

# HOUSE BILL REPORT

## EHB 1473

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**As Passed House:**  
March 9, 2013

**Title:** An act relating to reporting payments for construction services.

**Brief Description:** Requiring certain entities to report payments for construction services.

**Sponsors:** Representatives Sells, McCoy, Morrell, Roberts, Takko, Lytton, Green, Ormsby, Bergquist, Freeman, Pollet and Tarleton.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 1/31/13, 2/7/13 [DP].

**Floor Activity:**

Passed House: 3/9/13, 51-47.

**Brief Summary of Engrossed Bill**

- Requires entities that regularly contract for construction services to report to the Department of Labor and Industries when the entity pays a construction service provider \$600 or more in a taxable year for construction services.
- Provides penalties for failing to report and filing incomplete reports.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

**Staff:** Trudes Tango (786-7384).

**Background:**

Contractors and subcontractors are subject to industrial insurance laws. The person, firm, or corporation letting the contract is entitled to collect from the contractor the full amount

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payable in premiums, and the contractor is entitled to collect from the subcontractor his or her proportionate amount of the payment.

Contractors must register with the Department of Labor and Industries (Department). Applicants for registration must submit an application that includes the applicant's Unified Business Identifier (UBI) number and evidence of workers' compensation coverage for its employees working in the state.

An employer who contracts for work from a contractor must keep a record of: (1) the UBI of the person or entity performing the work; and (2) the compensation paid to that person or entity.

Contractors are barred from bidding on public works contracts for one year if the contractor has committed any two of the following violations in a five-year period: knowingly misrepresenting payroll or employee hours upon which the industrial insurance premium is based; engaging in business without having obtained a certificate of industrial insurance coverage; committing an infraction under the Contractor Registration Act; performing work as an unregistered contractor; or not complying with certain apprenticeship standards.

#### **Summary of Engrossed Bill:**

An entity that in the course of business makes a payment to a construction service provider of \$600 or more in a taxable year for construction services must report the payment to the Department and the construction service provider in the manner prescribed by the Department.

The report must be made by January 31 following the taxable year in which the payment was made. The report must include: (1) the entity's name, address, and the UBI; (2) the construction service provider's name, address, and the UBI; and (3) the total amount paid to the construction service provider in the taxable year, including payments for services and any materials and equipment.

The Department must transmit the report to the Employment Security Department no later than the first day of the month following the calendar quarter in which the report was received. The Department may share the report, upon request, with other local, state, or federal government agencies. Except for the sharing of the report with other agencies, the reports are otherwise confidential and are not subject to public disclosure.

If the Director of the Department of Labor and Industries (Director) determines that an entity has failed to file a report or has filed an incomplete report, the Director may assess a monetary penalty of \$200 to \$1,000 per report. The monetary penalty is higher (\$1,000 to \$5,000 per report) if the Director determines that an entity knowingly failed to file a report or knowingly filed an incomplete, false, or misleading report. Penalties assessed are deposited into the State General Fund.

An entity assessed a penalty may not bid or have a bid considered on any public works contract until the penalty is fully paid. In addition, violations of the reporting requirements are added to the debarment statute.

The reporting requirement starts with payments made in the 2014 taxable year and does not apply to an entity that does not regularly contract for constructions services, as defined by the Department.

Funding to implement the reporting requirement must come from the Public Works Administration Account.

Definitions are provided for the following terms:

"Construction services" includes the erection, excavation, installation, alteration, addition, modification, repair, improvement, demolition, deconstruction, dismantling, or removal of all or any part of a building, structure, dock, wharf, surface, or subsurface on or attached to any real property.

"Construction service provider" means a general contractor or specialty contractor that provides construction services regardless of whether the general contractor or specialty contractor is registered.

"Entity" includes a sole proprietorship, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity other than the federal government, and any other individual or group, which is engaged in a trade, occupation, enterprise, governmental function, or similar activity in this state.

"Payment" does not include wages paid by the entity to an employee.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) There has been a lot of effort over the years to resolve issues with the underground economy. This bill provides one more tool to help fight the issues with the underground economy. The reporting requirements in the bill are no more difficult for an employer than filing a 1099 form. The \$600 threshold is consistent with federal requirements for when a 1099 form must be filed. This reporting mechanism will help the Department know which subcontractors are on the job. Currently there is no mechanism to see the business to business transactions that occur. This will help business and labor. Several states have introduced similar legislation.

(Information only) The Department has worked with the stakeholders to help them try to draft a bill that is close to the 1099 requirements. The Department would probably ask for the 1099 form and ask the entity to include the UBI numbers. There will be implementation

costs for information technology changes and staff. The term "regularly contract for construction services" would have to be defined.

(Opposed) This is a well-intentioned bill, but it will not achieve the intended results of reducing unregistered contractors. Contractors working illegally are the type of people who do not submit forms in the first place. They will not follow this requirement if they are already not registering. This bill only burdens the contractors who do act legally. In order to not be penalized, a business is going to give the Department a list of everyone it made payments to and this will create a burden on businesses and the Department. This requirement should have an expiration date and a review to see if the requirement has made a difference. This bill gives the Department the power to ask for any information by rule. Homeowners are exempt in this bill, but they are a large part of the underground economy. This bill is one more burden on legitimate contractors and one more way for them to get penalized. The bill should be amended to increase the threshold to \$300,000 for school districts.

**Persons Testifying:** (In support) Dick Mettler, Northwest Wall & Ceiling Contractors Association; and Jimmy Matta and Terry Tilton, Pacific Northwest Regional Council of Carpenters.

(Information only) Tamara Jones, Department of Labor and Industries.

(Opposed) Van Collins, Associated General Contractors; Tom Kwieciak, Building Industry Association of Washington; Jim King, Washington State HVAC/R Association; Gary Smith, Independent Business Association; and Charlie Brown, Puget Sound School Coalition.

**Persons Signed In To Testify But Not Testifying:** None.