

HOUSE BILL REPORT

HB 1786

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to defining independent contractor for purposes of prevailing wage.

Brief Description: Defining independent contractor for purposes of prevailing wage.

Sponsors: Representatives Ormsby, Campbell, Hunt, Hasegawa, Dunshee, Conway, Sullivan, Van De Wege, Chase and Wood.

Brief History:

Committee Activity:

Commerce & Labor: 2/4/09, 2/18/09 [DPS].

Brief Summary of Substitute Bill

- Creates a test for determining when a person is an independent contractor not entitled to the prevailing wage, which is substantially similar to the test used for workers' compensation and unemployment purposes.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Joan Elgee (786-7106)

Background:

Under Washington's prevailing wage law, the prevailing wage must be paid to laborers, workers, and mechanics on public works and under public building service maintenance contracts. The law does not define who is a laborer, worker, or mechanic (or who is an independent contractor who is not required to be paid the prevailing wage). In 2008 the

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Legislature established a seven-part test for determining when a person doing work done by independent contract in the construction industry is not covered for purposes of unemployment insurance and industrial insurance.

Summary of Substitute Bill:

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 who is not required to be paid the prevailing wage) if all parts of the following test must be met:

1. The individual has been and is 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 the contractor or contractors for whom the individual perform services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, 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 and an active and valid account with any other state agencies, and has a Unified Business Identifier 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 if the work requires registration or licensure.

The test is substantially similar to the test used for purposes of unemployment insurance and industrial insurance. The test differs in that contractor registration or electrical contractor licensing is required only if the work requires registration or licensure and in certain other respects.

Substitute Bill Compared to Original Bill:

The requirement to have a valid contractor registration or electrical contractor license is made applicable only if the work requires registration or licensure. The test is also modified to require that the individual "is" rather than "will continue to be" free from direction and control and clarify the provision that the service be outside the usual course of business or outside all the places of business of the enterprise.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a recommendation of the Underground Economy Task Force. It extends the same test used in workers' compensation to prevailing wage. Because there are fiscal considerations with the underground economy bill, this bill warrants consideration on its own. The problem is that some general contractors say people are independent contractors when they are workers. Some people have been paid piece work when they should have been paid prevailing wage. Because there has been no test, it has been a struggle when there have been complaints. This bill will level the playing field for bidding.

(In support with concerns) There is no fundamental objection to having a uniform definition but there are some fuzzy areas in the seven-part test adopted last year. These should be fixed in the other areas as well. Instead of saying "has been and will continue to be," just say "has been" and "is" - otherwise the test requires someone to be prescient. The part of the test concerning the service outside the course of business doesn't translate to prevailing wage.

(Information only) The Department is okay with the change to "has been" and "is" and we will work on the other suggestion.

(Opposed) None.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; and Dave Johnson, Washington State Building and Construction Trades Council.

(In support with concerns) Rick Slunaker, Associated General Contractors of Washington.

(Information only) Carl Hammersburg and David Soma, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.