

# SENATE BILL REPORT

## ESHB 3122

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, February 28, 2008

**Title:** An act relating to consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

**Brief Description:** Consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

**Sponsors:** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan and McIntire).

**Brief History:** Passed House: 2/14/08, 92-2.

**Committee Activity:** Labor, Commerce, Research & Development:2/25/08, 2/28/08 [DP, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; King.

**Staff:** Kathleen Buchli (786-7488)

**Background:** In 2007 the Legislature enacted SB 5926 relating to the underground economy in the construction industry. The Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force) was created to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground economy practices in the construction industry. The Task Force met six times in 2007 and discussed issues relating to the underground economy in the construction industry including current independent contractor laws in this state and other states.

Whether a person is an independent contractor or an employee determines if the person is covered for purposes of workers' compensation and unemployment benefits and whether industrial insurance premiums and unemployment taxes must be paid by the employer. The

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term "independent contractor" is not defined in code, rather, this concept is embodied in the exceptions to the definition of "employment."

Although the exception tests used by the Department of Labor and Industries (L&I) and the Employment Security Department (ESD) are substantially the same, there are some differences that could result in the worker being treated as an independent contractor for purposes of one agency and an employee for purposes of another.

**Summary of Bill:** The exception tests used by L&I and ESD are clarified. Both L&I and ESD will use a seven-part test to establish when work in construction is done by independent contract. This test establishes that work will not be considered employment if: the individual has been and will continue to be free from control or direction over the performance of the service; the service is outside the usual course of business for which such service is performed; the individual is customarily engaged in an independently established trade, occupation, profession, or business; the individual files a schedule of expenses with the internal revenue service for the type of business the individual is conducting; the individual has an active and valid certificate of registration with the Department of Revenue (DOR) and an active and valid account with other state agencies as required; the individual maintains a separate set of books or records; and the individual has a valid contractor registration or electrical contractor license.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute Bill:** PRO: This is limited to the construction industry and provides a test for the construction industry only. During the task force meetings, the agencies indicated that a single definition for independent contractor would help them.

OTHER: The bill is much improved from how it began, but the Committee should continue its work on the bill. The language of the bill is confusing. We believe we understand the intent of the language, but it is not clear. A sunset clause should be put on the bill to ensure that there are no unintended consequences down the road. The language is consistent with current language, and the intent is not to change the meaning of the current language.

**Persons Testifying:** PRO: Representative Conway, prime sponsor; Bob Abbott, Laborers District Council.

OTHER: Rick Slunaker, Associated General Contractors; Lisa Marsh, ESD; Carl Hammersburg, L&I.