
JOINT LEGISLATIVE TASK FORCE ON THE UNDERGROUND ECONOMY

FINAL REPORT January 13, 2010

Co-Chairs

Senator Jeanne Kohl-Welles* and Representative Steve Conway*

Task Force Members

Asterisk (*) denotes Executive Committee Members

Senator Janéa Holmquist*
Representative Cary Condotta*

Bob Abbott, Labor Member
John Bratton, Business Member
Dave Johnson, Labor Member*
John Littel, Labor Member
Randy Loomans, Labor Member
Craig Munson, Business Member
Rick Slunaker, Business Member*
Hilary Stern, Business Member

Local Government Members

Scott Merriman, Washington Association of Counties
Gary McLean, Association of Washington Cities

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JOINT LEGISLATIVE TASK FORCE ON THE UNDERGROUND ECONOMY

January 13, 2010

Members of the Legislature:

We are pleased to present the 2010 Final Report of the Joint Legislative Task Force on the Underground Economy.

The Task Force began its work in 2007 as the Joint Legislative Task Force on the Underground Economy in the Construction Industry. The Task Force heard presentations and public testimony that confirmed the underground economy is costly to the state in lost revenue and unfair to law-abiding businesses and workers. Recommendations from the 2007 work led to the enactment of two important pieces of legislation: ESHB 3122 which provided a clear definition of who is an independent contractor for persons working in the construction industry; and 2SSB 6732 which gave the Department of Labor and Industries additional tools to identify and impose consequences on people working underground.

In 2008, the Task Force continued its work, leading to a broad range of recommendations including increased regulation and education of contractors, greater education for consumers, establishment of benchmarks for continued monitoring of the underground economy, and the use of stop work orders for enforcement. The Task Force recommended that an interagency advisory committee be formed to continue the work of the Task Force. Instead, the Legislature extended the Task Force through December 1, 2009, and modified the scope of the Task Force to permit it to study non-construction activities.

In another 2009 bill, SB 6173, reseller certificates, the Task Force was directed to prepare a report that reviews the issues and concerns that need to be addressed by the Legislature in implementing the reseller certificate bill. The recommendations of the Task Force relating to SB 6173 are included in this report, as are the Task Force's recommendations on continued monitoring of the underground economy and information on areas outside of the construction industry that were studied by the Task Force.

Sincerely,



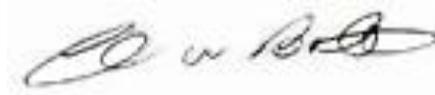
Senator Jeanne Kohl-Welles, Co-Chair



Representative Steve Conway, Co-Chair



Bob Abbott, Business Manager,
Wash. and North Idaho District Council
of Laborers



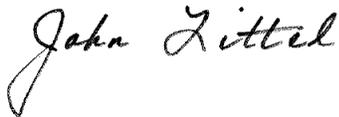
John Bratton, Legislative Policy Chair,
Building Industry Association of Wash.



Dave Johnson, Executive Secretary,
Wash. State Building & Construction
Trades Council, AFL-CIO



Craig Munson, Owner,
Seattle Floor Service



John Littel, Political Director,
Pacific Northwest Regional
Council of Carpenters



Rick Slunaker,
Director of Government Affairs,
Associated General Contractors of Wash.



Randy Loomans
Government Relations Director,
International Union of Operating Engineers
Local 302



Hilary Stern
Executive Director, CASA Latina

PART I BACKGROUND ON THE TASK FORCE

In 2007, the Legislature enacted Senate Bill 5926.¹ The bill created a joint legislative task force to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground economy practices in the construction industry. The Task Force met in the 2007 interim and developed findings and recommendations, which were incorporated into legislation that passed during the 2008 session.²

In 2008, the Task Force continued its work in studying the underground economy. This work led to the enactment of three bills during the 2009 session: (1) SHB 1555, addressing the recommendations of the joint legislative task force on the underground economy in the construction industry; (2) SSB 5904, defining independent contractors for the purposes of prevailing wage; and (3) SSB 5613, authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.³ The recommendations in SHB 1555 included: increased regulation and education of contractors, greater education for consumers, and the establishment of benchmarks for monitoring the effectiveness of efforts implemented since July 1, 2008, to address the underground economy. A preliminary benchmark report was provided to the Legislature in November 2009 and a benchmark report must be provided annually to the Legislature by December 1.

SHB 1555, as it was introduced, included a requirement that an interagency advisory committee be formed, with labor and business stakeholders, to address issues identified by the Task Force as well as emerging issues regarding the underground economy in construction and other areas. As passed, SHB 1555 did not include the requirement for an interagency advisory committee and instead modified the statutes relating to the Task Force. The Task Force was extended until December 1, 2009, and its focus was expanded to include the study of non-construction industries.⁴ A member representing the cities and a member representing the counties were added as well.

Also in 2009, the Legislature enacted SB 6173, improving sale tax compliance, which eliminated the requirement for a resale certificate to make purchases for resale exempt from the sales tax and replaced it with a seller's permit. SB 6173 also required the Task Force to review the issues and concerns that need to be addressed by the Legislature as a result of passing SB 6173 and to report recommendations on modifications to that act by December 1, 2009.

¹ The companion to SB 5926 was HB 2086 which passed the House Commerce and Labor Committee.

² The 2008 bills were ESHB 3122 which defined "independent contractor" for persons working in the construction industry and 2SSB 6732 which implemented the other Task Force recommendations, including extending the term of the Task Force to the end of 2008. The 2007-09 supplemental budget included funding for the Department of Labor and Industries to increase enforcement as well as to educate consumers about unregistered contractors.

