

HOUSE BILL REPORT

ESSB 6302

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to misclassification in the finishing trades on public works projects.

Brief Description: Concerning misclassification in the finishing trades on public works projects.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, Saldaña, Hasegawa, Orwall and Valdez).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/18/26, 2/20/26 [DP];
Appropriations: 2/26/26, 3/2/26 [DP].

Brief Summary of Engrossed Substitute Bill

- Requires the Department of Labor and Industries to investigate when there are three or more independent contractors performing finishing work on a public works project to determine whether those workers are being misclassified as independent contractors under the Prevailing Wages on Public Works Act.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Bronoske, McEntire, Obras and Ortiz-Self.

Staff: Kelly Leonard (786-7147).

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

Background:

The Prevailing Wages on Public Works Act requires employers to pay laborers, workers, and mechanics on public works contracts and public building service maintenance contracts at least the prevailing wage rate. Public works include all work, construction, alterations, repairs, or improvements, other than ordinary maintenance, done at the cost of the state or any municipality. The industrial statistician of the Department of Labor and Industries (L&I) establishes prevailing wage rates by adopting the hourly wage, usual benefits, and overtime established in collective bargaining agreements (CBAs) for trades and occupations that have CBAs. For a trade or occupation with more than one CBA in a county, the higher rate is used. For trades and occupations for which there are no CBAs in a county, L&I will conduct wage surveys.

An independent contractor is a worker who enters into a contractual agreement with a business to provide specific services on a project or on an as-needed basis. An independent contractor working on a public works project is not considered a laborer, worker, or mechanic, effectively exempting the independent contractor from having to be paid the prevailing wage rate. To qualify as an independent contractor under the Prevailing Wages on Public Works Act, the person must satisfy a seven-part statutory test, which includes:

1. the person has been and is free from control or direction over the performance of the service;
2. the service is either outside the usual course of business for the contractor for whom the person performs services, or the service is performed outside all of the places of business of the enterprise for which the person performs services, or the person is responsible for the costs of the principal place of business from which the service is performed;
3. the person is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service, or the person has a principal place of business for the work the person is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer;
4. the person is responsible for filing a schedule of expenses with the Internal Revenue Service for the type of business the individual is conducting;
5. the person has an active and valid certificate of registration with the Department of Revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the person is conducting for the payment of all state taxes normally paid by employers and businesses, and has registered for and received a unified business identifier number;
6. the person is maintaining a separate set of books or records that reflect all items of income and expenses of the business; and
7. the person has obtained any applicable contractor or trade registration or license for the relevant work.

A person's status as an independent contractor impacts other labor and employment

requirements. However, the standard for treating a person as an independent contractor varies depending on the context. Misclassifying a worker as an independent contractor may violate other federal or state laws.

Summary of Bill:

If L&I receives a referral to investigate a contractor or subcontractor who is engaging three or more independent contractors to perform the same type of covered finishing work at the same time on a public works project, L&I must investigate to determine whether the persons performing the work have been misclassified as independent contractors. Covered finishing work includes work on drywall, flooring, tiling, painting, and glazier and glasswork.

A referral for an investigation may be made by:

- the state, county, municipality, or political subdivision awarding the public works contract;
- a contractor or subcontractor on the public works project;
- a labor organization that represents persons performing covered finishing work on the public works project; or
- a person performing covered finishing work on the project.

Following an investigation, if L&I finds that a person performing covered finishing work has been misclassified as an independent contractor, the contractor or subcontractor that engaged the person is subject to all applicable requirements for paying the prevailing wage rate. L&I must also make appropriate referrals for investigations for possible violations of workers' compensation and unemployment insurance requirements.

Appropriation: None.

Fiscal Note: Available.

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) This bill represents a recommendation from the majority report produced by the Underground Economy Task Force. Misclassification of workers as independent contractors is a persistent problem in the underground economy, and the practice undermines workers, responsible contractors, and the integrity of public works projects. This bill is a step towards addressing the problem. The seven-part test for determining

whether a worker is an independent contractor often arises in a retroactive audit. This legislation brings this audit to the front end, allowing contractors to correctly identify whether these workers satisfy the test before proceeding. The bill triggers an audit when three or more independent contractors are being used for covered finishing work. This is a different approach than the original bill, which had a strict prohibition on a certain number of independent contractors. That approach was not workable for certain stakeholders—it is not good policy to punish the use of independent contractors. Sometimes independent contractors are key to getting a job done. Instead, the Legislature should ensure that workers are being classified correctly and contractors are following the current law. This version will increase enforcement without having to establish new, rigid prohibitions. This version has bipartisan support.

(Opposed) None.

Persons Testifying: Neil Hartman, Washington State Association Of UA Plumbers and Pipefitters; Carolyn Logue, Associated Builders and Contractors Inland Pacific Chapter; and Jerry Vanderwood, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Berg, Bergquist, Burnett, Callan, Corry, Cortes, Doglio, Dye, Fitzgibbon, Keaton, Leavitt, Lekanoff, Manjarrez, Marshall, Peterson, Pollet, Rude, Ryu, Springer, Stonier, Street, Thai and Valdez.

Staff: Jamie Gortmaker (786-7291).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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) This bill is the negotiated policy approach for a path forward on an issue where consensus has been difficult to achieve. Misclassification of independent contractors shifts payroll taxes away from unemployment insurance and workers' compensation premiums, and suppresses lawful revenue streams. Costs resulting from misclassification are borne by compliant employers and the state budget. This bill levels the playing field for responsible contractors and reduces fiscal leakage. Misclassification of independent contractors jeopardizes the ability of people to start their own businesses.

(Opposed) None

Persons Testifying: Carolyn Logue, Associated Builders and Contractors Inland Pacific Chapter; and Neil Hartman, WA Association of UA Plumbers and Pipefitters.

Persons Signed In To Testify But Not Testifying: None.