

HOUSE BILL REPORT

ESB 5850

As Passed House-Amended:

April 18, 1997

Title: An act relating to employment in the construction industry.

Brief Description: Changing provisions related to employment in the construction industry.

Sponsors: Senators Anderson, Newhouse, Haugen and Horn.

Brief History:

Committee Activity:

Commerce & Labor: 3/31/97, 4/3/97 [DPA].

Floor Activity:

Passed House-Amended: 4/18/97, 50-47.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

Staff: Chris Cordes (786-7103).

Background:

Industrial insurance coverage at construction sites.

A worker injured in the course of employment generally is compensated for his or her injuries under the industrial insurance law and is not permitted to bring a civil action against the employer. However, a worker may file a damage suit against a responsible "third party," if the third party is not the injured worker's co-worker. Workers on the same job site who are employed by different employers are not considered to be co-workers.

Third-party immunity is granted to design professionals who perform professional services for a construction project, unless the professional assumed responsibility for

safety by contract or actually exercised control over that part of the premises where the worker was injured. Design professionals include licensed or authorized architects, engineers, land surveyors, or landscape architects.

All employees covered by industrial insurance under the state fund pay, through wage deductions, one-half of the medical aid premium charged to the employer.

Construction site safety requirements under the Washington Industrial Safety and Health Act.

Under the Washington Industrial Safety and Health Act (WISHA), general contractors are responsible for provision of a safe workplace for their own employees, and for compliance with all safety regulations with respect to all employees on a construction job site. Washington courts have determined that a subcontractor's employee has a cause of action against the general contractor if the injury was caused by a violation of a specific safety regulation at the construction job site.

In 1993, the Department of Labor and Industries issued a WISHA regional directive, developed in consultation with labor and management representatives in the construction industry and related industries. The regional directive establishes guidelines for assessing the compliance of general contractors with the requirements for safety applying to the subcontractor's employees.

Summary of Bill:

Industrial insurance coverage at construction sites.

The immunity from liability for workplace injuries for third parties performing services at a construction site is modified.

An injured worker or the worker's beneficiary is not permitted to seek damages for an industrial injury or occupational disease occurring in the course of employment at a construction project from the owner or developer of the project, or any person performing work, furnishing materials, or providing services for the project, including design professionals, construction managers, general or prime contractors, suppliers, subcontractors of any tier, or their employees. This prohibition applies whether the work is performed at the site under a single contract or multiple contracts.

This immunity does not apply to:

- (1) a person or entity that injures a worker by deliberate intention. It is against public policy to indemnify against this liability.
- (2) manufacturers and product sellers for product liability actions.

- (3) negligent preparation of design plans by a design professional.

Beginning with the first calendar quarter six months after the other provisions of the bill take effect, for workers in the construction industry the wage deduction for the workers' share of the medical aid premium is capped at 50 percent of the basic manual rate for the applicable risk class.

Construction site safety requirements under the Washington Industrial Safety and Health Act.

The prime or general contractor has primary responsibility for safety compliance at each job site.

All construction employers have a duty to provide a safe workplace for their employees and employees of their subcontractors, in the context of general industry practice. The duty includes implementation of a safety program that is effective in practice. Construction employers must take reasonable steps to ensure that their safety programs are designed to comply with law.

Each construction employer on the site must designate a person who is responsible for safety. The name and telephone number of the designated person must be communicated to the contractor's own employees. The name and telephone number of the designated safety person for the prime or general contractor must be posted at the site.

Safety suggestions and hazard identification are to be encouraged. Disciplinary actions may be taken for violation of appropriately communicated requirements, including verbal or written reprimand, suspension from work, and termination for cause, subject to the employer's written policy or written agreement between the employer and the employees, if any.

If a construction employer's safety program is effective in practice, no WISHA citation may be issued to the construction employer for violations by his or her subcontractors. "Effective in practice" means all of the following are complied with:

- (1) Subcontractors must comply, by contract, with the WISHA.
- (2) A written program is implemented and enforced for each site by the prime or general contractor.
- (3) Each subcontractor provides, and makes available, an accident prevention plan for the work site.
- (4) The safety person's name and telephone number is posted.
- (5) All necessary safety equipment is provided to employees.

A violation or citation under the WISHA does not affect the immunity granted under the industrial insurance law.

Authority to adopt rules.

The Department of Labor and Industries must adopt rules, in consultation with affected parties, to implement the act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: (House amendment) General contractors are willing to accept responsibility for safety over the entire construction site, even for employees who are not their own. Other states have adopted similar construction site immunity laws and safety has not been an issue. There are many incentives for a general contractor to want to have the safest workplace possible, including motivations that are not just financial. This bill will improve the situation for subcontractors who are now having to pay workers' compensation premiums, but also having to indemnify the general contractor for injuries that occur to the subcontractors' employees. Owners of projects have no control over worksite safety and should be immune from liability. The current immunity for design professionals should be retained. The shift to employers of the cost of the medical aid fund premium should be deleted, or the application of the shift should be conditioned on enactment of the remainder of the bill.

Testimony Against: Injuries at construction worksites are usually very serious injuries. Allowing lawsuits against the third parties who are responsible for these injuries promotes safety and provides resources that can be used to retrain the worker for a new occupation and return to productive life. In addition, the state fund is reimbursed for its costs of providing benefits to the worker. As intended by the court when these lawsuits were permitted, safety at construction worksites is now taken seriously. The case resulted in labor/management discussions that continue to improve safety. This bill does not provide for safety programs that will be "effective in practice" except on paper. The penalties for safety violations are not large enough to provide safety incentives. Not enough safety inspectors are funded to adequately police the worksites. In some cases, the dangerous situation cannot be detected by normal inspections. The third parties that are subject to lawsuits are not paying workers' compensation premiums and therefore should not be granted immunity.

Testified: (In support of amendment) Rick Slunaker and Gene Colin, Associated General Contractors; Bob Manlowe; Tom Kwieciak and Dick Rokes, Building

Industry Association of Washington; Jim Justin, Association of Washington Cities. (In support of amendment, except section 2) Gary Smith, Independent Business Association; and Kathleen Collins, Sheet Metal and Air Conditioning Contractors. (Opposed to Senate amendment) Cliff Webster, Architects and Engineers Legislative Council. (Opposed) Bradley Crosta; George Thorton; Anna Marie Sandbo; John Durkin; Rod Nelson; Bob Dilger, Washington Building and Construction Trades Council; Allan Darr, International Union of Operating Engineers; Dick King, International Brotherhood of Electrical Workers; Bill Anderson; Jim Bender; Paul Blaski; Stephen Ignac; Roger Workman; Gary Shively; Bob Zappone; Ted Straub; Eric Franklin; Jack Gilchrest, Seattle Building and Construction Trades Council; and John Stanislay, Department of Labor and Industries.