³ The companion to SHB 1555 was SSB 5614 which passed the Senate Labor, Commerce and Consumer Protection Committee. The companion to SSB 5904 was SHB 1786 which passed the House Labor and Commerce Committee. The companion to SSB 5613 was SHB 1554 which passed the House of Representatives and the Senate Labor, Commerce and Consumer Protection Committee.

⁴ SHB 1555 changed the name of the Joint Legislative Task Force on the Underground Economy in the Construction Industry to the Joint Legislative Task Force on the Underground Economy.

Joint Legislative Task Force

Beginning in 2009, the Task Force consisted of the following members: four legislative members designated as the chairs and the ranking minority members of the Senate Labor, Commerce and Consumer Protection Committee and the House Commerce and Labor Committee; four members representing business; four members representing labor; one member representing cities; one member representing counties; and nonvoting agency liaison members from the Employment Security Department, the Department of Labor and Industries, and the Department of Revenue. The Washington State Institute for Public Policy (Institute) maintained a nonvoting liaison representative to the Task Force, although funding was not provided for the Institute in 2009.

Funding for SHB 1555 was provided for in the 2009-2011 operating budget, ESHB 1244.

PART II 2009 LEGISLATION

In 2009, the Legislature passed SHB 1555, SSB 5904, and SSB 5613. Budget provisos relating to the Underground Economy Task Force were enacted in the 2009-2011 operating budget, ESHB 1244.

SHB 1555 implemented the recommendations of the Task Force. These included:

- A requirement that a contractor maintain, and have available for inspection by the Department of Labor and Industries, a list of all direct subcontractors and a copy of their certificate of registration.
- Provisions allowing a city, town, or county to verify that a person is registered as a contractor before issuing a business license to that person. The Department of Licensing must conduct the verification for cities that participate in the Master License System.⁵
- Establishing that, following the Department of Revenue, the Department of Labor and Industries, and the Employment Security Department have a priority lien on retainage on public works projects.
- A requirement that the Department of Labor and Industries conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. The Department must work with new employers on an individual basis and establish mass education campaigns.
- Penalties for employers who fail to keep and preserve unemployment insurance records. These employers are subject to a penalty of up to \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.
- An annual report requirement for the Department of Labor and Industries, the Employment Security Department, and the Department of Revenue to report to the Legislature on the effectiveness of Task Force efforts. The agencies must use benchmarks and measures established by the Washington State Institute for Public Policy and other members they determine to be appropriate.

SHB 1555. Legislative changes to SHB 1555:

- As introduced, SHB 1555 included a requirement that an Interagency Advisory Committee on the Underground Economy be created. The Committee would consist of representatives of: the Department of Labor and Industries, the Employment Security Department, and the Department of Revenue; cities and counties; and labor and business. The Committee was to continue studying the underground economy with the goal of reducing or eliminating the underground economy in the state.
- As introduced, SHB 1555 included a section that defined independent contractor for prevailing wage purposes. During the 2009 session, this section was removed from SHB 1555 and its Senate companion and enacted in a separate bill, SSB 5904.

⁵ As introduced, the local government requirement was mandatory. The bill was modified and this requirement was made permissive by the Legislature

- As passed by the Legislature, the requirement for the Interagency Advisory Committee was removed. Instead, the term of the Task Force was extended to December 15, 2009, and language limiting the scope of the Task Force to the construction industry was removed. The composition of the Task Force was altered to include representatives of local government and the business and labor representatives were no longer confined to representatives of the construction industry.

SSB 5904 defined independent contractor for prevailing wage purposes, using the same seven-part test developed to define independent contractor for construction contractors in 2008.

An individual employed on a public works project is not considered to be a laborer, worker, or mechanic, and consequently not required to be paid prevailing wages, when:

- the individual has been and is free from control or direction over the performance of services;
- the service is outside the usual course of business for the contractor for whom the individual performs services;
- the individual is customarily engaged in an independently established trade;
- the individual is responsible for filing paperwork with the Internal Revenue Service;
- the individual has an active and valid certificate of registration with the Department of Revenue for the business the individual is conducting;
- the individual maintains separate books and records; and
- the individual has a valid contractor registration or license if the nature of the work requires registration or licensure.

SSB 5613 authorized the Department of Labor and Industries to issue stop work orders if a contractor has failed to secure payment on industrial insurance compensation by paying into the state fund or qualifying as a self-insurer.

- The stop work order may be served on the worksite or on the employer. Business operations must cease immediately upon service, consistent with the stop work order. An employer who violates a stop work order is subject to a \$1,000 penalty for each day not in compliance.
- The stop work order remains in effect until the Director of the Department releases the order based on the employer's compliance or the Director issues a conditional release.
- Procedures for reconsideration are included in the bill, as well as a procedure for an employer to continue working during the period of reconsideration.

ESHB 1244. Budget. The following items relating to the Task Force were included in the 2009-2011 operating budget:

For the Department of Labor and Industries, implementation of SHB 1555:

- \$73,000 of the general fund -- state appropriation for fiscal year 2010
- \$66,000 of the general fund -- state appropriation for fiscal year 2011
- \$606,000 of the accident account -- state appropriation
- \$600,000 of the medical aid account -- state appropriation

For the Employment Security Department, implementation of SHB 1555:

- \$159,000 of the unemployment compensation account -- federal appropriation from funds made available to the state by section 903(d) of the social security act (Reed Act)

For the Department of Labor and Industries, implementation of SSB 5613:

- \$131,000 of the accident account--state appropriation
- \$128,000 of the medical aid account--state appropriation

The text of SHB 1555, SSB 5904 and SSB 5613 and their bill reports are in Appendix A.

