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HOUSE BILL 2414

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State of Washington

52nd Legislature

1992 Regular Session

By Representatives G. Cole, Winsley, Jones, Franklin, Orr, Jacobsen, R. King, Prentice, Day, Valle and Hine

Read first time 01/16/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to construction contracts; adding a new section to  
2 chapter 4.24 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; adding a new section to chapter 39.04 RCW; and creating new  
5 sections.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that contractors  
8 on construction projects, including public works projects, may  
9 misclassify employees as independent contractors and therefore fail to  
10 pay the costs of insuring employees for industrial insurance or  
11 unemployment compensation, and may fail to pay prevailing wages on  
12 public works projects. The legislature further finds that the failure  
13 to pay these costs results in loss of tax revenues to the state, loss  
14 of mandated benefits to workers, and a competitive disadvantage and

1 loss of profits for contractors, subcontractors, and material  
2 suppliers. Therefore, it is in the interest of the state, its  
3 citizens, workers, and businesses, to provide additional enforcement of  
4 the laws requiring payment of these costs by creating private remedies  
5 for persons harmed by contractors who fail to comply with these laws.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW  
7 to read as follows:

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

16 (2)(a) If the successful bidder on a construction contract fails to  
17 pay for the required workers' compensation or unemployment compensation  
18 coverage, as evidenced by a final order of the appropriate state or  
19 federal agency, or fails to pay prevailing wages as required under  
20 chapter 39.12 RCW, the successful bidder shall be liable as provided in  
21 this section to an unsuccessful bidder on the contract and to an entity  
22 contracting with the unsuccessful bidder.

23 (b) The unsuccessful bidder, or entity contracting with the  
24 unsuccessful bidder, who suffers damage as a proximate result of the  
25 unsuccessful bidder's competitive bid for the construction project not  
26 being accepted because the successful bidder failed to pay for required  
27 workers' compensation or unemployment compensation coverage or failed  
28 to pay prevailing wages may bring an action for damages against the  
29 successful bidder in any court of competent jurisdiction. There is a

1 rebuttable presumption that the bid was awarded to the successful  
2 bidder because the successful bidder was able to lower its bid by not  
3 paying for the required workers' compensation or unemployment  
4 compensation coverage or not paying prevailing wages.

5 (c) In an action brought under this section, the court shall award  
6 treble damages, and may award costs and reasonable attorneys' fees to  
7 the injured party. The measure of damages suffered by the unsuccessful  
8 bidder or entity contracting with the unsuccessful bidder shall be  
9 equal to the profit projected by the unsuccessful bidder on its bid for  
10 the construction contract, or to the profit projected by the entity  
11 contracting with the unsuccessful bidder on the contract between it and  
12 the unsuccessful bidder, or to the wages that would have been paid  
13 under the labor contract for the construction project, as applicable.

14 (3) For the purposes of this section:

15 (a) "Construction contract" means "construction contract" as  
16 defined in RCW 4.24.370, and includes contracts for public works as  
17 defined in RCW 39.04.010.

18 (b) "Entity contracting with the unsuccessful bidder" includes any  
19 person, firm, association, trust, partnership, labor organization,  
20 corporation, or other legal entity that has, before the letting of bids  
21 on the construction contract at issue, entered into a contract with the  
22 unsuccessful bidder.

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

26 (d) "Unsuccessful bidder" includes any person, firm, association,  
27 corporation, or other legal entity who is a qualified bidder deemed  
28 responsive by the entity or agency awarding the construction contract.

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

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

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

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

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

21       A bidder on a public work, as defined in RCW 39.04.010, for a  
22 county shall include in its bid the costs for its employees' industrial  
23 insurance coverage required under Title 51 RCW, unemployment  
24 compensation contributions required under Title 50 RCW, and workers'  
25 compensation coverage and unemployment compensation contributions  
26 required under federal law, and is subject to section 2 of this act.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 39.04 RCW  
2 to read as follows:

3        A bidder on a public work, as defined in RCW 39.04.010, shall  
4 include in its bid the costs for its employees' industrial insurance  
5 coverage required under Title 51 RCW, unemployment compensation  
6 contributions required under Title 50 RCW, and workers' compensation  
7 coverage and unemployment compensation contributions required under  
8 federal law, and is subject to section 2 of this act.

9        NEW SECTION.    **Sec. 7.**        This act applies only to construction  
10 contracts for construction projects in which the call for competitive  
11 bids was made on or after the effective date of this act.