

HOUSE BILL REPORT

HB 1555

As Reported by House Committee On: Commerce & Labor

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

Brief Description: Addressing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Sponsors: Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy and Wood.

Brief History:

Committee Activity:

Commerce & Labor: 1/28/09, 2/18/09 [DPS].

Brief Summary of Substitute Bill

- Creates an interagency advisory committee to conduct a continuing study of the underground economy.
- Requires cities, counties, and towns to verify contractor registrations before issuing a business license.
- Makes other changes addressing the recommendations of the Joint Legislative Task Force on the Underground Economy in the Construction Industry.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Joan Elgee (786-7106)

Background:

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.

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 interim and developed recommendations which led to the passage of two bills in 2008, ESHB 3122 and 2SSB 6732. In addition, budget provisos were enacted. The 2008 legislation also extended the Task Force for an additional year. The Task Force met during the 2008 interim and submitted a final report to the Legislature. The final report contains a number of recommendations.

Summary of Substitute Bill:

Provisions are adopted addressing contractor registration, workers' compensation education and outreach, liens on public works retainage, and unemployment record-keeping:

- A contractor must maintain, and have available for inspection by the Department of Labor and Industries (L&I), a list of all direct subcontractors and a copy of their certificate of registration.
- Before issuing a business license to a person required to be registered as a contractor, a city, town, or county must verify that the person is registered. The Department of Licensing must conduct the verification for cities that participate in the Master License System.
- The L&I is directed to conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. The L&I must work with new employers on an individual basis and also establish mass education campaigns.
- The L&I and the Employment Security Department (ESD) have a priority lien on retainage on public works projects following the Department of Revenue (DOR).
- A penalty is created for employers who fail to keep and preserve unemployment insurance records. The penalty may not exceed \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.

An interagency underground economy advisory committee (committee) is created to conduct a continuing study of the underground economy. The committee is composed of:

- one representative each from the L&I, the ESD, and the DOR;
- one representative of cities and one representative of counties; and
- three representatives each of business and labor, appointed by the Director of the L&I.

The member from the L&I serves as the chair.

The committee must submit reports to the appropriate committees of the Legislature annually beginning December 1, 2010. In conducting its continuing study, the committee may consider, but is not limited to the following issues:

- shortening the time for new hire reporting to the Department of Social and Health Services;
- modifying resale certificate provisions;
- requiring contractors to place subcontractor Unified Business Identifier numbers on checks;
- establishing penalties for owners who intentionally do not follow the law;
- establishing penalties for persons who offer or accept undocumented cash payment;
- enhancing funding for the master business application system;
- requiring photo identification for contractor registration and renewal;
- requiring new and out-of-state contractors to attend a contractor training class before registration;
- requiring contractors to attend continuing education;
- creating effective sanctions for contractor registration violations; and
- establishing additional benchmarks and measures on the underground economy.

The L&I, the ESD, and the DOR must report to the appropriate committees of the Legislature by December 1 each year on the effectiveness of efforts implemented since July 1, 2008, to address the underground economy. The agencies must use benchmarks and measures established by the Washington Institute for Public Policy and other measures it determines appropriate.

Substitute Bill Compared to Original Bill:

Provisions are deleted which required: (1) photo identification requirement for contractor registration and renewal; (2) contractor training as a prerequisite for registration; (3) the Department of Labor and Industries (L&I) to explore the need for continuing education for contractors; and (4) an enhanced penalty for contractor registration violations. These items are added to the list of issues for the interagency underground economy advisory committee (committee) to consider studying. The listed issues are issues the committee may consider in its ongoing study, rather than a list upon which the committee must report in its first report. A definition of who is an independent contractor for purposes of prevailing wages is deleted. The verification required by local governments is limited to verification of contractor registration and the Department of Licensing is directed to conduct the verification for certain cities. The L&I and the Employment Security Department's lien priority is modified. Clarifying changes are made.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on 2/18/09.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 13, relating to unemployment insurance records, which takes effect October 1, 2009.

Staff Summary of Public Testimony:

(In support) The items in the bill are what the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force) agreed on but there are many changes that will likely need to be made as the bill gets perfected.

Regarding photo identification, there are people that get registered without even coming to the Department of Labor and Industries (L&I). The bill will make sure people are who they say they are. Two pieces are very important to labor: the definition of independent contractor for public works and the interagency underground economy advisory committee (committee). Consistency with independent contractor definitions is very important, especially in this economy.

There is a lot of work left to do and revenue that can be returned to the state due to underground economy activity. The committee would provide a forum for these issues and determine what might be changed by rule or legislation. Oregon has a similar interagency work group. Expanding outside construction is fine although there are still issues with construction. Addressing the underground economy in the taxicab industry is important.

The training piece is designed to address "willful ignorance" so corrective action can be taken early.

(In support with concerns) The local government cross-check verification piece is important. If the local governments could help the L&I track homeowners in getting their own permits, this would help, as most often the homeowners are working with unregistered contractors. The outreach and training aspects are supported, as are the pieces about working with other organizations.

Requiring the contractor to maintain a copy of the registration is cumbersome; the number should be enough. There are alternatives to photo identification, particularly on renewal. Using the seven-part test from workers' compensation is fine but should state that the contractor "is" rather than "has been and will continue to be" free from direction and control.

The committee should look at issues outside the construction industry since only 5 percent of the problems are in construction.

Legal contractors can't compete with noncompliant contractors. Some contractors have employees but are not reporting them. During the economic slowdown, it's even harder for responsible contractors. Businesses, individuals, and families are hurt. The L&I hasn't helped until recently.

(Information only) There are a couple of areas with technical issues.

(Comments only) Sixty-nine percent of cities require business licenses. Some cities verify registration and some do not. This would be a workload issue for some cities. Bellevue, for example, issues 4,000 to 5,000 business licenses a year and does not verify registrations. For some cities, computer systems are not set up for this. A delay may be caused. Cities may not know why the information is being requested. It is unclear what "other requirements" means.

(Opposed) None.

Persons Testifying: (In support) Representative Conway, prime sponsor; David Johnson, Washington State Building and Construction Trades Council; John Littel, Pacific Northwest Regional Council of Carpenters; Bob Abbott, Washington and North Idaho District Council of Laborers; and Chris Van Dyk, BYG Taxi Cooperative Association.

(In support with concerns) Rick Slunaker, Associated General Contractors of Washington; Amy Brackenbury, Building Industry Association of Washington; and Dickie Kinimaka, Kinimaka Tile.

(Information only) Carl Hammersburg, Department of Labor and Industries.

(Comments only) Victoria Lincoln, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.