PART III ACTIVITIES OF THE TASK FORCE

In 2009, Task Force topics included a review of the 2009 legislation; reports by the Department of Revenue on the implementation of SB 6173, reseller's permits; a review of the Master Licensing Process by the Department of Licensing; updates on underground economy activities and other agency activities by the Department of Labor and Industries, Employment Security Department, and the Department of Revenue; a review of the benchmarks established by the Benchmark Advisory Committee in conjunction with the Washington State Institute for Public Policy; a review of Oregon's Interagency Compliance Network; a review of criminal penalties for unlicensed contractor activity in selected states; discussion of priority issues for study outside the construction industry, including parcel delivery services, and the for hire vehicle industry; a review of local government enforcement; and a review of E2SSB 5850, human trafficking.⁶

Organizational Matters.

Procedures: In 2009, the Task Force maintained the procedures adopted in 2007 and 2008. The procedures addressed the organization and conduct of the Task Force, the appointment of the Task Force subcommittees; the data request process; and the decision making process. The Executive Committee agreed to meet as necessary to make data requests of staff and agencies and to identify agenda items for the next meeting.

Schedule: The Task Force held three meetings during the 2009 interim. (July 15, September 16, and November 20)

Reports: Presentations and reports given to the Task Force by state agency representatives, the Institute, and other presenters are available online.⁷ Appendix C contains a list of all these reports for 2007-2009.

Public Comment: The Task Force meetings included opportunities for public comment.

Subgroups: The Task Force requested that a Local Government subgroup be created to explore what local governments could do to assist with monitoring the underground economy and what can be done to help local government. This included a review of obstacles to checking contractor registration when issuing business licenses or building permits. The subgroup met outside of regularly scheduled Task Force meetings and reported back to the Task Force at the November 20 meeting.

⁶ For a summary of the Task Force Activities in 2007 and 2008, see the *Joint Legislative Task Force on the Underground Economy in the Construction Industry Final Report* available at <http://www.leg.wa.gov/jointcommittees/UECI>.

⁷ <http://www.leg.wa.gov/jointcommittees/UECI>

Substantive Issues Addressed in 2009.

Implementation of 2009 legislation and related updates from agencies. Agency representatives presented information on implementation of the 2009 legislation and related activities. (July 15, September 16, November 20)

The Employment Security Department discussed: the implementation of the independent contractor definition for construction contractors and its hiring of additional auditors; implementing the retainage from public works projects requirement; monitoring those who may be subject to the penalty for failure to keep records; audit results, including amounts discovered owed to the Department and amounts collected; and potential agency request legislation.

The Department of Labor and Industries discussed: the number of audits completed and dollars collected for fiscal years 2006 through 2009; outcomes from 2008 legislation, including expanding the number of auditors, expanding its FAIR team, and its efforts in conducting outreach activities; implementation of the 2009 legislation including developing work processes for stop work orders, managing retainage from public works projects, implementing the prevailing wage definition of exempt independent contractor; its detecting unregistered employers budget package which will fund a comprehensive employer misreporting/fraud detection computer system; its future industry focus, including education and outreach activities and targeted industries; and its responses due to general fund reductions and other economic impacts.

The Department of Revenue discussed: problem areas including out-of-state unregistered businesses and limited resources and presented on interagency efforts. The discussion on interagency efforts included a discussion by all agencies on dollars assessed and collected through interagency efforts, small business liaisons for each agency, and outreach activities.

Reseller permits. The Department of Revenue presented on SB 6173, reseller's permits. The Department reported on its implementation and updated the Task Force on its agency request legislation for changes to that bill. (July 15, November 20)

Shared work program. The Employment Security Department provided information to the Task Force on its shared work program, including participation rates and how it compares to other states' programs. (September 16)

Priority issues outside the construction industry. The Executive Committee requested that a letter be sent to a broad list of business and labor stakeholders, soliciting input from them on industry areas that would be appropriate for study by the Underground Economy Task Force. Task Force members were also requested to bring their suggestions forward. As a result, a study of low income workers, *Broken Laws, Unprotected Workers*, was distributed via e-mail to the Task Force, and discussion was had on parcel delivery drivers and for hire vehicle drivers. (July 15, September 16, November 20)

Barriers to enforcement by agencies. The agencies identified barriers to enforcement. These included: use of cell phones; internet advertising; third party subpoenas; and business churning. (September 16)

Oregon's Interagency Compliance Network and the future of the Task Force. Staff presented information on Oregon's Interagency Compliance Network. Representative Holvey from Oregon, the prime sponsor of Oregon's law, attended a meeting and discussed Oregon's experience. Agency representatives presented a comparison of Oregon's law with current Washington activities. A representative of the Governor's office was available to discuss suggestions on extending Washington's activities through a statutory scheme or by directive of the Governor. (September 16, November 20)

Retainage double amendment. Staff presented on a technical correction that could be made to a retainage statute as a result of the Legislature amending that statute twice during the 2009 session. This was approved by the Task Force as a legislative recommendation. (September 16)

Local government enforcement. A Local Government subgroup was created to explore what local governments could do to assist with monitoring the underground economy and what can be done to help locals. This included a review of obstacles to checking contractor registration when issuing business licenses or building permits. The subgroup met outside of regularly scheduled Task Force meetings and reported back findings at the final Task Force meeting. (September 16, November 20)

Benchmark report. The agencies presented its draft benchmark report to the Task Force at the final meeting. The benchmarks were designed to monitor outcomes and activities associated with recommendations of the Task Force. (November 20)

Human trafficking. Staff updated the Task Force on the implementation of E2SSB 5850, human trafficking, which states that employers of foreign workers must provide those workers with a disclosure form detailing their rights under state and federal law. (July 15, November 20)

PART IV RECOMMENDATIONS OF THE TASK FORCE

During the course of its meetings in 2009, the Task Force developed a list of possible action items. These items were put in a Recommendation Matrix for discussion by the Task Force at its final meeting. Voice votes were held on each item, with some discussion and/or editing of the items as the discussion occurred. The following is a list of those items, and whether they were adopted by the Task Force, put on hold, or discussed without a recommendation.

