
Commerce & Labor Committee

HB 1555

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

Sponsors: Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy and Wood.

Brief Summary of Bill

- Modifies contractor registration provisions to require photo identification and training in state laws.
- Provides that the independent contractor test for purposes of prevailing wage is the test used for purposes of industrial insurance and unemployment insurance in the construction industry.
- Creates an interagency advisory committee to conduct a continuing study of the underground economy.
- Makes other changes addressing the recommendations of the Joint Legislative Task Force on the Underground Economy in the Construction Industry.

Hearing Date: 1/28/09

Staff: Joan Elgee (786-7106)

Background:

In 2007 the Legislature established a Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force met during the 2007 interim and developed recommendations which led to the passage of two bills in 2008, ESHB 3122 and 2SSB 6732. Budget provisos were also enacted. The 2008 legislation also extended the Task Force. The Task Force met during the 2008 interim and submitted a final report to the Legislature. The final report contains a number of recommendations.

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.

Contractor registration

State law requires general and specialty contractors to register with the Department of Labor and Industries (L&I). Applicants for registration must submit an application under oath which includes the applicant's Unified Business Identifier (UBI) number and evidence of workers' compensation coverage for any employees. Applicants must also file a surety bond or other security deposit and insurance or proof of financial responsibility. Training is not a prerequisite to registration. A certificate of registration is valid for two years.

It is a civil infraction and a gross misdemeanor for a contractor to: (1) perform work as a contractor without being registered; (2) use a false or expired registration number in purchasing advertising; (3) subcontract to an unregistered contractor; or (4) commit other violations. Each day worked and each worksite at which the contractor works constitutes a separate infraction/gross misdemeanor in some situations.

Cities, counties, and towns are required to verify that a contractor is registered before issuing a building permit.

Education and outreach

The L&I offers contractor training days on topics such as bidding and estimating, state taxes, accident prevention, and hiring independent contractors. These workshops are offered without charge. The 2008 legislation directed the L&I to create an expanded social marketing campaign aimed at consumers to warn them of the risks and potential consequences of hiring unregistered contractors. The campaign may include providing information on violations and penalties and encouraging legitimate contractors and the public to report fraud.

Prevailing wages/public works

The prevailing wage must be paid to laborers, workers, and mechanics on public works and under public building service maintenance contracts. The prevailing wage laws do not define who is a laborer, worker, or mechanic, or who is an independent contractor. The 2008 legislation created an independent contractor test for construction for purposes of industrial insurance and unemployment insurance.

Public works contracts must provide for a retainage not to exceed 5 percent of the moneys earned by the contractor for the protection of laborers and suppliers, and for the state with respect to excise taxes. Employees who have not been paid the prevailing wage have a first priority lien against the retained percentage. Amounts owed for excise taxes are a second priority lien against the retainage.

Unemployment insurance recordkeeping

Employers must keep true and accurate work records for purposes of unemployment insurance. The Commissioner of the Employment Security Department may also require employers to submit various reports. An employer who contracts for construction or electrical work must keep a record of the UBI number and compensation paid to the person or entity performing the work. An employer who fails to obtain or maintain the UBI number or compensation is subject to a penalty not to exceed \$200.

Summary of Bill:

Contractor registration

Applicants for contractor registration and renewal of registration must submit photo identification. An applicant must also submit certification that the applicant has attended training approved by the Department of Labor and Industries (L&I) on state law. The L&I must work with business community representatives to explore the need for continuing education for contractors.

A contractor must maintain and have available for inspection by the L&I a list of all direct subcontractors and a copy of their certificate of registration.

A person is guilty of a class C felony for a third or subsequent conviction of specified contractor registration provisions.

Before issuing a business license to a person required to be registered as a contractor, a city, town, or county must verify that the person is registered and meets other requirements.

Education and outreach

The L&I is directed to conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. The L&I must work with new employers on an individual basis and also establish mass education campaigns.

Prevailing wages/public works

A test for independent contractor is added to prevailing wage provisions. A person is not considered a laborer, worker, or mechanic (and therefore is an independent contractor not required to be paid prevailing wages) if the independent contractor test used for purposes of industrial insurance and unemployment insurance in the construction industry is met. All parts of the following test must be met:

1. The individual has been and will continue to be free from control or direction over the performance of the service, both under contract and in fact.
2. The service is either outside the usual course of business for which the service is performed, or outside of all the places of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the place of business.
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature, or the individual has a principal place of business that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer.
4. On the effective date of the contract, the individual is responsible for filing, under the contract and in fact, a schedule of expenses with the Internal Revenue Service.
5. On the effective date of the contract or within a reasonable period after the effective date, the individual has an active and valid certificate of registration with the Department of Revenue (DOR) and an active and valid account with any other state agencies, and has a Unified Business Identifier (UBI) number.
6. On the effective date of the contract, the individual is maintaining a separate set of books or records.

7. On the effective date of the contract, the individual has a valid contractor registration or electrical contractor license if the work requires the registration or license.

The L&I and the Employment Security Department (ESD) have a priority lien on retainage on public works projects following employees and the DOR.

Unemployment insurance recordkeeping

A penalty is created for employers who fail to keep and preserve unemployment insurance records. The penalty may not exceed \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.

Interagency advisory committee

An interagency underground economy advisory committee is created to conduct a continuing study of the underground economy. The committee is composed of:

- one representative each from the L&I, the ESD, and the DOR;
- one representative of cities and one representative of counties; and
- three representatives each of business and labor, appointed by the Director of the L&I.

The member from the L&I serves as the chair.

The committee must submit reports to the appropriate committees of the Legislature annually beginning December 1, 2010. The first report must include, but not be limited to, the following issues:

- shortening the time for new hire reporting to the Department of Social and Health Services;
- modifying resale certificate provisions;
- requiring contractors to place subcontractor UBI numbers on checks;
- establishing penalties for owners who intentionally do not follow the law;
- establishing penalties for persons who offer or accept undocumented cash payment;
- enhancing funding for the master business application system; and
- establishing additional benchmarks and measures for the underground economy.

Benchmarks and measures

The L&I, the ESD, and the DOR must report to the appropriate committees of the Legislature by December 1 each year on the effectiveness of efforts implemented since July 1, 2008 to address the underground economy. The agencies must use benchmarks and measures established by the Washington Institute for Public Policy and other measures it determines appropriate.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on 1/21/09.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15, relating to unemployment insurance records, which takes effect October 1, 2009.