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HOUSE BILL 3019

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Condotta, Holmquist, McMorris, Crouse, Clements, Boldt, Schindler and Woods

Read first time 01/26/2004. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to liability for industrial insurance premiums of  
2 subcontractors; and amending RCW 51.12.050 and 51.12.070.

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

4 **Sec. 1.** RCW 51.12.050 and 2001 c 138 s 2 are each amended to read  
5 as follows:

6 (1) Whenever a public entity engages in any work, or lets a  
7 contract therefor, in which workers are employed for wages, this title  
8 shall be applicable thereto. The employer's payments into the accident  
9 fund shall be made from the treasury of the public entity. If the work  
10 is being done by contract, the payroll of the contractor and the  
11 subcontractor shall be the basis of computation and, in the case of  
12 contract work consuming less than one year in performance, the required  
13 payment into the accident fund shall be based upon the total payroll.  
14 The contractor and any subcontractor shall be subject to the provisions  
15 of this title, and the state for its general fund, the county,  
16 municipal corporation, or other taxing district shall be entitled to  
17 collect from the contractor the full amount payable to the accident  
18 fund and the contractor, in turn, shall be entitled to collect from the  
19 subcontractor his or her proportionate amount of the payment.

1 (2)(a) A public entity may seek partnerships with volunteer groups  
2 and businesses to engage in community improvement projects to benefit  
3 the public entity. In administering a project, the public entity must:

4 (i) Provide prospective donors and participants written notice of  
5 the risks and responsibilities to be assumed by the public entity and  
6 the donors or participants. A volunteer donating labor on the project  
7 must, before beginning work, document in writing that he or she has  
8 received the notice and that he or she is donating labor as a result of  
9 his or her own free choice; and

10 (ii) Pay premiums and assessments required under this title to  
11 secure medical aid benefits under chapter 51.36 RCW for volunteers  
12 donating labor on the project.

13 (b) A contractor or employer donating equipment or materials for  
14 use on a community improvement project shall not, for the purposes of  
15 this title, be considered the employer of an individual donating labor  
16 unless the contractor or employer pays the individual wages for working  
17 on the project or makes working on the project a condition of  
18 employment. This subsection applies regardless of whether:

19 (i) The contractor or employer informs the individual about the  
20 community improvement project or encourages the individual to donate  
21 labor on the project;

22 (ii) The individual uses equipment or materials on the project that  
23 are donated by the contractor or the individual's employer; or

24 (iii) The individual is granted maintenance or reimbursement for  
25 actual expenses necessarily incurred in performing labor for the  
26 project.

27 (3) Whenever and so long as, by state law, city charter, or  
28 municipal ordinance, provision is made for employees or peace officers  
29 injured in the course of employment, such employees shall not be  
30 entitled to the benefits of this title and shall not be included in the  
31 payroll of the municipality under this title: PROVIDED, That whenever  
32 any state law, city charter, or municipal ordinance only provides for  
33 payment to the employee of the difference between his or her actual  
34 wages and that received under this title such employees shall be  
35 entitled to the benefits of this title and may be included in the  
36 payroll of the municipality.

37 (4) For the purposes of this section, a public entity is not

1 responsible for any premiums upon the work of any subcontractor if the  
2 subcontractor has an industrial insurance account in good standing with  
3 the department when the contract is let.

4 (5) The definitions in this subsection apply throughout this  
5 section, unless the context clearly requires otherwise.

6 (a) "Community improvement project" means a project sponsored by a  
7 public entity that uses donated labor, materials, or equipment and  
8 includes, but is not limited to, projects to repair, restore, or  
9 preserve historic property.

10 (b) "Historic property" means real property owned by a public  
11 entity including, but not limited to, barns, schools, military  
12 structures, and cemeteries.

13 (c) "Public entity" means the state, county, any municipal  
14 corporation, or other taxing district.

15 **Sec. 2.** RCW 51.12.070 and 1981 c 128 s 4 are each amended to read  
16 as follows:

17 (1) The provisions of this title shall apply to all work done by  
18 contract; the person, firm, or corporation who lets a contract for such  
19 work shall be responsible primarily and directly for all premiums upon  
20 the work. The contractor and any subcontractor shall be subject to the  
21 provisions of this title and the person, firm, or corporation letting  
22 the contract shall be entitled to collect from the contractor the full  
23 amount payable in premiums and the contractor in turn shall be entitled  
24 to collect from the subcontractor his proportionate amount of the  
25 payment.

26 (2) For the purposes of this section, a contractor registered under  
27 chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be  
28 responsible for any premiums upon the work of any subcontractor if:

29 ~~((1))~~ (a) The subcontractor is currently engaging in a business  
30 which is registered under chapter 18.27 RCW or licensed under chapter  
31 19.28 RCW;

32 ~~((2))~~ (b) The subcontractor has a principal place of business  
33 which would be eligible for a business deduction for internal revenue  
34 service tax purposes other than that furnished by the contractor for  
35 which the business has contracted to furnish services;

36 ~~((3))~~ (c) The subcontractor maintains a separate set of books or

1 records that reflect all items of income and expenses of the business;  
2 and

3 ~~((4))~~ (d) The subcontractor has contracted to perform:

4 ~~((a))~~ (i) The work of a contractor as defined in RCW 18.27.010;  
5 or

6 ~~((b))~~ (ii) The work of installing wires or equipment to convey  
7 electric current or installing apparatus to be operated by such current  
8 as it pertains to the electrical industry as described in chapter 19.28  
9 RCW.

10 (3) For the purposes of this section, a contractor is not  
11 responsible for any premiums upon the work of any subcontractor if the  
12 subcontractor has an industrial insurance account in good standing with  
13 the department when the contract is let.

14 (4) It shall be unlawful for any county, city or town to issue a  
15 construction building permit to any person who has not submitted to the  
16 department an estimate of payroll and paid premium thereon as provided  
17 by chapter 51.16 RCW of this title or proof that such person has  
18 qualified as a self-insurer.

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