

SENATE BILL REPORT

ESB 5850

As Passed Senate, March 19, 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: 2/26/97, 2/27/97, 2/28/97 [DP, DNP].
Passed Senate, 3/19/97, 26-23.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Newhouse.

Minority Report: Do not pass.

Signed by Senators Franklin, Fraser and Heavey.

Staff: Jack Brummel (786-7428)

Background: Under the state's industrial insurance law, injured workers or their beneficiaries may seek damages from third persons, except design professionals, working on construction projects who have not been negligent and who have not assumed responsibility for safety practices.

Employers, except self-insurers and trainers licensed by the Horse Racing Commission, must deduct one-half of the medical aid fund premium from the wages of their workers.

Employers and employees are each required to pay one-half of the Department of Labor and Industries' supplemental pension fund assessment.

Summary of Bill: The immunity from suit provided to design professionals under current law is eliminated. Injured workers or their beneficiaries may not seek third-party damages against general or prime contractors, subcontractors, or their employees for injuries at a construction site.

For workers in the construction industry, employers may deduct from the pay of a worker no more than 40 percent of the basic manual premium rate for medical benefits established for the risk classification under which the employer operates.

Construction employers are required to provide safe work places for their employees and their subcontractor's employees, and have a written accident prevention program for each

construction project. All construction employers must designate a safety officer for each job site.

No citation is issued to a construction employer for safety violations by a subcontractor if the employer's safety program is effective in practice. The prime or general contractor has the primary responsibility for compliance with safety regulations.

Appropriation: None.

Fiscal Note: Requested on February 17, 1997.

Effective Date: Immediately, with the exception of the provisions related to deducting for medical benefits which take effect on January 1, 1998.

Testimony For: Safety is a priority for construction companies. Indemnity agreements put general contractors and subcontractors in an adversarial relationship as insurance premiums skyrocket. This bill would ensure workers can recover through industrial insurance but not subject employers to excess liability. Worksite immunity bills like this are not novel and such immunity does not cause workplace safety to deteriorate

Testimony Against: The public policy behind tort law is to: 1) compensate injured workers; and 2) modify behavior of people responsible for safety. Tort liability is a larger incentive to safety practices than WISHA enforcement. The effective in practice language of the bill amounts to a paper plan– that would not be effective. The Department of Labor and Industries' collection from third party recoveries would be reduced by about \$4 million. The bill would take away the right of a citizen to sue a nonemployer for an injury.

Testified: PRO: Rick Slunaker, Tim Gottberg, Associated General Contractors; Gene Colin, CEO, Ferguson Construction; Joe R. Devish, Carl T. Madsen, Inc.; Wayne Brokaw, Acme Materials & Construction Co.; Ken Dunham, Inland NW AGC; Bob Manlowe, Williams, Kastner & Gibbs; CON: John Stanislav, L&I; Robby Stern, Washington State Labor Council; Robert Dilger, Washington State Building & Construction Trades; Michael Beranbaum, Teamsters; Larry Shannon, Patrick LePley, Washington State Trial Lawyers.

House Amendment(s): The amendment grants third-party immunity to, in addition to contractors and their employees, owners and developers of construction projects and to persons performing work or providing services or materials to the project.

The amendment raises the cap on the workers' share of the medical aid fund premium from 40 to 50 percent of the basic manual rate. This rate applies beginning with the first calendar quarter that begins six months after the remainder of the bill takes effect.