

# FINAL BILL REPORT

## ESSB 6302

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### C 105 L 26

Synopsis as Enacted

**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).

**Senate Committee on Labor & Commerce**  
**House Committee on Labor & Workplace Standards**  
**House Committee on Appropriations**

**Background:** Prevailing Wage. State law requires prevailing wages be paid to laborers, workers, and mechanics employed upon all public works and under all public building service maintenance contracts. Public works means all work, construction, alteration, repair, or improvement other than ordinary maintenance executed at the cost of the state or any municipality.

An individual employed on a public works project is an independent contractor and not considered a laborer, worker, or mechanic when:

- the individual is free from control or direction over the performance of the service;
- the service is either outside the usual course of business for the contractor or contractors for whom the individual performs 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 for the costs of the principal place of business from which the service is performed;
- the individual 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 individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;
- the individual is responsible for filing a schedule of expenses with the Internal

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- Revenue Service for the type of business the individual is conducting;
- 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 as required by the particular case, for the business the individual 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 from the state;
  - the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and
  - the individual has the appropriate required contractor registration and contractor licenses.

Workers' Compensation. The Industrial Insurance Act provides that a worker who is injured in the course of employment or injured or disabled from an occupational disease is entitled to workers compensation benefits. Benefits may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits. The Department of Labor and Industries (L&I) administers the workers' compensation system.

With limited exceptions, all workers in the state are covered by mandatory industrial insurance. A person is not considered an employee or worker under, and is not covered for the purposes of workers' compensation, if:

- the individual is free from control or direction over the performance of the service;
- the service is either outside the usual course of business for the contractor or contractors for whom the individual performs 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 for the costs of the principal place of business from which the service is performed;
- the individual 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 individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;
- the individual is responsible for filing a schedule of expenses with the Internal Revenue Service for the type of business the individual is conducting;
- 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 as required by the particular case, for the business the individual 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 from the state; or
- the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

Underground Economy in Construction Task Force. The 2024 Supplemental Budget created an Underground Economy Task Force (Task Force) to investigate the underground

economy in the construction industry and report its findings and recommendations to the Legislature. The Task Force published a report to the Legislature that included both consensus recommendations and majority recommendations. A consensus recommendation is one that received ten or more votes from the 12 voting members, while a majority recommendation received a majority of the 12 voting members.

One of the majority recommendations in the Task Force's report was that the Legislature should consider establishing a threshold of independent contractor usage on projects that would prompt L&I to review appropriate use of the independent contractor classifications.

**Summary:** If a contractor or subcontractor engages 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, upon referral for investigation, must investigate to determine whether the individuals performing the work have been misclassified as independent contractors. Covered finishing work is work in drywall, flooring, tiling, painting, and glazier and glasswork.

A referral for investigation may be made by:

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

If L&I finds that any individual performing covered finishing work has been misclassified as an independent contractor, the contractor or subcontractor that engaged the individual is subject to all applicable requirements, liabilities, and penalties under the state's prevailing wage laws. Following this finding, L&I must make the appropriate referrals under state unemployment insurance and industrial insurance statutes.

**Votes on Final Passage:**

**Senate** 37 11

**House** 92 4

**Effective:** June 11, 2026