

HOUSE BILL REPORT

HB 2414

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to construction contracts.

Brief Description: Requiring disclosures for public works bids.

Sponsor(s): Representatives G. Cole, Winsley, Jones, Franklin, Orr, Jacobsen, R. King, Prentice, Day, Valle and Hine.

Brief History:

Reported by House Committee on:
Commerce & Labor, January 30, 1992, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 7 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; and Prentice.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: Employers on construction projects are required to provide industrial insurance and unemployment insurance coverage for their workers. Some workers on construction projects are exempt from these insurance requirements. This exemption applies if the person is engaged in a business registered as a construction contractor or licensed as an electrical contractor, is working for another registered contractor or licensed electrical contractor, has a principal place of business eligible for a tax business deduction, maintains a separate set of books for the business, performs the work of a construction contractor or electrical contractor, and the other contractor does not supervise or control the means by which the work is accomplished or performed.

In 1991, the Legislature enacted House Bill 1244, which directed the Department of Labor and Industries and the Employment Security Department to study the extent to which contractors were requiring employees to become subcontractors to avoid the payment of required worker insurance. The departments jointly conducted a survey of persons registered as specialty contractors. The departments reported inconclusive results, finding that the survey was not able to determine the full extent to which the avoidance of employer obligations exists in the construction industry. The report concluded that some avoidance existed and recommended an auditing program.

Also in 1991, California enacted a law creating a civil cause of action against contractors who fail to pay workers compensation or unemployment insurance on public works projects.

Summary of Substitute Bill: The Legislature finds that employees may be misclassified as independent contractors and therefore premiums are not paid for industrial insurance or unemployment insurance. The failure to pay these costs results in loss of tax revenues to the state and loss of benefits to workers, and creates a competitive disadvantage for other contractors, subcontractors, and material suppliers. It is in the interest of the state to provide additional enforcement of these laws through private remedies.

Bidders on public works contracts are required to include the costs of workers' compensation and unemployment insurance in the bid. The employment status of the workers is to be determined under the relevant worker benefit law.

If a successful bidder on a construction contract fails to pay the required workers' compensation or unemployment insurance costs, the bidder is liable to the second lowest bidder on the contract or to an entity contracting with the second lowest bidder. The second lowest bidder must have suffered damages as a proximate result of his or her bid not being accepted because the successful bidder failed to pay the required insurance coverage or prevailing wages. There is a rebuttable presumption that the bid was awarded to the successful bidder because he or she was able to lower the bid by not paying the required insurance or prevailing wages.

The bidder, or entity contracting with a bidder, who brings a law suit may be awarded costs and reasonable attorneys' fees. The second lowest bidder is prohibited from bringing the law suit if the bidder has, within a year of filing a bid for the project, failed to pay for workers' compensation

or unemployment compensation coverage and has failed to take steps to correct the violation.

The act applies to construction contracts for which the call for competitive bids was made on or after the effective date of the act.

Substitute Bill Compared to Original Bill: The proposed substitute bill makes the following changes: (1) the cause of action for failure to pay for worker benefit coverage is limited to public works projects and the cause of action does not include failure to pay prevailing wages; (2) only the second lowest bidder on the contract is entitled to bring the action, along with any party contracting with the second lowest bidder; (3) the provision is deleted that specified treble damages and made damages equal to the profit projected on the project; (4) a section is added that prohibits a second lowest bidder from bringing the law suit if the bidder has, within a year of filing a bid for the project, failed to pay for workers' compensation or unemployment compensation coverage and has failed to take steps to correct the violation.

Fiscal Note: Not requested.

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

Testimony For: Contractors are failing to provide their workers with workers' compensation or unemployment insurance coverage. These violations are increasing. The state is losing tax revenues and workers are losing the benefit of mandated worker benefits. Several states are increasing enforcement of these laws by allowing a civil action against the contractor who fails to pay.

Testimony Against: Concerns were expressed about the scope and intent of the bill.

Witnesses: (In favor): Robert Dilger, Washington State Building and Construction Trades Council; Jeff Johnson, Washington State Labor Council; Jack Wojtanowicz, Drywall Local 1144; and Otto Herman, Rebound. (No position, with questions): Duke Schaub, Associated General Contractors; and Larry Stevens, United Subcontractors Association.