

SENATE BILL REPORT

SB 5613

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 16, 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: Senators Kohl-Welles, Keiser, Franklin, Kline, McDermott, Tom and Fraser.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/02/09, 2/16/09 [DPS, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5613 be substituted therefor, and the substitute bill do pass.

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

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 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.

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.

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 to restrain further construction work at the job site by the contractor. General and specialty electrical contractors must obtain a license from the Department.

Summary of Bill (Recommended Substitute): If the Director of the Department of Labor and Industries (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.

The Department may adopt rules to carry out the provisions.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The scope of a stop-work order is modified to apply to employers who fail to secure industrial insurance compensation by paying into the state fund or qualifying as a self-insurer. The requirement that all business operations cease is removed. Business operations must cease consistent with the stop-work order issued. Reconsiderations must be held within ten days of the Department of Labor and

Industries receiving the request for reconsideration. The stop-work order remains in effect during the period of reconsideration unless the employer furnishes a bond to the Department. If the stop-work order is upheld, the bond will be seized and applied towards the premium, penalty, and interest owed by the employer.

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 Original Bill: PRO: This comes from discussion and presentations of the underground economy task force. This is tailored to Washington State and is another tool for L&I. This is important now because we will see more underground economy activity due to the nature of the economy. This will not shut down the whole project if the order is put in place; it affects the employer and not the entire job site. The scope of the underground economy could be greater than what we have anticipated, and due to the tough economic times could be getting worse. This will only be implemented after an investigation. Employers have opportunities to prove they are trying to get in compliance or were trying to get in compliance before the stop-work order is implemented. It is an unlevel playing field for those contractors who are playing by the rules and this should help level the playing field.

CON: We do not want to protect unregistered contractors. This tool should not be given to L&I because the investigation process is vague and the employer may not know that there is an investigation going on. It does allow L&I to shut down the entire operation of a business if it is found out of compliance; this is not just the job site, but the entire business. It is possible for employers to misreport their workers, possibly due to misinformation from L&I. This would shut down worksites for paperwork violations. This is a bad time for this legislation and there are provisions in statute already that deal with penalties. In reality, because the jobs on the job sites are interrelated, if you shut down one job, it could shut down the job site. The task force recommended that this be considered further, but did not recommend legislation be adopted in 2009. We are concerned that there is no recourse for a contractor who has been exonerated after a hearing.

OTHER: L&I is looking at the timeline and making sure that it will minimize impact. We are also looking into bonding provisions that would allow a person to continue work before a hearing is conducted.

Persons Testifying: PRO: Randy Loomans, Operating Engineers, #302; David Johnson, Washington State Building and Construction Trades; Bob Abbott, District Council of Laborers.

CON: Amy Brackenbury, Building Industry Association of Washington; James Curry, Associated Builders and Contractors; Gary Smith, Independent Business Association; Rick Slunaker, Associated General Contractors.

OTHER: Carl Hammersburg, L&I.