
HOUSE BILL 1145

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Veloria, G. Cole, Heavey, King, Franklin, Orr, Scott, Jones, Basich, Quall, Karahalios, J. Kohl and Ludwig

Read first time 01/18/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to construction contracts; adding a new section to
2 chapter 39.04 RCW; adding a new section to chapter 35.22 RCW; adding a
3 new section to chapter 35.23 RCW; adding a new section to chapter 36.32
4 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that contractors on
7 public works projects may misclassify employees as independent
8 contractors and therefore fail to pay the costs of insuring employees
9 for industrial insurance or unemployment compensation, and may fail to
10 pay prevailing wages. The legislature further finds that the failure
11 to pay these costs results in loss of tax revenues to the state, loss
12 of mandated benefits to workers, and a competitive disadvantage and
13 loss of profits for contractors, subcontractors, and material
14 suppliers. Therefore, it is in the interest of the state, its
15 citizens, workers, and businesses, to provide additional enforcement of
16 the laws requiring payment of these costs by creating private remedies
17 for persons harmed by contractors who fail to comply with these laws.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
2 to read as follows:

3 (1) A bidder on a public work contract shall include in its bid the
4 costs for its employees' industrial insurance coverage required under
5 Title 51 RCW, unemployment compensation contributions required under
6 Title 50 RCW, and workers' compensation coverage and unemployment
7 compensation contributions required under federal law. The employment
8 status of a worker for the purposes of this subsection shall be
9 determined in the same manner as employment status is determined under
10 the applicable industrial insurance or unemployment compensation law.

11 (2)(a) If the successful bidder on a construction contract has
12 violated the requirement to pay for workers' compensation or
13 unemployment compensation coverage, as evidenced by a final order of
14 the appropriate state or federal agency, the successful bidder shall be
15 liable as provided in this section to the second lowest bidder on the
16 contract and to an entity contracting with the second lowest bidder.

17 (b) The second lowest bidder, or entity contracting with the second
18 lowest bidder, or worker who would have been paid prevailing wages, who
19 suffers damage as a proximate result of a competitive bid for a public
20 work project not being accepted because the successful bidder failed to
21 pay for required workers' compensation, unemployment compensation
22 coverage, or prevailing wages may bring an action for damages against
23 the successful bidder in any court of competent jurisdiction. There is
24 a rebuttable presumption that the bid was awarded to the successful
25 bidder who violated its requirement to pay for workers' compensation or
26 unemployment insurance coverage because the successful bidder was able
27 to lower its bid by not paying for the required coverage.

28 (c) In an action brought under this section, the court may award
29 costs and reasonable attorneys' fees to the prevailing party.

30 (3) A second lowest bidder who, within one year prior to filing the
31 bid for a public work, has violated its requirement to pay for workers'
32 compensation or unemployment insurance coverage, as evidenced by a
33 final order of the appropriate state or federal agency, and who has
34 failed to take affirmative steps to correct any violations, is
35 prohibited from bringing an action under this section.

36 (4) For the purposes of this section:

37 (a) "Entity contracting with the second lowest bidder" includes any
38 person, firm, association, trust, partnership, labor organization,
39 corporation, or other legal entity that has, before the letting of bids

1 on the construction contract at issue, entered into a contract with the
2 second lowest bidder.

3 (b) "Second lowest bidder" includes any person, firm, association,
4 corporation, or other legal entity who is the second lowest qualified
5 bidder deemed responsive by the entity or agency awarding the public
6 works contract.

7 (c) "Successful bidder" includes any person, firm, association,
8 corporation, or other legal entity awarded a construction contract
9 after competitive bidding.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.22 RCW
11 to read as follows:

12 A bidder on a public work, as defined in RCW 39.04.010, for a city
13 of the first class shall include in its bid the costs for its
14 employees' industrial insurance coverage required under Title 51 RCW,
15 unemployment compensation contributions required under Title 50 RCW,
16 and workers' compensation coverage and unemployment compensation
17 contributions required under federal law, and is subject to section 2
18 of this act.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.23 RCW
20 to read as follows:

21 A bidder on a public work, as defined in RCW 39.04.010, for a city
22 of the second or third class or a town shall include in its bid the
23 costs for its employees' industrial insurance coverage required under
24 Title 51 RCW, unemployment compensation contributions required under
25 Title 50 RCW, and workers' compensation coverage and unemployment
26 compensation contributions required under federal law, and is subject
27 to section 2 of this act.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.32 RCW
29 to read as follows:

30 A bidder on a public work, as defined in RCW 39.04.010, for a
31 county shall include in its bid the costs for its employees' industrial
32 insurance coverage required under Title 51 RCW, unemployment
33 compensation contributions required under Title 50 RCW, and workers'
34 compensation coverage and unemployment compensation contributions
35 required under federal law, and is subject to section 2 of this act.

1 NEW SECTION. **Sec. 6.** This act applies only to construction
2 contracts for public works projects in which the call for competitive
3 bids was made on or after the effective date of this act.

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