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**Labor & Workplace Standards  
Committee**

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**ESB 6321**

**Brief Description:** Addressing certain exclusions from the definition of worker under industrial insurance statutes.

**Sponsors:** Senators Baumgartner and Pedersen.

**Brief Summary of Engrossed Bill**

- Modifies the seven-part independent contractor test for construction contractors for purposes of workers' compensation.

**Hearing Date:** 2/23/16

**Staff:** Joan Elgee (786-7106).

**Background:**

Under industrial insurance laws, workers are covered and premiums are owed unless an exception applies. In the construction industry, an individual performing services is not a covered worker if a seven-part test is met.

The seven-part test has the following elements, requiring that the individual:

*Control or direction.* Is free from control or direction;

*Separate business.* Performs a service:

- that is outside the usual course of business for which the service is performed,
- that is outside all of the places of business of the enterprise for which the service is performed, or
- for which the individual is responsible for the costs of the principal place of business where the services are performed;

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*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.*

*Established independent business.* Has:

- an independently established trade, occupation, profession, or business, or
- a principal place of business that qualifies for an Internal Revenue Service (IRS) deduction;

*IRS schedule of expenses.* Is responsible for filing a schedule of expenses with the IRS;

*Books and records.* Has a separate set of books and records that reflect all items of income and expenses;

*State tax accounts.* Has an active and valid account with the Department of Revenue, and any other required state agencies for the payment of taxes, on the contract date or within a reasonable period after the contract date; and

*Contractor registration/electrical licensing.* Is registered as a contractor or licensed as an electrical contractor on the contract date.

Each of the seven elements must be met.

### **Summary of Bill:**

Elements of the seven-part independent contractor test are modified as follows:

*Control or direction.* The following do not constitute control or direction: Requirements regarding sequencing, deadlines, or date and time of entry to a worksite, reasonable expectations of professional dress, conduct, demeanor safety, or any other conditions specified in the agreement with the property owner or higher tier contractor.

*Established independent business.* The trade, occupation, profession, or business does not need to be independently established. The alternative for meeting the test, a principal place of business eligible for an IRS business deduction, is eliminated.

*IRS schedule of expenses.* The requirement that the individual be responsible for filing a schedule of expenses with the IRS is eliminated.

*State tax accounts.* The requirement to have active and valid accounts with any required state agencies is limited to the Departments of Revenue and Labor and Industries. If checked quarterly or within a reasonable period before, during, and/or after the agreement, reliance on information published by the Departments of Revenue and Labor and Industries constitutes compliance.

*Books and records.* The requirement that the individual has a separate set of books and records is eliminated.

*Contractor registration/electrical license.* If checked quarterly or within a reasonable period before, during, and/or after the agreements, reliance on information published by the Department of Labor and Industries constitutes compliance.

**Appropriation:** None.

**Fiscal Note:** Available.

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