

HOUSE BILL ANALYSIS

HB 1980

Brief Description: Changing provisions related to employment in the construction industry.

Sponsors: Representatives Lisk, McMorris, Dyer and Honeyford

Hearing: February 26, 1997

BACKGROUND:

Immunity from industrial insurance liability at construction sites

Generally, an injured worker covered by industrial insurance is compensated for his or her injuries under the industrial insurance law and is not permitted to bring a civil action against the employer for that injury. However, a worker may file a damage suit against a "third party," if the third party is not the injured worker's co-worker. Workers who are working on the same job site, but who are employed by different employers are not considered to be co-workers.

Third-party immunity is granted to design professionals who perform professional services for a construction project, unless the professional assumes responsibility for safety by contract or actually exercised control over that part of the premises where the worker was injured. Design professionals include licensed or authorized architects, engineers, land surveyors, or landscape architects.

Construction site safety requirements under the Washington Industrial Safety and Health Act

Under the Washington Industrial Safety and Health Act, general contractors are responsible for provision of a safe workplace for their own employees, and for compliance with all safety regulations with respect to all employees on a construction job site. Washington courts have determined that a subcontractor's employee has a cause of action against the general contractor if the injury was caused by a violation of a specific safety regulation at the construction job site.

In 1993, the Department of Labor and Industries issued a regional directive, developed in consultation with labor and management representatives in the construction industry and related industries. The regional directive establishes guidelines for assessing the compliance

of general contractors with the requirements for safety applying to the subcontractor's employees.

SUMMARY OF BILL:

Immunity from industrial insurance liability at construction sites

The immunity from liability for workplace injuries for third parties performing services at a construction site is modified.

An injured worker or the worker's beneficiary is not permitted to seek damages for an industrial injury or occupational disease occurring in the course of employment at a construction project from the owner or developer of the project, or any person performing work, furnishing materials, or providing services for the project, including design professionals, construction managers, general or prime contractors, suppliers, subcontractors of any tier, or their employees. This prohibition applies whether the work is performed at the site under a single contract or multiple contracts.

This immunity does not apply to:

- (1) a person or entity that injures a worker by deliberate intention. It is against public policy to indemnify against this liability.
- (2) manufacturers and product sellers for product liability actions.
- (3) negligent preparation of design plans by a design professional.

Construction site safety requirements under the Washington Industrial Safety and Health Act

All construction employers. All construction employers have a duty to provide a safe workplace for their employees and employees of their subcontractors, in the context of general industry practice. The duty includes implementation of a safety program that is effective in practice. Construction employers must take reasonable steps to ensure that their safety programs are designed to comply with law.

Each construction employer on the site must designate a person who is responsible for safety. The name and telephone number of the designated person must be communicated to the contractor's own employees. The name and telephone number of the designated safety person for the prime or general contractor must be posted at the site.

Safety suggestions and hazard identification are to be encouraged. Disciplinary actions may

be taken for violation of appropriately communicated requirements, including verbal or written reprimand, suspension from work, and termination for cause, subject to the employer's written policy or written agreement between the employer and the employees, if any.

A violation or citation under the Washington Industrial Safety and Health Act (WISHA) does not affect the immunity granted under the industrial insurance law.

Prime or general contractors. The prime or general contractor has primary responsibility for safety compliance at each job site. If a construction employer's safety program is effective in practice, no WISHA citation may be issued for violations by their subcontractors.

"Effective in practice" means all of the following are complied with:

- (1) Subcontractors must comply, by contract, with WISHA.
- (2) A written program is implemented and enforced for each site by the prime or general contractor.
- (3) Each subcontractor provides, and makes available, an accident prevention plan for the work site.
- (4) The safety person's name and telephone number is posted.
- (5) All necessary safety equipment is provided to employees.

Authority to adopt rules

The Department of Labor and Industries must adopt rules, in consultation with affected parties, to implement the act.

FISCAL NOTE: Requested on February 18, 1997.

EFFECTIVE DATE: Ninety days after adjournment of session in which bill is passed.