

SENATE BILL REPORT

2ESHB 1701

As of Second Reading

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; 5/13/11, 52-36.

Committee Activity:

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. It is not a violation if more than two independent contractors work on or in a single building if proof is provided that those independent contractors beyond the first two are not working during the same time period. Exemptions for not working during the same time period are broad and do not exempt independent contractors from industrial insurance. Independent contractors must separately pass the statutory seven part tests to be exempt from coverage.

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.