

SENATE BILL REPORT

SB 5614

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2009

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: Senators Kohl-Welles, Keiser, Franklin, Kline, McDermott and Fraser.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/02/09, 2/23/09 [DPS, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5614 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, King and Kline.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Kathleen Buchli (786-7488)

Background: In 2007 the Legislature created the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground economy practices in the construction industry. During the 2007 interim, the Task Force developed findings and recommendations and forwarded them to the Legislature. Many of these findings and recommendations were embodied in bills enacted during the 2008 legislative session. The Task Force's term was extended for an additional year and required to submit a final report to the Legislature by December 31, 2008.

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 its Final Report, the Task Force issued a number of recommendations including recommendations relating to contractor registration, education and outreach activities, defining the term independent contractor for prevailing wage purposes, unemployment insurance recordkeeping, establishing an interagency advisory committee, and benchmarks and measures.

Summary of Bill (Recommended Substitute): A contractor must maintain and have available for inspection by 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 may verify that the person is registered. L&I must conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. L&I must work with new employers on an individual basis and establish mass education campaigns.

L&I and the Employment Security Department (ESD) have a priority lien on retainage on public works projects following employees and the Department of Revenue (DOR).

Employers who fail to keep and preserve unemployment insurance records are subject to a penalty that may not exceed \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The following requirements are removed: that an applicant for registration as a contractor submit a photo identification for initial registration and renewals; that L&I approve training on state law for applicants for contractor registration; that L&I work with business representatives to explore continuing education requirements; establishing a felony penalty for failure to register as a contractor; that an interagency advisory committee be established; and that the agencies report annually on the effectiveness of efforts implemented since 2008.

The requirement that cities, counties, and towns not issue a business license without first verifying that the person is appropriately registered with L&I is removed; instead, this provision is made permissive. The section establishing an independent contractor test for the purpose of prevailing wage is removed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 19, 2009.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: We support efforts to crack down on unregistered contractors. We support some technical changes to the bill. Instead of requiring contractors to keep a list of all direct subcontractors and a copy of their certificate

of registration on the job site, it would be easier for them to retain the contractor's registration number and this could be maintained electronically.

The requirement for providing a photo identification for registration renewals is redundant. The current language used to determine independent contractor status is problematic; rather than stating that the person "has been, and will continue to be free" from control or direction, the statute should state "is" free from control or direction. Language should be added to the provision on the interagency advisory committee that specifically states that the scope of that section is to address the entire underground economy and not just the construction industry.

In regards to the fiscal impact of the bill, we would like to sit down with the L&I and determine the impact; the bill could result in a revenue gain. We support the education and outreach efforts as well as expanding the scope to look at the bigger picture of the underground economy. We know that money is being lost to the underground economy in the construction industry. If we can examine more areas where the underground economy exists, there would be more to gain than what the state would expend.

OTHER: The requirement that cities and towns verify business licenses may not be applicable to all cities. Currently, 69 percent of cities and towns require business licenses, and the process varies from city to city. Some cities would have to overhaul their systems to comply with the bill's requirements. This provides a challenge to local environments; if there are more responsibilities, they need funding to meet them. The cities and towns are glad to be part of the interagency advisory committee.

Persons Testifying: PRO: Amy Brackenbury, Building Industry Association of Washington; Chris Van Dyk, BYG Taxi Cooperative Association; Rick Slunaker, Associated General Contractors; David Johnson, Washington State Building and Construction Trades; Bob Abbott, District Council of Laborers.

OTHER: Victoria Lincoln, Association of Washington Cities.