

SENATE BILL REPORT

2SSB 6575

As Amended by House, March 5, 2010

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

Brief Description: Concerning the recommendations of the joint legislative task force on the underground economy.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Keiser, Kline, Franklin and McDermott).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/25/10, 2/02/10 [DPS-WM].

Ways & Means: 2/05/10, 2/08/10 [DP2S].

Passed Senate: 2/15/10, 34-13.

Passed House: 3/05/10, 98-0.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6575 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Honeyford, King and Kline.

Staff: Kathleen Buchli (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6575 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hewitt, Hobbs, Honeyford, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Parlette, Pflug, Regala, Rockefeller and Schoesler.

Staff: Michael Bezanson (786-7449)

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.

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 and 2008 interims and developed recommendations which were incorporated into legislation. In 2009 the Legislature expanded the scope of the Task Force beyond the construction industry. The Task Force made a number of recommendations based on its 2009 interim work.

The Contractor Registration Act (Act) requires general and specialty contractors to register with the Department of Labor and Industries (Department). Under the Act, a contractor who fails to register is subject to a fine of not less than \$1,000 and not more than \$5,000. The Director of the Department may reduce the fee to no less than \$500 for a first offense if the contractor registers within 10 days of receiving a notice of infraction.

Contractor registration fees and penalties are deposited into the General Fund.

Summary of Second Substitute Bill: The penalty for a first offense of failure to register as a contractor is modified. To receive a reduced penalty, a contractor must register for and complete a contractor training class in addition to registering as a contractor. Once a contractor receives a notice of infraction, the contractor has ten days to register as a contractor and register for a class, and 120 days to complete the class. A contractor must also pay any class fees upon registration to receive the reduced penalty. The Department will conduct the classes or approve classes conducted by others. The Department may charge a fee that covers the cost of administering a class. In addition, the Department may adopt rules on the number of classes to be offered, the class locations, fees, and curriculum.

A contractor who receives a third citation from the Department for failing to register as a contractor is guilty of a class C felony if that person works as a contractor while unregistered, while his or her registration is suspended or revoked, or under a registration issued to another contractor.

A double amendment regarding retainage on public works contracts is corrected.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

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 Proposed Substitute As Heard in Committee (Labor, Commerce & Consumer Protection): PRO: The Task Force met during the 2009 interim. Business and labor came together and recognized the need to address the underground economy and the costs to legitimate contractors who act in good faith in becoming registered. We believe this bill provides the state with practical approaches to achieve compliance as well as protections for the public. The fiscal note on the bill points out a Catch 22 created by the Legislature; the agency is asked to do more with less but you as

a Legislature are charging contractors more than what is being appropriated back to the program. This amounts to a hidden tax that goes into the general fund. By creating a dedicated account, that money will be easier to identify and it will be easier to enforce contractor statutes and protect the general public. There has been discussion at the Task Force meetings on what Oregon has passed and how they have addressed the issue of independent contractors. We have an amendment that will address how many independent contractors may be working in a specific area or on a jobsite, and will address that they may be under the direction and control of someone else and avoiding the payment of workers compensation premiums.

OTHER: The way the provisions relating to the class to be offered by the Department are written needs to be clarified so that people throughout the state are able to take a class within the 120 days provided in the statute. It is a concern of the Department to have a broad time frame to ensure that classes will be available relative to where the contractors are located, and the Department is also exploring on-line classes.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Senator Kohl-Welles, prime sponsor; Dave Johnson, Washington State Building and Construction Trades Council; Rick Slunaker, Associated General Contractors.

OTHER: Gary Smith, Independent Business Association; Carl Hammersburg, Department of Labor and Industries.

Staff Summary of Public Testimony on Recommend First Substitute (Ways & Means): PRO: This bill is from a unanimous recommendation from the Underground Economy Task Force which met for the third year in a row. We have been gradually working to eliminate the underground activity especially in the contractor and construction industries as well as other industries. It is import to recognize that the labor and business communities have worked together with legislators on these recommendations.

We would like to offer a friendly amendment which appears in HB 2826, the companion bill. The problem we have in the past and continue to have is with uncovered workers on job sites; whether this is an independent contractor or sole proprietor. Oregon has had positive results through a recently implemented law that addresses multiple provider sole proprietor issues. This is costing the state revenue. The amendment is a streamlined approach based on the Oregon law and the work of the Underground Economy Task Force.

We appreciate the work of L&I and the work they have been doing with the task force.

Persons Testifying (Ways & Means): PRO: Senator Kohl-Welles, prime sponsor; Dave Johnson, Washington State Building and Construction Trades Council.

House Amendment(s): A contractor registration account is created with monetary penalties, class fees, and contractor registration fees to be deposited in the account. The provision making the third violation of a failure to register a class C felony is removed.