

# HOUSE BILL REPORT

## 2SSB 6575

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### As Reported by House Committee On:

Commerce & Labor  
Ways & Means

**Title:** An act relating to recommendations of the joint legislative task force on the underground economy.

**Brief Description:** Concerning the recommendations of the joint legislative task force on the underground economy.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Keiser, Kline, Franklin and McDermott).

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/19/10, 2/23/10 [DPA];  
Ways & Means: 2/27/10 [DPA(WAYS w/o CL)].

#### Brief Summary of Second Substitute Bill (As Amended by House)

- Requires contractors who fail to register with the Department of Labor and Industries to take a training class, in addition to registering, to be eligible for a reduced penalty for a first-time offense.
- Provides that a contractor who engages in certain unregistered contractor activity after a third final infraction for such activity commits a class C felony.
- Provides that a contractor violation occurs in certain circumstances when contractors with no workers covered under industrial insurance work together on the same task.
- Creates a dedicated account for contractor registration.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

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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.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

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

**Background:**

In 2007 the Legislature established a Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force met during the 2007 and 2008 interims and developed recommendations which were incorporated into legislation. In 2009 the Legislature expanded the scope of the Task Force beyond the construction industry. The Task Force made a number of recommendations based on its 2009 interim work.

The Contractor Registration Act (Act) requires general and specialty contractors to register with the Department of Labor and Industries (Department). Under the Act, a contractor who fails to register is subject to a fine of not less than \$1,000 and not more than \$5,000. The Director of the Department may reduce the fee to no less than \$500 for a first offense if the contractor registers within 10 days of receiving a notice of infraction. It is also a gross misdemeanor for a contractor to work without being registered, work while a registration is suspended or revoked, or commit certain other acts.

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**Summary of Amended Bill:**

The penalty for a first offense of failure to register as a contractor is modified. To receive a reduced penalty, a contractor must register for and complete a contractor training class, in addition to registering as a contractor. Once a contractor receives a notice of infraction, the contractor has 10 days to register as a contractor and register for a class, and 120 days to complete the class. A contractor must also pay any class fees upon registration to receive the reduced penalty.

The Department will conduct or approve contractor training classes. The Department may charge a fee that covers the cost of administering a class. In addition, the Department may adopt rules on the number of classes to be offered, and the class locations, fees, and curriculum. In determining class locations, the Department may consider offering online classes and ensure that classes are reasonably accessible in eastern and western Washington.

A contractor commits a class C felony if he or she engages in unregistered contractor activity after receiving a third final infraction for working while unregistered, while his or her registration is suspended or revoked, or under a registration issued to another contractor.

A violation occurs if, on a job site (single physical address), work is performed together on the same task by more than two contractors with no workers covered under industrial insurance on the job site. If the contractors are working together in the same trade or craft, the contractors have the burden of proof to show that they are not working together on the same task. The violation is committed by all contractors who are parties to the contract for

the performance of that task. The penalty and reduced penalty for a first offense is similar to the penalty for failure to register as a contractor. The penalty is not less than \$1,000 or more than \$5,000. For a first offense, the Director of the Department may reduce the penalty to no less than \$500 if the contractor registers for and completes a training class within the same time frames as provided for an unregistered contractor first offense.

A Contractor Registration Account (Account) is created beginning July 1, 2011. All registration fees, penalties, and class fees must be deposited into the Account, and moneys may be appropriated from the Account only for purposes of contractor registration.

A double amendment regarding retainage on public works contracts is corrected.

**Amended Bill Compared to Second Substitute Bill:**

The amended bill adds the Account and the provisions relating to work by multiple contractors working together on the same task.

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**Appropriation:** None.

**Fiscal Note:** Available on second substitute bill. New fiscal note requested on February 23, 2010.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 3 and 4, relating to the Contractor Registration Account, which take effect July 1, 2011.

**Staff Summary of Public Testimony:**

(In support) The Washington State Institute for Public Policy estimates the underground economy, just in construction, costs the taxpayers over \$100 million per year. It is unfair to contractors who play by the rules. This bill is another way to get at unregistered contractors who are not paying workers compensation premiums or unemployment taxes. There is a televised investigative report on this activity. Restoring the dedicated fund will create fairness and should be seriously considered. There is an expectation about the use of fees paid by contractors and when these monies are devoted to other purposes, it degrades confidence in the system. The independent contractor proposal is much clearer. There is still an issue of enforcement, but no official position has been taken yet.

(In support with amendment) Removal of the dedicated fund is disappointing. The training and felony pieces in the bill are important. The parties have a compromise simplified proposal on the independent contractor issue. Contractors are telling workers they cannot work unless they are independent contractors when these people are actually employees. The proposal helps the Department by dealing with the issue up front. The misclassification proposal may be the most important piece from the work of the Task Force. Oregon has had their law for 15 years and does not have misclassification issues.

(Available for questions) The parties are very close on an amendment on the independent contractor issue.

(Opposed) None.

**Persons Testifying:** (In support) Senator Kohl-Welles, prime sponsor; and Rick Slunaker, Associated General Contractors of Washington.

(In support with amendment) David Johnson, Washington State Building and Construction Trades Council; and David O'Meara, International Union of Painters and Allied Trades.

(Available for questions) Carl Hammersburg, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** (With concerns) Amy Brackenbury, Building Industry Association of Washington.

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Ways & Means and without amendment by Committee on Commerce & Labor. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

**Staff:** Trista Zugel (786-7157).

### **Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Commerce & Labor:**

The provision that a contractor who engages in certain unregistered contractor activity after a third final infraction for such activity commits a class C felony is eliminated.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 3 and 4, relating to the Contractor Registration Account, which take effect July 1, 2011.

### **Staff Summary of Public Testimony:**

(In support) This bill is the final bill to come out of the Joint Legislative Task Force on the Underground Economy (Task Force), which produced a lot of excellent legislation in recent years. It is important for ongoing compliance activities. The training class requirement for

unregistered contractors who want their penalties reduced, as well as the class C felony for the third final infraction were agreed to by members of the Task Force. This legislation also addresses the inappropriate use of multiple owner-operators performing work as specialty contractors when they should really be classified as employees. This is critical to ensuring the proper payroll taxes are paid and the revenue from these taxes should also be considered. This eliminates the unfair advantage gained when employers don't pay appropriate payroll taxes and workers compensation premium. This requirement was also agreed upon by the Task Force

The new requirements regarding three or more owner-operators doing the same work need some improvement.

(Opposed) The prohibition on the use of multiple owner-operators performing work as specialty contractors was not agreed to by the Task Force. This idea deserves additional study. This idea came from a review of the Oregon contractor compliance statute. We should not adopt any provision that punishes those who are following the rules. Oregon and Washington have completely different systems and it is inappropriate to take a component of that system and apply it to the Washington system. We have concerns about the dedicated account because many dedicated accounts are raided for other purposes. Also, if the money is going to be used to punish those who are complying with the law, it shouldn't be placed in the account anyway. The fiscal note does not reflect the costs associated with disputes that arise out of the new requirements.

**Persons Testifying:** (In support) David Johnson, Washington State Building and Construction Trades Council; Craig Munson, Seattle Floor Service; Randy Loomans, International Union of Operating Engineers #302; Dave O'Meara and Chad Smith, Painters and Allied Trades; Rick Slunacker, Associated General Contractors; and Todd Pierce, International Union of Painters and Allied Trades District Council #5.

(Opposed) Amy Brackenburg, Business Industry Association of Washington ; Cliff Webster, Associated Builders and Contractors; and Gary Smith, Independent Business Association.

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