
SUBSTITUTE HOUSE BILL 2414

State of Washington

52nd Legislature

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By House Committee on Commerce & Labor (originally sponsored by Representatives G. Cole, Winsley, Jones, Franklin, Orr, Jacobsen, R. King, Prentice, Day, Valle and Hine)

Read first time 02/03/92.

1 AN ACT Relating to construction contracts; adding a new section to
2 chapter 39.04 RCW; adding a new section to chapter 35.22 RCW; adding a
3 new section to chapter 35.23 RCW; adding a new section to chapter 36.32
4 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that contractors
7 on public works projects may misclassify employees as independent
8 contractors and therefore fail to pay the costs of insuring employees
9 for industrial insurance or unemployment compensation. The legislature
10 further finds that the failure to pay these costs results in loss of
11 tax revenues to the state, loss of mandated benefits to workers, and a
12 competitive disadvantage and loss of profits for contractors,
13 subcontractors, and material suppliers. Therefore, it is in the
14 interest of the state, its citizens, workers, and businesses, to

1 provide additional enforcement of the laws requiring payment of these
2 costs by creating private remedies for persons harmed by contractors
3 who fail to comply with these laws.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
5 to read as follows:

6 (1) A bidder on a public work contract shall include in its bid the
7 costs for its employees' industrial insurance coverage required under
8 Title 51 RCW, unemployment compensation contributions required under
9 Title 50 RCW, and workers' compensation coverage and unemployment
10 compensation contributions required under federal law. The employment
11 status of a worker for the purposes of this subsection shall be
12 determined in the same manner as employment status is determined under
13 the applicable industrial insurance or unemployment compensation law.

14 (2)(a) If the successful bidder on a construction contract has
15 violated the requirement to pay for workers' compensation or
16 unemployment compensation coverage, as evidenced by a final order of
17 the appropriate state or federal agency, the successful bidder shall be
18 liable as provided in this section to the second lowest bidder on the
19 contract and to an entity contracting with the second lowest bidder.

20 (b) The second lowest bidder, or entity contracting with the second
21 lowest bidder, who suffers damage as a proximate result of a
22 competitive bid for a public work project not being accepted because
23 the successful bidder failed to pay for required workers' compensation
24 or unemployment compensation coverage may bring an action for damages
25 against the successful bidder in any court of competent jurisdiction.
26 There is a rebuttable presumption that the bid was awarded to the
27 successful bidder who violated its requirement to pay for workers'
28 compensation or unemployment insurance coverage because the successful

1 bidder was able to lower its bid by not paying for the required
2 coverage.

3 (c) In an action brought under this section, the court may award
4 costs and reasonable attorneys' fees to the prevailing party.

5 (3) A second lowest bidder who, within one year prior to filing the
6 bid for a public work, has violated its requirement to pay for workers'
7 compensation or unemployment insurance coverage, as evidenced by a
8 final order of the appropriate state or federal agency, and who has
9 failed to take affirmative steps to correct any violations, is
10 prohibited from bringing an action under this section.

11 (4) For the purposes of this section:

12 (a) "Entity contracting with the second lowest bidder" includes any
13 person, firm, association, trust, partnership, labor organization,
14 corporation, or other legal entity that has, before the letting of bids
15 on the construction contract at issue, entered into a contract with the
16 second lowest bidder.

17 (b) "Second lowest bidder" includes any person, firm, association,
18 corporation, or other legal entity who is the second lowest qualified
19 bidder deemed responsive by the entity or agency awarding the public
20 works contract.

21 (c) "Successful bidder" includes any person, firm, association,
22 corporation, or other legal entity awarded a construction contract
23 after competitive bidding.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.22 RCW
25 to read as follows:

26 A bidder on a public work, as defined in RCW 39.04.010, for a city
27 of the first class shall include in its bid the costs for its
28 employees' industrial insurance coverage required under Title 51 RCW,
29 unemployment compensation contributions required under Title 50 RCW,

1 and workers' compensation coverage and unemployment compensation
2 contributions required under federal law, and is subject to section 2
3 of this act.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.23 RCW
5 to read as follows:

6 A bidder on a public work, as defined in RCW 39.04.010, for a city
7 of the second or third class or a town shall include in its bid the
8 costs for its employees' industrial insurance coverage required under
9 Title 51 RCW, unemployment compensation contributions required under
10 Title 50 RCW, and workers' compensation coverage and unemployment
11 compensation contributions required under federal law, and is subject
12 to section 2 of this act.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.32 RCW
14 to read as follows:

15 A bidder on a public work, as defined in RCW 39.04.010, for a
16 county shall include in its bid the costs for its employees' industrial
17 insurance coverage required under Title 51 RCW, unemployment
18 compensation contributions required under Title 50 RCW, and workers'
19 compensation coverage and unemployment compensation contributions
20 required under federal law, and is subject to section 2 of this act.

21 NEW SECTION. **Sec. 6.** This act applies only to construction
22 contracts for public works projects in which the call for competitive
23 bids was made on or after the effective date of this act.