

# HOUSE BILL REPORT

## SSB 5904

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### As Reported by House Committee On: Commerce & Labor

**Title:** An act relating to defining independent contractor for purposes of prevailing wage.

**Brief Description:** Defining independent contractor for purposes of prevailing wage.

**Sponsors:** Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Prentice, Keiser, Franklin, Hobbs and Kline).

#### **Brief History:**

##### **Committee Activity:**

Commerce & Labor: 3/17/09, 3/20/09 [DP].

#### **Brief Summary of Substitute Bill**

- Creates a test for determining when a person is an independent contractor not entitled to the prevailing wage, which is substantially similar to the test used in construction for workers' compensation and unemployment purposes.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

**Staff:** Joan Elgee (786-7106)

#### **Background:**

Under Washington's prevailing wage law, the prevailing wage must be paid to laborers, workers, and mechanics on public works and under public building service maintenance contracts. The law does not define who is a laborer, worker, or mechanic (or who is an independent contractor not required to be paid the prevailing wage). In 2008 the Legislature established a seven-part test for determining when a person doing work by independent

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

contract in the construction industry is not covered for purposes of unemployment insurance and industrial insurance.

The Joint Legislative Task Force on the Underground Economy in the Construction Industry recommended that the Legislature define who is an independent contractor for purposes of prevailing wage laws.

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**Summary of Bill:**

A test for independent contractor is added to prevailing wage provisions. A person is not considered a laborer, worker, or mechanic (and therefore is an independent contractor not required to be paid the prevailing wage) if all parts of the following test are met:

1. The individual has been and is free from control or direction over the performance of the service, both under contract and in fact.
2. The service is either outside the usual course of business for the contractor or contractors for whom the individual perform services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the place of business.
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature, or the individual has a principal place of business that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer.
4. On the effective date of the contract, the individual is responsible for filing, under the contract and in fact, a schedule of expenses with the Internal Revenue Service.
5. On the effective date of the contract or within a reasonable period after the effective date, the individual has an active and valid certificate of registration with the Department of Revenue and an active and valid account with any other state agencies, and has a Unified Business Identifier number.
6. On the effective date of the contract, the individual is maintaining a separate set of books or records.
7. On the effective date of the contract, the individual has a valid contractor registration or electrical contractor license if the work requires registration or licensure.

The test is substantially similar to the test used for purposes of unemployment insurance and industrial insurance in construction. Contractor registration or electrical contractor licensing is required only if the work requires registration or licensure.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The definition issue was a recommendation of the Task Force on the Underground Economy in the Construction Industry. The problem is that if a complaint is filed that employees are being classified as independent contractors on prevailing wage jobs, there is no test to determine who is an independent contractor. There is a test for workers' compensation, but it does not apply to prevailing wage. An effort was made to make the test close to identical with the workers' compensation test.

(Information only) The Department helped craft minor changes to the bill.

(Opposed) None.

**Persons Testifying:** (In support) Bob Abbott, Washington and North Idaho District Council of Laborers; Dave Johnson, Washington State Building and Construction Trades Council; and Rick Slunaker, Associated General Contractors of Washington.

(Information only) Josh Swanson, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** None.