

HOUSE BILL REPORT

SHB 1554

As Passed House:

March 5, 2009

Title: An act relating to authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.

Brief Description: Authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Chase, Dickerson, Green, Goodman, Rolfes, Morrell, Cody, Simpson, Campbell, Ormsby, Van De Wege, Appleton, Flannigan, Seaquist, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Priest, Sullivan, Eddy, White, Hasegawa and Wood).

Brief History:

Committee Activity:

Commerce & Labor: 1/28/09, 1/30/09, 2/4/09, 2/18/09 [DPS].

Floor Activity

Passed House: 3/5/09, 96-0.

Brief Summary of Substitute Bill

- Authorizes the Director of the Department of Labor and Industries to issue a stop-work order against a contractor or electrician employer if the employer has failed to secure industrial insurance.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Joan Elgee (786-7106)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Employers in the state must secure payment of industrial insurance by either insuring with the state fund or qualifying as a self-insurer. An employer who fails to secure industrial insurance is liable for a penalty of \$500 or a sum double the amount of premiums incurred prior to securing payment, whichever is greater. Criminal penalties may also apply.

General and specialty contractors must register with the Department of Labor and Industries (Department) and a contractor who fails to register is subject to an order issued by the Director of the Department to restrain further construction work at the job site by the contractor. General and specialty electrical contractors must obtain a license from the Department.

At least six states provide for stop-work orders.

Summary of Substitute Bill:

If the Director of the Department of Labor and Industries (Director) determines after an investigation that a general or specialty contractor or a general or specialty electrical contractor has failed to secure payment of industrial insurance, the Director may issue a stop-work order against the employer.

A stop-work order may be served on a worksite by posting a copy in a conspicuous location, in which case the order is effective as to the employer's operations on that worksite. A stop-work order may be served on the employer, in which case the order is effective as to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service. An employer who violates a stop-work order is subject to a \$1,000 penalty for each day not in compliance.

A stop-work order remains in effect until the Director: (1) releases the order upon finding that the employer has come into compliance and paid any premiums, penalties, and interest owing under industrial insurance; or (2) issues an order of conditional release. The Director may issue a conditional release order if the employer has complied with the coverage requirements and has agreed to pay premiums, penalties, and interest through a payment schedule. If the terms of the payment schedule are not met, the stop-work order may be reinstated.

An employer against whom a stop-work order has been issued may request reconsideration from the Department of Labor and Industries (Department) or appeal to the Board of Industrial Insurance Appeals (Board) within 10 days of receiving the stop-work order. A reconsideration must be concluded within 10 days of the request. The stop-work order remains in effect during the period of reconsideration or appeal unless the employer posts a cash deposit or bond of \$5,000 or \$1,000 per covered worker, whichever is greater. Procedures for Board appeals and judicial review are referenced.

Stop-work orders and penalties are effective against any successor corporation or business entity that has one or more of the same principals or officers as the employer under the stop-work order and which is engaged in the same or equivalent trade or activity.

The Department may adopt rules to carry out the provisions.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on 2/19/09.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Stop-work orders are another tool in the tool chest and a way to combat the underground economy. They are in use on the East Coast. New York issued 1,000 stop-work orders between March and October of 2008. A subgroup of the Underground Economy in the Construction Industry Task Force (Task Force) worked on this. The major concerns were about contractors who might slip through and the impact to the job site. The bill has safeguards against inadvertent issuance of an order. This bill will have a sentinel effect and shows a positive fiscal note.

(Opposed) The Task Force report did not support stop-work orders. The idea is good but the line is not bright enough, and shutting down a business is too great a penalty. There is no recourse if a contractor is exonerated. Use the contractor registration model. The Department of Labor and Industries (L&I) should be able to shut down businesses if they don't have workers' compensation, but not classifying workers properly is not enough. Employers could be shut down for a paperwork violation. There is a lack of due process in the bill. The bill needs work. Roofers are concerned about the L&I shutting down their work site.

(Information only) Two pieces are missing: a requirement that reconsiderations happen in 10 days and a way to post a bond or cash deposit so a contractor could continue working. The triggers are when a contractor is unregistered or meets the knowing misrepresentation standard. Knowing misrepresentation is a high standard because the L&I has to prove the contractor knew that he or she was wrong.

Persons Testifying: (In support) Representative Conway, prime sponsor; Dave Johnson, Washington State Building and Construction Trades Council; and Randy Loomans, International Union of Operating Engineers Local 302.

(Opposed) Rick Slunaker, Associated General Contractors of Washington; Gary Smith, Independent Business Association; Amy Brackenbury, Building Industry Association of Washington; and James Curry, Associated Builders and Contractors.

(Information only) Carl Hammersburg, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.