

SENATE BILL REPORT

SHB 1554

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, March 17, 2009

Title: An act relating to authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.

Brief Description: Authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Chase, Dickerson, Green, Goodman, Rolfes, Morrell, Cody, Simpson, Campbell, Ormsby, Van De Wege, Appleton, Flannigan, Seaquist, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Priest, Sullivan, Eddy, White, Hasegawa and Wood).

Brief History: Passed House: 3/05/09, 96-0.

Committee Activity: Labor, Commerce & Consumer Protection: 3/17/09 [DP, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senator King.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Kathleen Buchli (786-7488)

Background: Employers in the state must secure payment of industrial insurance by either insuring with the State Fund or qualifying as a self-insurer. An employer who fails to secure industrial insurance is liable for a penalty of \$500 or a sum double the amount of premiums incurred prior to securing payment, whichever is greater. Criminal penalties may also apply. Employers who insure with the State Fund must provide a true and accurate payroll to the Department of Labor and Industries (Department) and pay the appropriate premium. An

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employer who knowingly misrepresents the amount of payroll or employee hours is liable for up to ten times the amount of the difference in premiums paid and what the employer should have paid, as well as the reasonable expenses of audit and collection.

General and specialty contractors must register with the Department, and a contractor who fails to register is subject to an order issued by the Director of the Department (Director) to restrain further construction work at the jobsite by the contractor. General and specialty electrical contractors must obtain a license from the Department.

Summary of Bill: If the Director determines after an investigation that a general or specialty contractor or a general or specialty electrical contractor has failed to secure payment on industrial insurance compensation by paying into the State Fund or qualifying as a self-insurer, the Director may issue a stop-work order against the employer. A stop-work order may be served on a worksite by posting a copy in a conspicuous location, in which case the order is effective as to the employer's operations on that worksite. A stop-work order may be served on the employer, in which case the order is effective as to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service, consistent with the stop-work order. An employer who violates a stop-work order is subject to a \$1,000 penalty for each day not in compliance.

A stop-work order remains in effect until the Director (1) releases the order upon finding that the employer has come into compliance and paid any premiums, penalties, and interest owing under industrial insurance; or (2) issues an order of conditional release. The Director may issue a conditional release order if the employer has complied with the coverage requirements and has agreed to pay penalties through a penalty schedule. If the terms of the payment schedule are not met, the stop-work order may be reinstated.

An employer against whom a stop-work order has been issued may request reconsideration from the Department or appeal to the Board of Industrial Insurance Appeals (Board) within ten days of receiving the stop-work order. If the Department conducts a reconsideration, it must be concluded within ten days of receiving the request for consideration. The stop-work order remains in effect during the period of reconsideration or appeal, unless the employer furnishes to the Department a cash deposit or bond in the amount of \$5,000 or \$1,000 per covered worker identified. If the stop-work order is upheld, the cash deposit or bond will be seized and applied to the premium, penalty, and interest balance of that employer. In an appeal before the Board, the appellant has the burden of proceeding with the evidence to establish a prima facie case. The Administrative Procedure Act applies to judicial review, and the Department has the same right of review as do employers.

Stop-work orders and penalties are effective against any successor corporation or business entity that has one or more of the same principals or officers as the employer under the stop-work order and which is engaged in the same or equivalent trade or activity.

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: PRO: This bill is fair and has the appropriate level of strength; it is straightforward and clear. The bill provides a bright line for guiding the Department in issuing stop work orders. The bill provides for the Director's discretion and requires that an investigation must occur. It is based on what has worked in other states, but is tailored to this state. The bill is a product of a collaborative effort from stakeholders and members of the Task Force and provides the Department another tool to address enforcement.

Persons Testifying: PRO: Rick Slunaker, Associated General Contractors; John Littel, Pacific NW Regional Council of Carpenters; David Johnson, Washington State Building Trades.