Future of Task Force work

1. Continue the Task Force in its current form. **Not adopted.**
2. Create another model to continue the work. At the final meeting, the Executive Branch provided a handout on its commitments to addressing issues relating to the underground economy.⁸ The Task Force endorsed the Executive Branch suggestion and added that agency collaboration on the underground economy should include the Attorney General. The Task Force agreed that the Legislature needs to appropriate dollars to support agencies in their budgeted activities. On-going activities must include meetings with stakeholders which may require additional budgeting. The stakeholder meetings could be on an annual basis. **Adopted.**

Sellers' Permits

3. Clarify terminology in sellers' permit law by renaming permit as "reseller" permit.⁹ **Adopted.**
4. Allow automatic issuance of permits for eligible contractors. **Adopted.**
5. Change time frame for contractor permit from one year to two years. **Adopted.**
6. Coordinate statutory definitions for different types of contractors. **Adopted.**
7. Allow a single use reseller permit for companies with intermittent needs. **Adopted, if the Department of Revenue can develop an approach to a single use reseller permit.**
8. Provide safe harbor provisions for businesses that rely on agency provided data through a voluntary automatic verification process and allow the Department of Revenue or sellers to supplement audit information from their own data and other sources to prove that sales were made for resale. **Not adopted.**
9. Ensure the acceptance by the Department of Revenue and state businesses of uniform resale certificates or the electronic/digital equivalent from businesses. **Adopted.**

⁸ This handout is available at Appendix B.

⁹ Item numbers 3 through 6 and 11 through 13 are part of the Department of Revenue's proposed agency request legislation.

10. Coordinate existing tax exemption certificates with the reseller permit. **Adopted.**
11. Clarify that construction contractors need to provide purchase information for their wholesale construction activities as part of the application process. **Adopted.**
12. Relieve a seller of the responsibility to obtain and keep reseller permits if the seller annually verifies the validity of their customers' reseller permits. **Adopted.**
13. Identify circumstances when a buyer is considered to have improperly used a reseller permit for purposes of the 50 percent penalty for misusing a reseller permit. **Adopted.**

Barriers to underground economy enforcement

14. - 15. Address cell phones and internet advertising. The Task Force recognizes that these are barriers to addressing the underground economy and recommends that the agencies continue to work on these issues and bring proposals back to the Legislature.
16. Third party subpoenas. The Legislature should examine the need for legislation on third party subpoenas. **Adopted with direction that legislation would be drafted as a separate bill.**
17. Address business churning. **Adopted, with direction to draft legislation as a separate bill.**

Suggestions from Task Force members

18. Provide graduated penalties for operating as a contractor without being registered (e.g., mandatory education for first offense, significant monetary penalty for second offense, and class C felony for third offense). **Adopted.**
19. Provide penalties for hiring an unregistered contractor. The Task Force agreed on the need to examine penalties relating to knowingly hiring unregistered contractors.
20. Bar legal right to payment by unregistered contractors, including requiring unregistered contractors to disgorge amounts received in payment. The Task Force agreed that this item should be subject to future study.
21. Address Construction Compliance Inspector funding sources (i.e., from workers compensation funds, similar to FAIR team). The Task Force recommends the Legislature set up a dedicated account for construction compliance inspectors. The account would be funded from contractor registration fees.
22. Address notification of all agencies when a state account is closed (e.g., DOR notify L&I, ESD, and DOL when DOR account is closed). This item was put on hold, but with the understanding that the agencies are able to address this.

23. Address workplace violations in low-wage industries. This item was put on hold. The Task Force acknowledges that underground economy activity is in other areas such as low wage industries and that these industries may be subject to future study.

24. Address use of multiple owner operators performing work in a specialty classification. The Task Force agreed on the need to examine if the Oregon approach to address placing restrictions on multiple owner operators has merit.

Suggestions from industries outside construction

25. Provide financial penalties for employers who misclassify workers as independent contractors. The Task Force agreed to put this item on hold.

26, 28 - 31. (Described below.) The Task Force did not issue a recommendation on these items. The Task Force participated in considerable discussion on parcel delivery and for hire vehicle industries, both of which brought recommendations to the Task Force, but which the Task Force did not discuss in detail.

(26.) Create a private right of action against employers for workers who have been misclassified as independent contractors.

(28.) Exempt certain "for hire" vehicle operators from the definition of "worker." Require mandatory industrial insurance for "urban transportation businesses." Set premium based on gross income. See PSHB 1625/PSSB 5785.

(29.) Require all persons (including business owners) in a business enterprise to be covered by industrial insurance.

(30.) Expand the authority of the Port of Seattle, and grant King County and the City of Seattle equivalent authority, to regulate executive sedans and executive vans, which are otherwise regulated as limousines by DOL. See HB 1775.

(31.) Conform workers compensation law with unemployment compensation law with respect to services referral agencies.

During the discussion on the parcel delivery services, an additional issue was presented to the Task Force - the Alternative Test Exemption. Discussion ensued on the alternative test as an enforcement issue.

27. Give consideration to staffing to properly investigate claims of misclassifying workers as independent contractors and the identification of necessary funding. **Adopted.**

Other

32. Correct retainage double amendment. **Adopted by voice vote at 9/16 meeting.**

Local Government Subgroup Opportunities - Local Business Licenses

As a result of its meetings during the 2009 interim, the Local Government Subgroup developed a list of barriers and opportunities that could be seized to assist the goals of the Task Force. These were focused on local business licenses and building permits. The Task Force discussed the opportunities that related to local business licenses and deferred discussion on opportunities relating to building permits.

