

FINAL BILL REPORT

SHB 1133

C 138 L 01

Synopsis as Enacted

Brief Description: Determining liability for donated labor on community projects.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Carrell, Lantz, Lambert, Hurst, Casada, Morell, Kagi, Marine, Cox, Talcott, Tokuda, Fisher, Bush, Edwards, O'Brien, Darneille, Edmonds, Esser and Haigh).

House Committee on Commerce & Labor
Senate Committee on Labor, Commerce & Financial Institutions

Background:

Washington's industrial insurance law requires most employers to cover their workers for medical benefits and lost wages when the workers are injured or develop occupational diseases in the course of employment. The law defines "employer" and "worker" but does not specify when an employment relationship exists. To determine whether an employment relationship exists, the courts have developed a two-part test: (1) the employer has the right to control the worker's physical conduct in the performance of duties; and (2) the employee consents to this relationship. In litigation, whether an employment relationship exists is a question of fact that must be submitted to the jury.

One exception to the general requirement for an employment relationship involves volunteers providing services to a governmental entity. "Volunteers" are those who perform assigned or authorized duties by their own free choice, who receive no wages, and who are accepted as volunteers by the governmental entity. The industrial insurance law requires state agencies to cover all of their volunteers, while local governments may elect to have volunteer coverage programs. Covered volunteers receive medical benefits only.

Employers subject to the industrial insurance law are not liable in personal injury lawsuits brought by their workers for unintentional workplace injuries or illnesses covered by the industrial insurance law.

Summary:

The Legislature finds that government and business partnerships can assist communities to preserve historic property, but that uncertainty about risks and obligations may deter employers otherwise willing to donate materials and equipment. The Legislature's

purpose is to encourage participation by establishing clear criteria for determining industrial insurance liability for labor that is donated on these projects.

A public entity, including the state and local governments, seeking partnerships on community improvement projects with volunteer groups and businesses must (1) provide prospective donors and participants with written notice of the risks and responsibilities to be assumed by the parties, (2) require volunteers, before beginning work, to document that they received the notice and are donating labor by their free choice, and (3) pay industrial insurance premiums to provide medical aid benefits to volunteers donating labor.

A contractor or employer donating equipment or materials for the project is not considered the employer, for industrial insurance purposes, of a person donating labor unless the contractor or employer pays the person wages for working on the project or makes working on the project a condition of employment. These criteria apply whether the contractor or employer informs the person about the project or encourages the person to donate labor, whether the person uses the donated materials or equipment, or whether the person is reimbursed for actual expenses incurred in working on the project.

A community improvement project means a project sponsored by a public entity using donated labor, materials, or equipment, including projects to repair, restore, or preserve historic property. Historic property means real property owned by a public entity, such as barns, schools, military structures, and cemeteries.

Votes on Final Passage:

House 98 0
Senate 48 1

Effective: July 22, 2001