

SENATE BILL REPORT

ESHB 1701

As of March 29, 2011

Title: An act relating to the underground economy by addressing the loss in state revenue through misclassification of workers as independent contractors in the construction industry.

Brief Description: Concerning the misclassification of contractors as independent contractors in the construction industry.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Ormsby, Green, Sells, Kenney, Van De Wege, Hasegawa, Hudgins, Moeller, Miloscia, Sullivan, Upthegrove, Pettigrew, Seaquist, Hunter and Frockt).

Brief History: Passed House: 3/04/11, 54-43.

Committee Activity: Labor, Commerce & Consumer Protection: 3/15/11.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Edith Rice (786-7444)

Background: The Contractor Registration Act (Act) requires general and specialty contractors to register with the Department of Labor and Industries (Department). The Act sets forth penalties for specific violations of the Act. For example, a contractor who fails to register is subject to a fine of not less than \$1,000 and not more than \$5,000.

With limited exceptions, all workers in the state are covered by mandatory industrial insurance. Some independent contractors are exempt from mandatory coverage. The term independent contractor is not defined in law; rather, this concept is embodied in several exception tests to the definition of worker. If a worker fulfills the tests, the worker is not covered for purposes of workers' compensation and no industrial insurance premiums are due. Otherwise, the worker is a covered worker and premiums are due.

In 2009, as part of underground economy legislation, the Legislature directed the Department, together with the Employment Security Department and the Department of Revenue, to report each year on the effectiveness of efforts to address the underground economy.

Summary of Bill: The Legislature finds that the state loses over \$100 million per year in underground economy construction activity. The Legislature finds that if multiple

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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 further finds that prohibiting certain contracting, which by its nature creates a situation in which taxes due are not paid, will provide clarity to contractors and reduce the underground economy.

It is 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 that job site covered by industrial insurance, and (3) are not being treated as covered workers. A task is a risk classification for purposes of industrial insurance. Work on residential wood frame construction up to four stories is exempt.

Penalties are established of \$500 for the first offense, \$2,500 for the second offense, and \$5,000 for the third or subsequent offense. For a first time offense, the fine is waived if the contractor registers for a training class within ten days, and completes the class within 120 days, of receiving the infraction. The contractor must also pay the class fee. For the third or subsequent offense, the Director must also suspend the contractor's certificate of registration for one year. The Director must also suspend the registration of any contractor until payment of penalties that have become final are paid in full.

Beginning on December 1, 2012, the underground economy report must include a report on the effectiveness of the new violation. The underground economy report provision is codified.

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 allows the first penalty to be waived by attending a class. This is an overwhelming problem. We have tried to address the concerns of those who opposed the original bill with this version of the bill. We can't compete with those who don't pay appropriate taxes. Too many businesses are using the designation of independent contractor and gaming the system. Other states are looking into this issue. This is a huge hit to the state. We should support this bill to deter the cheaters.

CON: We are punishing family businesses and just need better enforcement. This bill isn't necessary. This won't work well in dense urban areas. Our business models have changed.

Persons Testifying: PRO: Representative Ormsby, prime sponsor; Randy Loomans, IUOE 302; Don DeMulling, Iron Workers Local 86; Dave Johnson, WA Building Trades; Susan Bittner, Fryer-Knowles; Tim Bendokas, Western WA Signatory Painters Employees; Craig Munsen, Seattle Floor Service; Dave O'Meara UIPAT.

CON: Aran Buchan, Assoc. of Builders and Contractors; Bill Stauffacher, Building Industry Assoc. of WA; Rick Slunaker, Associated General Contractors; Brian Minnich.