33. Pursue data-sharing agreements between state agencies and some of the largest jurisdictions with their own systems. **Adopted.**

34. Hook DOR, ESD, and L&I into the local entity portion of MLS, using the nexus for data-sharing to both the agencies as well as the cities. **Adopted.**

35. Enhance the DOL grants program and advertise to mid-cities and smaller cities, along with the enhancement of data-sharing with the state agencies that may help them identify businesses that lack the local registration. **Adopted.**

Appendix A

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1555

Chapter 432, Laws of 2009

61st Legislature
2009 Regular Session

CONSTRUCTION INDUSTRY--UNDERGROUND ECONOMY

EFFECTIVE DATE: 07/26/09 - Except section 11, which becomes effective 10/01/09.

Passed by the House April 23, 2009
Yeas 95 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 16, 2009
Yeas 31 Nays 16

BRAD OWEN

President of the Senate

Approved May 11, 2009, 2:35 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1555** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1555

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy, and Wood)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the recommendations of the joint legislative
2 task force on the underground economy in the construction industry;
3 amending RCW 60.28.021, 60.28.040, 60.28.051, 60.28.060, and 50.12.070;
4 amending 2008 c 120 s 10 (uncodified); reenacting and amending RCW
5 60.28.011; adding a new section to chapter 18.27 RCW; adding a new
6 section to chapter 35.21 RCW; adding a new section to chapter 35A.21
7 RCW; adding a new section to chapter 36.01 RCW; adding a new section to
8 chapter 51.04 RCW; creating a new section; prescribing penalties;
9 providing an effective date; and providing an expiration date.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 18.27 RCW
12 to read as follows:

13 A contractor must maintain and have available for inspection by the
14 department a list of all direct subcontractors and a copy of their
15 certificate of registration.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
17 to read as follows:

18 A city that issues a business license to a person required to be

1 registered under chapter 18.27 RCW may verify that the person is
2 registered under chapter 18.27 RCW and report violations to the
3 department of labor and industries. The department of licensing shall
4 conduct the verification for cities that participate in the master
5 license system.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.21 RCW
7 to read as follows:

8 A city that issues a business license to a person required to be
9 registered under chapter 18.27 RCW may verify that the person is
10 registered under chapter 18.27 RCW and report violations to the
11 department of labor and industries. The department of licensing shall
12 conduct the verification for cities that participate in the master
13 license system.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.01 RCW
15 to read as follows:

16 A county that issues a business license to a person required to be
17 registered under chapter 18.27 RCW may verify that the person is
18 registered under chapter 18.27 RCW and report violations to the
19 department of labor and industries.

20 **Sec. 5.** RCW 60.28.011 and 2007 c 494 s 504 and 2007 c 218 s 92 are
21 each reenacted and amended to read as follows:

22 (1) Public improvement contracts shall provide, and public bodies
23 shall reserve, a contract retainage not to exceed five percent of the
24 moneys earned by the contractor as a trust fund for the protection and
25 payment of: (a) The claims of any person arising under the contract;
26 and (b) the state with respect to taxes imposed pursuant to Titles 50,
27 51, and 82 RCW which may be due from such contractor.

28 (2) Every person performing labor or furnishing supplies toward the
29 completion of a public improvement contract shall have a lien upon
30 moneys reserved by a public body under the provisions of a public
31 improvement contract. However, the notice of the lien of the claimant
32 shall be given within forty-five days of completion of the contract
33 work, and in the manner provided in RCW 39.08.030.

34 (3) The contractor at any time may request the contract retainage

1 be reduced to one hundred percent of the value of the work remaining on
2 the project.

3 (a) After completion of all contract work other than landscaping,
4 the contractor may request that the public body release and pay in full
5 the amounts retained during the performance of the contract, and sixty
6 days thereafter the public body must release and pay in full the
7 amounts retained (other than continuing retention of five percent of
8 the moneys earned for landscaping) subject to the provisions of
9 chapters 39.12 and 60.28 RCW.

10 (b) Sixty days after completion of all contract work the public
11 body must release and pay in full the amounts retained during the
12 performance of the contract subject to the provisions of chapters 39.12
13 and 60.28 RCW.

14 (4) The moneys reserved by a public body under the provisions of a
15 public improvement contract, at the option of the contractor, shall be:

16 (a) Retained in a fund by the public body;

17 (b) Deposited by the public body in an interest bearing account in
18 a bank, mutual savings bank, or savings and loan association. Interest
19 on moneys reserved by a public body under the provision of a public
20 improvement contract shall be paid to the contractor;

21 (c) Placed in escrow with a bank or trust company by the public
22 body. When the moneys reserved are placed in escrow, the public body
23 shall issue a check representing the sum of the moneys reserved payable
24 to the bank or trust company and the contractor jointly. This check
25 shall be converted into bonds and securities chosen by the contractor
26 and approved by the public body and the bonds and securities shall be
27 held in escrow. Interest on the bonds and securities shall be paid to
28 the contractor as the interest accrues.

29 (5) The contractor or subcontractor may withhold payment of not
30 more than five percent from the moneys earned by any subcontractor or
31 sub-subcontractor or supplier contracted with by the contractor to
32 provide labor, materials, or equipment to the public project. Whenever
33 the contractor or subcontractor reserves funds earned by a
34 subcontractor or sub-subcontractor or supplier, the contractor or
35 subcontractor shall pay interest to the subcontractor or sub-
36 subcontractor or supplier at a rate equal to that received by the
37 contractor or subcontractor from reserved funds.

