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SENATE BILL 5216

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State of Washington                      53rd Legislature                      1993 Regular Session

By Senators Prentice, Moore, A. Smith, Sutherland and Quigley

Read first time 01/18/93. Referred to Committee on Labor & Commerce.

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 on  
7 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, and may fail to  
10 pay prevailing wages. The legislature further finds that the failure  
11 to pay these costs results in loss of tax revenues to the state, loss  
12 of mandated benefits to workers, and a competitive disadvantage and  
13 loss of profits for contractors, subcontractors, and material  
14 suppliers. Therefore, it is in the interest of the state, its  
15 citizens, workers, and businesses, to provide additional enforcement of  
16 the laws requiring payment of these costs by creating private remedies  
17 for persons harmed by contractors who fail to comply with these laws.

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

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

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

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

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

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

36        (4) For the purposes of this section:

37        (a) "Entity contracting with the second lowest bidder" includes any  
38 person, firm, association, trust, partnership, labor organization,  
39 corporation, or other legal entity that has, before the letting of bids

1 on the construction contract at issue, entered into a contract with the  
2 second lowest bidder.

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

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

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.22 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 first class shall include in its bid the costs for its  
14 employees' industrial insurance coverage required under Title 51 RCW,  
15 unemployment compensation contributions required under Title 50 RCW,  
16 and workers' compensation coverage and unemployment compensation  
17 contributions required under federal law, and is subject to section 2  
18 of this act.

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

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

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

30 A bidder on a public work, as defined in RCW 39.04.010, for a  
31 county shall include in its bid the costs for its employees' industrial  
32 insurance coverage required under Title 51 RCW, unemployment  
33 compensation contributions required under Title 50 RCW, and workers'  
34 compensation coverage and unemployment compensation contributions  
35 required under federal law, and is subject to section 2 of this act.

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

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