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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1701

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State of Washington                      62nd Legislature                      2011 1st Special Session

By House Labor & Workforce Development (originally sponsored by Representatives Ormsby, Green, Sells, Kenney, Van De Wege, Hasegawa, Hudgins, Moeller, Miloscia, Sullivan, Upthegrove, Pettigrew, Seaquist, Hunter, and Frockt)

READ FIRST TIME 02/17/11.

1            AN ACT Relating to the underground economy by addressing the loss  
2 in state revenue through misclassification of workers as independent  
3 contractors in the construction industry; amending 2009 c 432 s 13  
4 (uncodified); adding new sections to chapter 18.27 RCW; creating a new  
5 section; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** The legislature finds that the state loses  
8 over one hundred million dollars a year in taxes due to underground  
9 economy construction activity, causing great inequity to law-abiding  
10 businesses and taxpayers. The legislature further finds that an  
11 employer in construction is required to pay industrial insurance and  
12 unemployment taxes for a worker unless a seven-part independent  
13 contractor test is met, which test includes that the worker is free  
14 from direction and control and has his or her own books and records.  
15 The legislature finds that some contractors avoid taxes by engaging  
16 multiple contractors to work on the same task and treating the  
17 contractors as exempt independent contractors rather than hiring and  
18 paying taxes on these persons as covered workers. The legislature  
19 finds, however, that if multiple contractors are working on the same

1 task on a job site, the contractors must be working under direction and  
2 control such that they are not exempt independent contractors but are,  
3 in fact, covered workers.

4 The legislature finds that the seven-part test is and should  
5 continue to be applied in investigations of underground economy  
6 activity in the construction industry. However, the legislature also  
7 finds that prohibiting up front certain contracting which by its nature  
8 creates a situation in which taxes due are not paid will provide  
9 clarity to contractors and provide an additional cost-effective means  
10 to reduce the underground economy. By enacting section 2 of this act,  
11 the legislature intends to define the prohibited contracting narrowly  
12 to assure no legitimate contracting is prohibited. The legislature  
13 intends that nothing in section 2 of this act prohibits a contractor  
14 from engaging more than two independent contractors who have no covered  
15 workers to work on the same task so long as those contractors are  
16 treated as covered workers.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.27 RCW  
18 to read as follows:

19 (1) It is a violation under this chapter and an infraction for any  
20 contractor to engage more than two independent contractors to work on  
21 or in a single building who:

- 22 (a) Are working on the same task involving a similar material;
- 23 (b) Bring no workers to work on or in the building subject to the  
24 mandatory coverage of Title 51 RCW; and
- 25 (c) Are not being treated by the contractor as covered workers  
26 under Title 51 RCW.

27 (2) No more than two independent contractors, as covered by  
28 subsection (1) of this section, may be under contract at the same time.  
29 It is not a violation of this act, if more than two independent  
30 contractors work on or in a single building if proof is provided, both  
31 in written contract and in fact, that any independent contractors  
32 beyond the first two are not working as independent contractors during  
33 the same time period.

34 (3) The exemptions provided by subsection (2) of this section are  
35 broad and in no way exempt independent contractors from industrial  
36 insurance coverage under Title 51 RCW. Each and every independent

1 contractor must separately pass the tests provided in RCW 51.08.180 or  
2 51.08.181 to be exempt from coverage under Title 51 RCW.

3 (4)(a) A contractor found to have committed an infraction under  
4 this section shall be assessed a fine of:

5 (i) Five hundred dollars for a first offense. However, the  
6 director shall waive the fine if the contractor registers for a  
7 department-approved training class within ten days of receiving a  
8 notice of infraction, completes the class within one hundred twenty  
9 days of receiving the notice of infraction, and pays the class fees  
10 upon class registration;

11 (ii) Two thousand five hundred dollars for a second offense; and

12 (iii) Five thousand dollars for a third or subsequent offense.

13 (b) For a third or subsequent offense under this section, the  
14 director shall also suspend the contractor's certificate of  
15 registration for one year.

16 (c) In addition to any other penalty, the director shall suspend  
17 the registration of the contractor until payment of penalties assessed  
18 under this section that have become final are paid in full.

19 (5) For purposes of this section, "task" means a single risk  
20 classification as defined in rule under Title 51 RCW.

21 (6) Classes offered under subsection (4) of this section may be  
22 conducted or approved by the department. Registrants must pay a fee to  
23 cover the cost of administering the class.

24 (7) This section does not apply to work performed on residential  
25 wood frame construction up to four stories in height.

26 **Sec. 3.** 2009 c 432 s 13 (uncodified) is amended to read as  
27 follows:

28 The department of labor and industries, the employment security  
29 department, and the department of revenue shall coordinate and report  
30 to the appropriate committees of the legislature by December 1st of  
31 each year on the effectiveness of efforts implemented since July 1,  
32 2008, to address the underground economy. Beginning on December 1,  
33 2012, the report shall include the effectiveness of section 2 of this  
34 act. The agencies shall use benchmarks and measures established by the  
35 institute for public policy and other measures it determines  
36 appropriate.

1        NEW SECTION.   **Sec. 4.**   Section 3 of this act is codified as a new  
2   section in chapter 18.27 RCW.

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