

# SENATE BILL REPORT

## SB 5614

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As of February 18, 2009

**Title:** An act relating to the recommendations of the joint legislative task force on the underground economy in the construction industry.

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

**Sponsors:** Senators Kohl-Welles, Keiser, Franklin, Kline, McDermott and Fraser.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/02/09.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

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

**Background:** In 2007 the Legislature created the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed 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. During the 2007 interim, the Task Force developed findings and recommendations and forwarded them to the Legislature. Many of these findings and recommendations were embodied in bills enacted during the 2008 legislative session. The Task Force's term was extended for an additional year and required to submit a final report to the Legislature by December 31, 2008.

In its Final Report, the Task Force issued a number of recommendations including recommendations relating to contractor registration, education and outreach activities, defining the term independent contractor for prevailing wage purposes, unemployment insurance recordkeeping, establishing an interagency advisory committee, and benchmarks and measures.

**Summary of Bill:** 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. 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

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inspection by 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.

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

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.

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

Employers who fail to keep and preserve unemployment insurance records are subject to a penalty that may not exceed \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.

An interagency underground economy advisory committee is created to conduct a continuing study of the underground economy. The committee is composed of representatives from L&I, ESD, DOR, cities and counties, business, and labor. The committee must submit reports to the appropriate committees of the Legislature annually beginning December 1, 2010.

L&I, ESD, and 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.

**Appropriation:** None.

**Fiscal Note:** Available

**Committee/Commission/Task Force Created:** Yes.

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

**Staff Summary of Public Testimony:** PRO: We support efforts to crack down on unregistered contractors. We support some technical changes to the bill. Instead of requiring contractors to keep a list of all direct subcontractors and a copy of their certificate of registration on the job site, it would be easier for them to retain the contractor's registration number and this could be maintained electronically.

The requirement for providing a photo identification for registration renewals is redundant. The current language used to determine independent contractor status is problematic; rather than stating that the person "has been, and will continue to be free" from control or direction, the statute should state "is" free from control or direction. Language should be added to the provision on the interagency advisory committee that specifically states that the scope of that section is to address the entire underground economy and not just the construction industry.

In regards to the fiscal impact of the bill, we would like to sit down with the L&I and determine the impact; the bill could result in a revenue gain. We support the education and outreach efforts as well as expanding the scope to look at the bigger picture of the underground economy. We know that money is being lost to the underground economy in the construction industry. If we can examine more areas where the underground economy exists, there would be more to gain than what the state would expend.

OTHER: The requirement that cities and towns verify business licenses may not be applicable to all cities. Currently, 69 percent of cities and towns require business licenses, and the process varies from city to city. Some cities would have to overhaul their systems to comply with the bill's requirements. This provides a challenge to local environments; if there are more responsibilities, they need funding to meet them. The cities and towns are glad to be part of the interagency advisory committee.

**Persons Testifying:** PRO: Amy Brackenbury, Building Industry Association of Washington; Chris Van Dyk, BYG Taxi Cooperative Association; Rick Slunaker, Associated General Contractors; David Johnson, Washington State Building and Construction Trades; Bob Abbott, District Council of Laborers.

OTHER: Victoria Lincoln, Association of Washington Cities.