1 (6) A contractor may submit a bond for all or any portion of the
2 contract retainage in a form acceptable to the public body and from a
3 bonding company meeting standards established by the public body. The
4 public body shall accept a bond meeting these requirements unless the
5 public body can demonstrate good cause for refusing to accept it. This
6 bond and any proceeds therefrom are subject to all claims and liens and
7 in the same manner and priority as set forth for retained percentages
8 in this chapter. The public body shall release the bonded portion of
9 the retained funds to the contractor within thirty days of accepting
10 the bond from the contractor. Whenever a public body accepts a bond in
11 lieu of retained funds from a contractor, the contractor shall accept
12 like bonds from any subcontractors or suppliers from which the
13 contractor has retained funds. The contractor shall then release the
14 funds retained from the subcontractor or supplier to the subcontractor
15 or supplier within thirty days of accepting the bond from the
16 subcontractor or supplier.

17 (7) If the public body administering a contract, after a
18 substantial portion of the work has been completed, finds that an
19 unreasonable delay will occur in the completion of the remaining
20 portion of the contract for any reason not the result of a breach
21 thereof, it may, if the contractor agrees, delete from the contract the
22 remaining work and accept as final the improvement at the stage of
23 completion then attained and make payment in proportion to the amount
24 of the work accomplished and in this case any amounts retained and
25 accumulated under this section shall be held for a period of sixty days
26 following the completion. In the event that the work is terminated
27 before final completion as provided in this section, the public body
28 may thereafter enter into a new contract with the same contractor to
29 perform the remaining work or improvement for an amount equal to or
30 less than the cost of the remaining work as was provided for in the
31 original contract without advertisement or bid. The provisions of this
32 chapter are exclusive and shall supersede all provisions and
33 regulations in conflict herewith.

34 (8) Whenever the department of transportation has contracted for
35 the construction of two or more ferry vessels, sixty days after
36 completion of all contract work on each ferry vessel, the department
37 must release and pay in full the amounts retained in connection with
38 the construction of the vessel subject to the provisions of RCW

1 60.28.020 and chapter 39.12 RCW. However, the department of
2 transportation may at its discretion condition the release of funds
3 retained in connection with the completed ferry upon the contractor
4 delivering a good and sufficient bond with two or more sureties, or
5 with a surety company, in the amount of the retained funds to be
6 released to the contractor, conditioned that no taxes shall be
7 certified or claims filed for work on the ferry after a period of sixty
8 days following completion of the ferry; and if taxes are certified or
9 claims filed, recovery may be had on the bond by the department of
10 revenue, the employment security department, the department of labor
11 and industries, and the material suppliers and laborers filing claims.

12 (9) Except as provided in subsection (1) of this section,
13 reservation by a public body for any purpose from the moneys earned by
14 a contractor by fulfilling its responsibilities under public
15 improvement contracts is prohibited.

16 (10) Contracts on projects funded in whole or in part by farmers
17 home administration and subject to farmers home administration
18 regulations are not subject to subsections (1) through (9) of this
19 section.

20 (11) This subsection applies only to a public body that has
21 contracted for the construction of a facility using the general
22 contractor/construction manager procedure, as defined under RCW
23 39.10.210. If the work performed by a subcontractor on the project has
24 been completed within the first half of the time provided in the
25 general contractor/construction manager contract for completing the
26 work, the public body may accept the completion of the subcontract.
27 The public body must give public notice of this acceptance. After a
28 forty-five day period for giving notice of liens, and compliance with
29 the retainage release procedures in RCW 60.28.021, the public body may
30 release that portion of the retained funds associated with the
31 subcontract. Claims against the retained funds after the forty-five
32 day period are not valid.

33 (12) Unless the context clearly requires otherwise, the definitions
34 in this subsection apply throughout this section.

35 (a) "Contract retainage" means an amount reserved by a public body
36 from the moneys earned by a person under a public improvement contract.

37 (b) "Person" means a person or persons, mechanic, subcontractor, or
38 materialperson who performs labor or provides materials for a public

1 improvement contract, and any other person who supplies the person with
2 provisions or supplies for the carrying on of a public improvement
3 contract.

4 (c) "Public body" means the state, or a county, city, town,
5 district, board, or other public body.

6 (d) "Public improvement contract" means a contract for public
7 improvements or work, other than for professional services, or a work
8 order as defined in RCW 39.10.210.

9 **Sec. 6.** RCW 60.28.021 and 2007 c 218 s 94 are each amended to read
10 as follows:

11 After the expiration of the forty-five day period for giving notice
12 of lien provided in RCW 60.28.011(2), and after receipt of the
13 ~~((department of revenue's))~~ certificates of the department of revenue,
14 the employment security department, and the department of labor and
15 industries, and the public body is satisfied that the taxes certified
16 as due or to become due by the department of revenue, the employment
17 security department, and the department of labor and industries are
18 discharged, and the claims of material suppliers and laborers who have
19 filed their claims, together with a sum sufficient to defray the cost
20 of foreclosing the liens of such claims, and to pay attorneys' fees,
21 have been paid, the public body may withhold from the remaining
22 retained amounts for claims the public body may have against the
23 contractor and shall pay the balance, if any, to the contractor the
24 fund retained by it or release to the contractor the securities and
25 bonds held in escrow.

26 If such taxes have not been discharged or the claims, expenses, and
27 fees have not been paid, the public body shall either retain in its
28 fund, or in an interest bearing account, or retain in escrow, at the
29 option of the contractor, an amount equal to such unpaid taxes and
30 unpaid claims together with a sum sufficient to defray the costs and
31 attorney fees incurred in foreclosing the lien of such claims, and
32 shall pay, or release from escrow, the remainder to the contractor.

33 **Sec. 7.** RCW 60.28.040 and 1985 c 80 s 1 are each amended to read
34 as follows:

35 (1) Subject to subsection (5) of this section, the amount of all
36 taxes, increases, and penalties due or to become due under Title 82

1 RCW, from a contractor or the contractor's successors or assignees with
2 respect to a public improvement contract wherein the contract price is
3 twenty thousand dollars or more, shall be a lien prior to all other
4 liens upon the amount of the retained percentage withheld by the
5 disbursing officer under such contract(~~(, except that)~~).

