

SENATE BILL REPORT

SB 5599

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 21, 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: Senators Kohl-Welles, Conway, Keiser, Kline, Nelson and Harper.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/10/11, 2/21/11 [DP, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Edith Rice (786-7444)

Background: Businesses are obligated to withhold income, Social Security and Medicare taxes from an employee's wages; pay the employer's share of Social Security, Medicare and unemployment taxes; and provide workers' compensation insurance coverage. Employee misclassification is costing state government a significant amount in unpaid taxes at a time when the state can least afford it. By inaccurately labeling employees independent contractors businesses can avoid paying taxes and complying with labor laws. Independent contractors perform their work free from supervision, operate as a separate business and have a history of doing so, are responsible for filing an IRS return, are up to date on applicable registrations, maintain their own expense and earnings records and if they are in the construction trades, have an active contractor registration or contractor's license.

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.

Washington State has explored misclassification of employees issues in recent years. In 2009 SHB 1555 was adopted which contained recommendations from the Joint Legislative Task Force on the Underground Economy. This bill required three state agencies to coordinate and report on the effectiveness of efforts to address the underground economy to the Legislature in December of each year. The Department of Labor and Industries (L&I), Employment Security, and Department of Revenue jointly issued the most recent report (Underground Economy Benchmark Report to the Legislature) in December, 2010.

Summary of Bill: It is a violation under the Registration of Contractors Act if the contractor engages more than two independent contractors to work on a single job site who are working on the same task, brings no workers to the job site who are subject to workers compensation coverage and are not being treated by the contractor as covered by workers compensation. The contractor has the burden of proof to show that the independent subcontractors working for the contractor in the same trade or occupation at a single job site are not working on the same task.

Contractors found to have committed a violation of this act are subject to an infraction. There is an infraction fee of \$500 for the first infraction, \$2,500 for the second infraction, and \$5,000 for the third infraction. For a third or subsequent offense under this act, the Director of L&I can also suspend the contractor's certificate of registration for one year. Finally, the Director of L&I must suspend the contractor registration until payment of any penalties assessed, is paid in full.

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: Employers of workers misclassified as independent contractors use this tactic to avoid paying appropriate taxes and fees. This bill prevents that from happening and is a plus for state revenue. The numbers of independent contractors have increased over the past few years and this is lost revenue to the state. Legitimate businesses can't compete in a system that rewards cheating. Non-payment of appropriate fees allows legitimate businesses to be underbid by 10 to 15 percent. Our profit margin often is not this much. This is a step in the right direction. Contractors that abuse this law will close shop and merely open up under another name. In Oregon this is criminal profiteering and there should be stiffer fines. This bill applies a clear test.

CON: There are some problems with timing of work as it's described in the bill. We could be jointly liable. Most operators are within the law; this bill will put many small and mid-size operators out of business. There are many technical issues that need to be fixed. What is really needed is more effective enforcement of the existing law. The language is too broad, and would be difficult to comply with. We have concerns about the definition of job-site in the bill. There is some ambiguity in this bill.

Persons Testifying: PRO: Dave Johnson, WA State Building and Construction Trades Council; Dave Omera, International Union of Painters and Allied Trades (IUPAT) #5; Susan Bittner, Fryer Knowles Inc.; Kevin Sutherland, Commercial Floors; Michael Heinz, Heritage Floors; Carl Hammersburg, L&I; Tim Bendokas, Signatory Painting; Stacey Grund, Grund Inc.; Craig Munson, Seattle Floor Service; Don Demullig, Iron Workers; Paula Cline, Jeff Kelly, IUPAT; Randy Loomans, Iron Workers 302.

CON: Tammie Hetrick, Washington Retail; April Santa Rosa, WA Floor Covering; Gary Smith, Independent Business Association; Rick Slunaker, Association of General Contractors; Bill Stauffacher, Building Industry Association of WA.