate- that would translate into amounts being available for claims being:

Year One	\$213,400
Year Two	\$396,960
Year Three	\$548,810
Year Four	\$557,986
Year Five	\$576,008
Year Six	\$574,287

The lowest need in the past four years was 2017, with 49 judgments, averaging \$20,556.64 and totaling just over \$1 million dollars. The next three years saw 83, 99, and 91 judgments and totaling \$1.875 million, \$3.663 million, and \$2.507 million.

The trend line is clear. The recovery fund is never adequately funded, over a span of not too many years the original \$2 million investment is dissipated, and the \$3 contractor registration fee and increased penalties for unregistered contractors are inadequate to provide adequate resources. Claims will pile up- the first year's claims could easily commit the first several years of available resources, with year two claimants having to wait until year five or later. This proposal can become a cruel hoax on the consumer.

## **Recommendation:**

Independent Business Association recommends that the 20% cap on total claimant amounts be removed, and that sufficient amounts of the fines and penalties now going to the general fund be permanently dedicated to the recovery fund so as to ensure that consumers can receive payment in the year of their claim.

## **Successorship and Fraudulent Contractor Registrations**

For decades there has been a problem with unscrupulous contractors who defraud consumers and the state, get caught, shut down their business and start up another one to avoid having to pay. The state's toolbox has always focused on the "fronts" these unscrupulous contractors use, instead of going after those who procure the fronts.

Independent Business Association thought for a brief time this fall that the work group might come to grips with this problem, finally, but folks didn't really want to do so. The same as happens whenever the Legislature takes up the issues- plenty of objections, but no alternative ideas.

After no real consideration of this issue for over a year by the work group, Independent Business association threw out some ideas:

1. One idea is to make a "fraudulent" contractor registration- one that lists a "front" for the contractor on the registration to hide the identity of the real contractor- illegal and a violation of the state Consumer Protection Act. Discovery of a fraudulent contractor registration would void the contractor registration retroactively, and subject the contractor to penalties for having been doing construction work as an unregistered contractor. The violator would be the actual contractor, not the front, and a consumer having relied upon a fraudulent contractor registration would be entitled to all the protections a consumer is due for hiring a registered contractor.
2. A possible addition to this idea would be a requirement for a short course- possibly as little as two to four hours- on registered contractor legal obligations such as any new law on fraudulent contractor registrations and the recovery fund (including the obligation to repay the fund. The course could be offered by L&I and/or third parties who agree to include required topics. One purpose of such a course is to try and identify "fronts". A second- and the idea behind the bill proposed in 2013-14- is to nullify the "I didn't know defense" against violations of legal obligations of contractors.

3. In lieu of a class that brings the proposed registered contractor into personal contact, there could be a requirement that applications for contractor registration be in person to provide an opportunity to scrutinize the applicant.

As expected, many objections, no other ideas. Then an example of the problem appeared: Suspended contractor's wife starts her own contracting business and gets suspended, too. That created a little buzz among the work group, but it died down and no solutions emerged.

The department remained focused, and there was some discussion, on enhancing the toolbox to further crack-down on the "fronts", but nothing aimed at the contractors behind and procuring the fraudulent contractor registrations. The proposal in the draft report sent out the evening of January 27, 2021 (the night before the final meeting), to amend RCW 18.27.030, was still focused on the "fronts"- the successors- and does nothing to enable the department to go after the real culprit.

## Recommendation:

Independent Business Association recommends that an approach similar to

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is necessary. In addition, a method for pursuing these contractors hidden assets should be pursued..

## Other Issues

1. **Bond amounts-** information presented to the work group early in its work indicated that simply doubling bond limits would not impact bond companies' lack of underwriting, and such doubling would provide little additional protection for consumers. The primary beneficiaries of doubling bond limits, even if the increase is dedicated to consumers' judgments, would be bond companies, and attorneys. That is why the recovery fund

concept was pursued and limited to a consumer's actual damages, not attorney's fees and costs.

2. **Licensing vs. Registration**- the narrative fails to note that the Arizona study that debunked the idea that licensing, as opposed to registration, would better protect the consumer was based on 25 years of data. No data from any source was ever presented to support the debunked theory.
3. **Premature Report**- a new draft report with significant new information (some inconsistent with previously provided information) and significant changes in the narrative was provided to the work group the night before what became the final meeting of the work group on January 28, 2021- a meeting many members of the work group were unable to attend because of conflicting obligations with the Legislature. Many members had also been unable to attend the next-to-last meeting on January 12th due to legislative commitments. The rush to present the report to the Legislature appears to be about getting it off a desk rather than getting it right.