6 (2) Subject to subsection (5) of this section, after payment of all
7 taxes, increases, and penalties due or to become due under Title 82
8 RCW, from a contractor or the contractor's successors or assignees with
9 respect to a public improvement contract wherein the contract price is
10 twenty thousand dollars or more, the amount of all other taxes,
11 increases, and penalties under Title 82 RCW, due and owing from the
12 contractor, shall be a lien prior to all other liens upon the amount of
13 the retained percentage withheld by the disbursing officer under such
14 contract.

15 (3) Subject to subsection (5) of this section, after payment of all
16 taxes, increases, and penalties due or to become due under Title 82
17 RCW, the amount of all taxes, increases, and penalties due or to become
18 due under Titles 50 and 51 RCW from the contractor or the contractor's
19 successors or assignees with respect to a public improvement contract
20 wherein the contract price is twenty thousand dollars or more shall be
21 a lien prior to all other liens upon the amount of the retained
22 percentage withheld by the disbursing officer under such contract.

23 (4) Subject to subsection (5) of this section, the amount of all
24 other taxes, increases, and penalties due and owing from the contractor
25 shall be a lien upon the balance of such retained percentage remaining
26 in the possession of the disbursing officer after all other statutory
27 lien claims have been paid.

28 (5) The employees of a contractor or the contractor's successors or
29 assignees who have not been paid the prevailing wage under such a
30 public improvement contract shall have a first priority lien against
31 the bond or retainage prior to all other liens. (~~The amount of all~~
32 other taxes, increases and penalties due and owing from the contractor
33 shall be a lien upon the balance of such retained percentage remaining
34 in the possession of the disbursing officer after all other statutory
35 lien claims have been paid.))

36 **Sec. 8.** RCW 60.28.051 and 2007 c 210 s 2 are each amended to read
37 as follows:

1 Upon completion of a contract, the state, county, or other
2 municipal officer charged with the duty of disbursing or authorizing
3 disbursement or payment of such contracts shall forthwith notify the
4 department of revenue, the employment security department, and the
5 department of labor and industries of the completion of contracts over
6 thirty-five thousand dollars. Such officer shall not make any payment
7 from the retained percentage fund or release any retained percentage
8 escrow account to any person, until he or she has received from the
9 department of revenue ((a)), the employment security department, and
10 the department of labor and industries certificates that all taxes,
11 increases, and penalties due from the contractor, and all taxes due and
12 to become due with respect to such contract have been paid in full or
13 that they are, in ((the)) each department's opinion, readily
14 collectible without recourse to the state's lien on the retained
15 percentage.

16 **Sec. 9.** RCW 60.28.060 and 1967 ex.s. c 26 s 25 are each amended to
17 read as follows:

18 If within thirty days after receipt of notice by the department of
19 revenue, the employment security department, and the department of
20 labor and industries of the completion of the contract, the amount of
21 all taxes, increases and penalties due from the contractor or any of
22 his successors or assignees or to become due with respect to such
23 contract have not been paid, the department of revenue, the employment
24 security department, and the department of labor and industries may
25 certify to the disbursing officer the amount of all taxes, increases
26 and penalties due from the contractor, together with the amount of all
27 taxes due and to become due with respect to the contract and may
28 request payment thereof ((to the department of revenue)) in accordance
29 with the priority provided by this chapter. The disbursing officer
30 shall within ten days after receipt of such certificate and request pay
31 to the department of revenue, the employment security department, and
32 the department of labor and industries the amount of all taxes,
33 increases and penalties certified to be due or to become due ((with
34 respect to the particular contract, and, after payment of)) and all
35 claims which by statute are a lien upon the retained percentage
36 withheld by the disbursing officer((, shall pay to the department of
37 revenue the balance, if any, or so much thereof as shall be necessary

1 ~~to satisfy the claim of the department of revenue for the balance of~~
2 ~~all taxes, increases or penalties shown to be due by the certificate of~~
3 ~~the department of revenue)) in accordance with the priority provided by~~
4 ~~this chapter.~~ If the contractor owes no taxes imposed pursuant to
5 Titles 50, 51, and 82 RCW, the department of revenue, the employment
6 security department, and the department of labor and industries shall
7 so certify to the disbursing officer.

8 NEW SECTION. Sec. 10. A new section is added to chapter 51.04 RCW
9 to read as follows:

10 The department shall conduct education and outreach to employers on
11 workers' compensation requirements and premium responsibilities,
12 including independent contractor issues. The department shall work
13 with new employers on an individual basis and also establish mass
14 education campaigns.

15 **Sec. 11.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read
16 as follows:

17 (1)(a) Each employing unit shall keep true and accurate work
18 records, containing such information as the commissioner may prescribe.
19 Such records shall be open to inspection and be subject to being copied
20 by the commissioner or his or her authorized representatives at any
21 reasonable time and as often as may be necessary. The commissioner may
22 require from any employing unit any sworn or unsworn reports with
23 respect to persons employed by it, which he or she deems necessary for
24 the effective administration of this title.

25 (b) An employer who contracts with another person or entity for
26 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
27 record of the unified business identifier account number for and
28 compensation paid to the person or entity performing the work. In
29 addition to the penalty in subsection (3) of this section, failure to
30 obtain or maintain the record is subject to RCW 39.06.010 ((and to a
31 penalty determined by the commissioner, but not to exceed two hundred
32 fifty dollars, to be collected as provided in RCW 50.24.120)).

