

HOUSE BILL REPORT

HB 1980

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to employment in the construction industry.

Brief Description: Changing provisions related to employment in the construction industry.

Sponsors: Representatives Lisk, McMorris, Dyer and Honeyford.

Brief History:

Committee Activity:

Commerce & Labor: 2/26/97, 3/5/97 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

Staff: Chris Cordes (786-7103).

Background:

Industrial insurance coverage at construction sites.

Generally, an injured worker covered by industrial insurance is compensated for his or her injuries under the industrial insurance law and is not permitted to bring a civil action against the employer for that injury. However, a worker may file a damage suit against a "third party," if the third party is not the injured worker's co-worker. Workers who are working on the same job site, but who are employed by different employers are not considered to be co-workers.

Third-party immunity is granted to design professionals who perform professional services for a construction project, unless the professional assumes responsibility for safety by contract or actually exercised control over that part of the premises where

the worker was injured. Design professionals include licensed or authorized architects, engineers, land surveyors, or landscape architects.

All employees covered by industrial insurance under the state fund pay, through wage deductions, one-half of the medical aid premium charged to the employer.

Construction site safety requirements under the Washington Industrial Safety and Health Act.

Under the Washington Industrial Safety and Health Act, general contractors are responsible for provision of a safe workplace for their own employees, and for compliance with all safety regulations with respect to all employees on a construction job site. Washington courts have determined that a subcontractor's employee has a cause of action against the general contractor if the injury was caused by a violation of a specific safety regulation at the construction job site.

In 1993, the Department of Labor and Industries issued a regional directive, developed in consultation with labor and management representatives in the construction industry and related industries. The regional directive establishes guidelines for assessing the compliance of general contractors with the requirements for safety applying to the subcontractor's employees.

Summary of Substitute Bill:

Industrial insurance coverage at construction sites.

The immunity from liability for workplace injuries for third parties performing services at a construction site is modified.

An injured worker or the worker's beneficiary is not permitted to seek damages for an industrial injury or occupational disease occurring in the course of employment at a construction project from the owner or developer of the project, or any person performing work, furnishing materials, or providing services for the project, including design professionals, construction managers, general or prime contractors, suppliers, subcontractors of any tier, or their employees. This prohibition applies whether the work is performed at the site under a single contract or multiple contracts.

This immunity does not apply to

- (1) a person or entity that injures a worker by deliberate intention. It is against public policy to indemnify against this liability.
- (2) manufacturers and product sellers for product liability actions.

- (3) negligent preparation of design plans by a design professional.

Beginning January 1, 1998, for workers in the construction industry, the wage deduction for the worker's share of the medical aid premium is capped at one-half of the medical aid premium calculated on the basic manual rate for the applicable risk class.

Construction site safety requirements under the Washington Industrial Safety and Health Act.

All construction employers. All construction employers have a duty to provide a safe workplace for their employees and employees of their subcontractors, in the context of general industry practice. The duty includes implementation of a safety program that is effective in practice. Construction employers must take reasonable steps to ensure that their safety programs are designed to comply with law.

Each construction employer on the site must designate a person who is responsible for safety. The name and telephone number of the designated person must be communicated to the contractor's own employees. The name and telephone number of the designated safety person for the prime or general contractor must be posted at the site.

Safety suggestions and hazard identification are to be encouraged. Disciplinary actions may be taken for violation of appropriately communicated requirements, including verbal or written reprimand, suspension from work, and termination for cause, subject to the employer's written policy or written agreement between the employer and the employees, if any.

A violation or citation under the Washington Industrial Safety and Health Act (WISHA) does not affect the immunity granted under the industrial insurance law.

Prime or general contractors. The prime or general contractor has primary responsibility for safety compliance at each job site. If a construction employer's safety program is effective in practice, no WISHA citation may be issued to the construction employer for violations by his or her subcontractors.

"Effective in practice" means all of the following are complied with:

- (1) Subcontractors must comply, by contract, with the WISHA.
- (2) A written program is implemented and enforced for each site by the prime or general contractor.
- (3) Each subcontractor provides, and makes available, an accident prevention plan for the work site.
- (4) The safety person's name and telephone number is posted.

- (5) All necessary safety equipment is provided to employees.

Authority to adopt rules.

The Department of Labor and Industries must adopt rules, in consultation with affected parties, to implement the act.

Substitute Bill Compared to Original Bill: The substitute bill adds a provision revising the share of the medical aid premium that workers in the construction industry pay. Beginning January 1, 1998, employers may deduct a premium from these workers' wages that is no more than one-half of the basic manual rate for the applicable risk class.

Appropriation: None.

Fiscal Note: Requested on February 18, 1997.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately, except section 2, relating to industrial insurance premiums, which takes effect January 1, 1998.

Testimony For: (Substitute bill) In recent years, various court decisions and legislative changes have significantly increased costs in the construction industry. This bill is intended to restate the policy underlying industrial insurance and remove the expensive coping that is now required because of these decisions. However, the bill does not provide protection for those who deliberately injure workers. It does not reduce safety or shield manufacturers from product liability claims. Good safety programs are required to survive in the construction industry's very competitive environment. Without this bill, contractors are subject to high premiums to cover risks at the worksite and, at the same time, are subject to law suits based on the same risks. Several other states have enacted similar construction worksite immunity laws.

Testimony Against: (Substitute bill) The court cases have resulted in significantly improved safety at construction sites. The right to sue a responsible third party under the industrial insurance law should not be different in the construction industry because accidents can be caused by many different third parties who enter the construction site. The bill would represent a \$5 million loss in recovery to the state fund for third party actions. If this bill creates a "one employer" concept at construction worksites, this may have an impact on other employment issues, such as picketing of these worksites. This bill does not represent the original labor-management agreement on this issue because it does not include the financial incentives for safety. Contractors should not be given incentives to cut corners on safety. The regional directives that the Department of Labor and Industries uses to guide safety inspections at construction worksites provides the level playing field that

contractors wanted to implement the court decisions. The bill's safety provisions are not adequate, because the "effective in practice" program could be simply a paper program. If contractors are complaining about a bad insurance situation, then that issue should be addressed. The substitute bill is flawed because it contains sections reducing the worker's premium responsibility. This change will simply shift costs to the subcontractors.

Testified: (In support) Rick Slunaker, Associated General Contractors; Gene Colan; Dick Wilkie; Tim Gottberg; Dick Ducharme, Utility Contractors Association of Washington; and Bob Manlow. (In support of original bill, opposed to substitute) Larry Stevens, United Subcontractors Association; and Gary Smith, Independent Business Association. (Opposed) Bob Dilger and John Fisher, Washington State Building and Construction Trades Council; Ron Forrest, District Council of Carpenters; Dick King and Richard Nelson, International Brotherhood of Electrical Workers; Jack Gilchrest, Seattle-King County Building and Construction Trades Council; Joe Baca, Lathers and Dry Wall Union, Local 1144; Clark Gilman; South Sound Residential Trades Union, UBC 360; John Meyer, Pierce County Building and Construction Trades Council; Mark Martinez, Roofers Local 153; David Merrill, Fire Sprinkler Fitters and Installers; Dan Sexton, United Association of Plumbers and Pipefitters; Robby Stern, Washington State Labor Council; Allan Darr, International Union of Operating Engineers; Larry Shannon, Washington State Trial Lawyers Association; Steve Balsom; and John Stanisley, Department of Labor and Industries.