

HOUSE BILL REPORT

2SSB 6732

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to implementing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Brief Description: Implementing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Kline, Keiser, Marr, Murray, Hobbs, Regala, Tom, Oemig and Fairley).

Brief History:

Committee Activity:

Commerce & Labor: 2/21/08, 2/26/08 [DPA];

Appropriations: 3/1/08 [DPA(APP w/o CL)].

Brief Summary of Second Substitute Bill (As Amended by House Committee)

- Provides a civil penalty for persons who falsify information on a contractor registration application.
- Creates a public works contracting "strike" for certain contractor registration and industrial insurance violations and provides for a one-year bar from bidding on public works contracts for repeat violations.
- Provides for additional contractor compliance staff and auditors, and provides for a social marketing campaign aimed at consumers regarding hiring of unregistered contractors.
- Implements other recommendations of the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force).
- Extends the Task Force, with a report due by December 31, 2008.

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.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

Background:

In 2007 the Legislature enacted SB 5926, which created the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground construction economy. Over the 2007 interim, the Task Force met six times and adopted recommendations at its final meeting. The Task Force recommendations included recommendations on penalties, enforcement, data sharing and detection, and education and outreach.

Any person working as a construction contractor in this state must be registered with the Department of Labor and Industries (L&I). An applicant for registration must have a Unified Business Identifier (UBI) number if required by the Department of Revenue (DOR), which is generally if the gross income of the business is \$12,000 a year or more. The Department of Labor and Industries must deny a contractor application and suspend a contractor registration under certain conditions, including if there is an unsatisfied related judgement against the contractor. Certain violations of the contractor registration provisions subject the person to a penalty of no more than \$10,000. These include falsifying a registration number and soliciting work as a contractor without being registered.

Under prevailing wage laws, a contractor who files a false statement regarding prevailing wages or fails to file a statement is subject to a civil penalty and not permitted to bid on a public works contract until the penalty is paid. This is considered a prevailing wage "strike" and if the contractor is found to have violated the law a second time in five years, the contractor is "barred" from bidding on public works contracts for one year.

Penalties are set forth for industrial insurance violations. An employer who engages in business without obtaining industrial insurance coverage, or engages in business after a certificate of coverage has been revoked, or knowingly misrepresents the amount of payroll or employee hours is subject to penalty.

Employers must maintain a record of the UBI number of construction contractors and electrical contractors with whom they contract.

Information maintained by the Employment Security Department (ESD) that is private and confidential may be disclosed to other agencies for official purposes under certain conditions.

Agencies who receive information from the ESD are prohibited from further disclosing the information unless the disclosure is directly connected to the original purpose.

Summary of Amended Bill:

Contractor registration applicants must have a UBI number, regardless of the size of the business. The Department of Labor and Industries must deny a registration application and suspend an active registration if L&I determines that the contractor falsified information on the application (unless the error was inadvertent), or the contractor does not have a valid and active certificate of registration with the DOR. A contractor who falsifies information on a registration application, unless the error was inadvertent, is subject to a penalty of up to \$10,000.

The following violations constitute a "strike" for purposes of public works contracting: violation of laws relating to industrial insurance reporting of payroll and hours, and maintenance of coverage; and performing work as an unregistered contractor. A contractor is barred from bidding on any public works project for one year if, within a five-year period, the contractor commits any combination of two or more of these violations.

Employers must keep records of the compensation paid to construction contractors and electrical contractors with whom they contract, in addition to the UBI number.

Agencies receiving information from the ESD may disclose it to another agency if the agency would be otherwise permitted to obtain the information.

The Department of Labor and Industries is directed to add staff to the Fraud Audit Infracton and Revenue contractor fraud team and both L&I and the ESD must hire additional auditors. If funds are available, funding must be dedicated to the Office of the Attorney General for contractor compliance cases. The Department of Labor and Industries must create an expanded social marketing campaign aimed at consumers and warning them of the risks and potential consequences of hiring unregistered contractors.

In addition, L&I must establish a pilot project with local jurisdictions to explore ways to improve the collection and sharing of building permit information. Participation by local jurisdictions is voluntary and L&I must report back to the appropriate committees of the Legislature by November 15, 2013.

The Washington State Institute for Public Policy (Institute) must organize an advisory committee, with the assistance of L&I, the ESD, and the DOR, to establish benchmarks for monitoring of activities recommended by the Task Force. The Institute must report back to the appropriate committees of the Legislature by December 31, 2008.

The Task Force is extended, with a report to the Legislature due by December 31, 2008.

Amended Bill Compared to Second Substitute Bill:

Adds provision requiring: (1) L&I to add three staff to the Fraud Audit Infraction and Revenue contractor fraud team; (2) L&I and the ESD to hire more auditors, with L&I to hire at least three more auditors; and (3) if funds are available in the 2008 supplemental budget, dedication of funds to the Attorney General's Office to be used for contractor compliance cases.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The additional auditors that are in the House bill are very important and the bill will not be effective without them. Auditors need to be out there in the field actively looking for unregistered contractors to help make sure compliance is a competitive advantage. Using 608/609 funds is legitimate since the auditors will bring in money that will go back into 608/609 funds.

The marketing campaign should not be funded with 608/609 funds.

(In support with concerns) The Institute for Public Policy's study indicates Washington is losing \$109 million per year in tax revenue to the underground economy. The auditors are key in recovering this money and were part of the Task Force's recommendations. The Department of Labor and Industries' fraud team gets a nine to one return. If the auditors are included, the bill can be fully supported.

(Opposed) None.

Persons Testifying: (In support) Carolyn Logue, Contractors Bonding and Insurance Company; and Amy Brackenbury, Building Industry Association of Washington.

(In support with concerns) Dave Johnson, Washington State Building and Construction Trades Council; and Rick Slunaker, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Commerce & Labor. Signed by 33 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Hunter,

Kagi, Kenney, Kessler, Kretz, Linville, McDonald, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Anderson.

Staff: Alex MacBain (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill represents an interim's worth of work by the Joint Legislative Task Force on the Underground Economy in the Construction Industry. The bill exemplifies a comprehensive approach to addressing the loss of revenue to the state that is created by those working under the radar and not paying their fair share. The additional auditors in the bill are very important and the bill would not be effective without them. The Washington State Institute for Public Policy estimates that the tax revenue lost to the state and for unpaid workers compensation is \$109 million.

(Opposed) None.

Persons Testifying: Carolyn Logne, Contractors Bonding and Insurance Company; Rick Slunaker, Association of General Contractors; and David Johnson, Washington State Building and Trades Council.

Persons Signed In To Testify But Not Testifying: None.