

HOUSE BILL REPORT

HB 1133

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to limiting liability for donated labor on community projects.

Brief Description: Determining liability for donated labor on community projects.

Sponsors: Representatives Carrell, Lantz, Lambert, Hurst, Casada, Morell, Kagi, Marine, Cox, Talcott, Tokuda, Fisher, Bush, Edwards, O'Brien, Darneille, Edmonds, Esser and Haigh.

Brief History:

Committee Activity:

Commerce & Labor: 1/30/01, 2/21/01 [DPS].

Brief Summary of Substitute Bill

- Establishes criteria for public entities to follow when seeking partnerships with businesses or volunteer groups on community improvement projects, including notice of risks and responsibilities and payment of medical aid benefits for volunteers.
- Establishes criteria for determining, for industrial insurance purposes, when a contractor donating materials or equipment to a community improvement project is not considered the employer of labor donated to the project.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

Staff: Chris Cordes (786-7103).

Background:

Washington's industrial insurance law requires most employers to cover their workers for

medical benefits and lost wages when the workers are injured or develop occupational diseases in the course of employment. The law defines "employer" and "worker" but does not specify when an employment relationship exists.

In interpreting this law, the courts have developed a two-part test to determine whether an employment relationship exists: (1) the employer has the right to control the worker's physical conduct in the performance of duties; and (2) the employee consents to this relationship. In litigation, whether an employment relationship exists is a question of fact that must be submitted to the jury.

One exception to the general requirement for an employment relationship involves volunteers providing services to a governmental entity. "Volunteers" are those who perform assigned or authorized duties by their own free choice, who receive no wages, and who are accepted as volunteers by the governmental entity. The industrial insurance law requires state agencies to cover all of their volunteers, while local governments may elect to have volunteer coverage programs. Covered volunteers receive medical benefits only.

Employers subject to the industrial insurance law are not liable in personal injury lawsuits brought by their workers for unintentional workplace injuries or illnesses covered by the industrial insurance law.

Summary of Substitute Bill:

The Legislature finds that government and business partnerships can assist communities to preserve historic property, but that uncertainty about risks and obligations may deter employers otherwise willing to donate materials and equipment. The Legislature's purpose is to encourage participation by establishing clear criteria for determining industrial insurance liability on these projects.

A public entity, including the state and local governments, seeking partnerships on community improvement projects with volunteer groups and businesses must (1) provide prospective donors and participants with written notice of the risks and responsibilities to be assumed by the parties, (2) require volunteers, before beginning work, to document that they received the notice and are donating labor by their free choice, and (3) pay industrial insurance premiums to provide medical aid benefits to volunteers donating labor.

A contractor or employer donating equipment or materials for the project is not considered the employer, for industrial insurance purposes, of a person donating labor to the project unless the contractor or employer pays the person wages or makes working on the project a condition of employment. These criteria apply whether the contractor or employer informs the person about the project or encourages the person to donate labor,

whether the person uses the donated materials or equipment, or whether the person is reimbursed for actual expenses incurred in working on the project.

A community improvement project means a project sponsored by a public entity using donated labor, materials, or equipment, including projects to repair, restore, or preserve historic property. Historic property means real property owned by a public entity, such as barns, schools, military structures, and cemeteries.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) adds a section stating the Legislature's intent to encourage volunteer participation in certain community projects by clarifying industrial insurance obligations; (2) requires a public entity seeking partnerships on community improvement projects with volunteer groups and businesses to provide prospective donors and participants with written notice of the risks and responsibilities to be assumed by the parties, to require volunteers, before beginning work, to document that they received the notice and are donating labor by their free choice, and to pay industrial insurance premiums to provide medical aid benefits to volunteers donating labor; (3) adds that, to retain the contractor/employer exemption, the contractor or employer must not pay wages to volunteers or make working on the project a condition of employment; and (4) adds a definition of "historic property" to mean real property owned by a public entity, including barns, schools, military structures, and cemeteries.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Fort Steilacoom Park has barns and a graveyard that no one is preserving. Contractors are willing to donate materials and equipment, but are worried that they might be liable for industrial insurance premiums. This bill deals with a very narrow situation, but it will clarify responsibilities and assist communities to put together projects to preserve historic sites. Local governments no longer have the funds to pay for these projects and this will assist in maximizing donated help.

(Concerns, original bill) The grant of immunity should be clarified and donors should be given information that explains the liability for industrial insurance, safety, and tort actions. The bill should clarify what is "volunteer" work and require documentation before the work is started.

Testimony Against: None.

Testified: (In support, original bill) Representative Carrell, prime sponsor; Laurel Lemke, Western State Hospital; George Walk, Pierce County; Bob Mack, cities of Lakewood, Bellevue, and Tacoma; and Jeff Brewster, city of Lakewood.

(With concerns, original bill) Clif Finch, Association of Washington Business; and Michael Temple, Washington State Trial Lawyers Association.

(Information only) Suzanne Mager, Department of Labor and Industries.