

SHB 1701 - H AMD 306

By Representative Ormsby

ADOPTED 03/04/2011

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the state loses over one hundred million dollars a year in taxes due to underground economy construction activity, causing great inequity to law-abiding businesses and taxpayers. The legislature further finds that an employer in construction is required to pay industrial insurance and unemployment taxes for a worker unless a seven-part independent contractor test is met, which test includes that the worker is free from direction and control and has his or her own books and records. The legislature finds that some contractors avoid taxes by engaging multiple contractors to work on the same task and treating the contractors as exempt independent contractors rather than hiring and paying taxes on these persons as covered workers. The legislature finds, however, that if multiple contractors are working on the same task on a job site, the contractors must be working under direction and control such that they are not exempt independent contractors but are, in fact, covered workers.

The legislature finds that the seven-part test is and should continue to be applied in investigations of underground economy activity in the construction industry. However, the legislature also finds that prohibiting up front certain contracting which by its nature creates a situation in which taxes due are not paid will provide clarity to contractors and provide an additional cost-effective means to reduce the underground economy. By enacting section 2 of this act, the legislature intends to define the prohibited contracting narrowly to assure no legitimate contracting is prohibited. The legislature intends that nothing in section 2 of this

1 act prohibits a contractor from engaging more than two independent  
2 contractors who have no covered workers to work on the same task so  
3 long as those contractors are treated as covered workers.

4

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.27 RCW  
6 to read as follows:

7 (1) It is a violation under this chapter and an infraction for any  
8 contractor to engage more than two independent contractors to work on  
9 or in a single building who:

10 (a) Are working on the same task involving a similar material;

11 (b) Bring no workers to work on or in the building subject to the  
12 mandatory coverage of Title 51 RCW; and

13 (c) Are not being treated by the contractor as covered workers  
14 under Title 51 RCW.

15 (2)(a) A contractor found to have committed an infraction under  
16 this section shall be assessed a fine of:

17 (i) Five hundred dollars for a first offense. However, the  
18 director shall waive the fine if the contractor registers for a  
19 department-approved training class within ten days of receiving a  
20 notice of infraction, completes the class within one hundred twenty  
21 days of receiving the notice of infraction, and pays the class fees  
22 upon class registration;

23 (ii) Two thousand five hundred dollars for a second offense; and

24 (iii) Five thousand dollars for a third or subsequent offense.

25 (b) For a third or subsequent offense under this section, the  
26 director shall also suspend the contractor's certificate of  
27 registration for one year.

28 (c) In addition to any other penalty, the director shall suspend  
29 the registration of the contractor until payment of penalties assessed  
30 under this section that have become final are paid in full.

31 (3) For purposes of this section, "task" means a single risk  
32 classification as defined in rule under Title 51 RCW.

33

34

1 (4) Classes offered under subsection (2) of this section may be  
2 conducted or approved by the department. Registrants must pay a fee  
3 to cover the cost of administering the class.

4 (5) This section does not apply to work performed on residential  
5 wood frame construction up to four stories in height.

6  
7 **Sec. 3.** 2009 c 432 s 13 (uncodified) is amended to read as  
8 follows:

9 The department of labor and industries, the employment security  
10 department, and the department of revenue shall coordinate and report  
11 to the appropriate committees of the legislature by December 1st of  
12 each year on the effectiveness of efforts implemented since July 1,  
13 2008, to address the underground economy. Beginning on December 1,  
14 2012, the report shall include the effectiveness of section 2 of this  
15 act. The agencies shall use benchmarks and measures established by the  
16 institute for public policy and other measures it determines  
17 appropriate.

18  
19 **Sec. 4.** Section 3 of this act is codified as a new section in  
20 chapter 18.27 RCW."

21  
22 Correct the title.

23  
24  
25

EFFECT: Strikes all provisions of underlying substitute bill.

Creates a contractor registration violation for a contractor to engage more than two independent contractors to work on or in a single building who: 1) Are working on the same task involving a similar material; 2) bring no workers to work on or in the building subject to mandatory industrial insurance coverage; and 3) are not being treated as covered workers for purposes of industrial insurance.

Defines "task" as a single risk classification for purposes of industrial insurance.

Sets penalties of \$500 for a first offense, \$2,500 for a second offense, and \$5,000 for a third offense. However, the fine for the first offense is waived if the contractor registers for a training class approved by the Department of Labor and Industries (Department) within 10 days and completes the class within 120 days of receiving the notice of infraction, and pays the class fee. In addition, a contractor's registration is suspended until payment of penalties that have become final are paid. For a third or subsequent offense, the contractor's certificate of registration is suspended for one year.

Exempts work performed on residential wood frame construction up to four stories in height.

Requires the Department to report on the effectiveness of the provision as part of the annual underground economy report beginning in 2012.

Codifies the section requiring the underground economy report.

--- END ---