33 (2)(a) Each employer shall register with the department and obtain
34 an employment security account number. Registration must include the
35 names and social security numbers of the owners, partners, members, or
36 corporate officers of the business, as well as their mailing addresses

1 and telephone numbers and other information the commissioner may by
2 rule prescribe. Registration of corporations must also include the
3 percentage of stock ownership for each corporate officer, delineated by
4 zero percent, less than ten percent, or ten percent or more. Any
5 changes in the owners, partners, members, or corporate officers of the
6 business, and changes in percentage of ownership of the outstanding
7 shares of stock of the corporation, must be reported to the department
8 at intervals prescribed by the commissioner under (b) of this
9 subsection.

10 (b) Each employer shall make periodic reports at such intervals as
11 the commissioner may by regulation prescribe, setting forth the
12 remuneration paid for employment to workers in its employ, the full
13 names and social security numbers of all such workers, and the total
14 hours worked by each worker and such other information as the
15 commissioner may by regulation prescribe.

16 (c) If the employing unit fails or has failed to report the number
17 of hours in a reporting period for which a worker worked, such number
18 will be computed by the commissioner and given the same force and
19 effect as if it had been reported by the employing unit. In computing
20 the number of such hours worked, the total wages for the reporting
21 period, as reported by the employing unit, shall be divided by the
22 dollar amount of the state's minimum wage in effect for such reporting
23 period and the quotient, disregarding any remainder, shall be credited
24 to the worker: PROVIDED, That although the computation so made will
25 not be subject to appeal by the employing unit, monetary entitlement
26 may be redetermined upon request if the department is provided with
27 credible evidence of the actual hours worked. Benefits paid using
28 computed hours are not considered an overpayment and are not subject to
29 collections when the correction of computed hours results in an invalid
30 or reduced claim; however:

31 (i) A contribution paying employer who fails to report the number
32 of hours worked will have its experience rating account charged for all
33 benefits paid that are based on hours computed under this subsection;
34 and

35 (ii) An employer who reimburses the trust fund for benefits paid to
36 workers and fails to report the number of hours worked shall reimburse
37 the trust fund for all benefits paid that are based on hours computed
38 under this subsection.

1 (3) Any employer who fails to keep and preserve records required by
2 this section shall be subject to a penalty determined by the
3 commissioner but not to exceed two hundred fifty dollars or two hundred
4 percent of the quarterly tax for each offense, whichever is greater.

5 **Sec. 12.** 2008 c 120 s 10 (uncodified) is amended to read as
6 follows:

7 (1) The joint legislative task force on the underground economy
8 (~~in the Washington state construction industry~~) is established. For
9 purposes of this section, "underground economy" means (~~contracting and~~
10 ~~construction~~) business activities in which payroll is unreported or
11 underreported with consequent nonpayment of payroll taxes to federal
12 and state agencies including nonpayment of workers' compensation and
13 unemployment compensation taxes.

14 (2) The purpose of the task force is to formulate a state policy to
15 establish cohesion and transparency between state agencies so as to
16 increase the oversight and regulation of the underground economy
17 practices (~~in the construction industry~~) in this state. To assist
18 the task force in achieving this goal and to determine the extent of
19 and projected costs to the state and workers of the underground economy
20 (~~in the construction industry~~), the task force shall contract with
21 the institute for public policy, or, if the institute is unavailable,
22 another entity with expertise capable of providing such assistance.

23 (3)(a) The task force shall consist of the following members:

24 (i) The chair and ranking minority member of the senate labor,
25 commerce, research and development committee;

26 (ii) The chair and ranking minority member of the house of
27 representatives commerce and labor committee;

28 (iii) Four members representing (~~the construction~~) business
29 interests, selected from nominations submitted by statewide
30 (~~construction~~) business organizations and appointed jointly by the
31 president of the senate and the speaker of the house of
32 representatives;

33 (iv) Four members representing (~~construction laborers~~) labor
34 interests, selected from nominations submitted by statewide labor
35 organizations and appointed jointly by the president of the senate and
36 the speaker of the house of representatives;

1 (v) One member representing cities, appointed by an association of
2 cities;

3 (vi) One member representing counties, appointed by an association
4 of counties.

5 (b) In addition, the employment security department, the department
6 of labor and industries, and the department of revenue shall cooperate
7 with the task force and shall each maintain a liaison representative,
8 who is a nonvoting member of the task force. The departments shall
9 cooperate with the task force and the institute for public policy, or
10 other entity as appropriate, and shall provide information and data as
11 the task force or the institute, or other entity as appropriate, may
12 reasonably request.

13 (c) The task force shall choose its chair or cochairs from among
14 its legislative membership. The chairs of the senate labor, commerce,
15 research and development committee and the house of representatives
16 commerce and labor committee shall convene the initial meeting of the
17 task force.

18 (4) In conducting its study in 2009, the task force may consider:

19 (a) Issues previously discussed by the joint legislative task force
20 on the underground economy in the construction industry and whether
21 these issues need to be addressed in nonconstruction industries;

22 (b) The role of local governments in monitoring the underground
23 economy;

24 (c) The need to establish additional benchmarks and measures for
25 purposes of section 13 of this act;

26 (d) Such other items the task force deems necessary.

27 (5)(a) The task force shall use legislative facilities and staff
28 support shall be provided by senate committee services and the house of
29 representatives office of program research. Within available funding,
30 the task force may hire additional staff with specific technical
31 expertise if such expertise is necessary to carry out the mandates of
32 this study.

33 (b) Legislative members of the task force shall be reimbursed for
34 travel expenses in accordance with RCW 44.04.120. Nonlegislative
35 members, except those representing an employer or organization, are
36 entitled to be reimbursed for travel expenses in accordance with RCW
37 43.03.050 and 43.03.060.

1 (c) The expenses of the task force will be paid jointly by the
2 senate and house of representatives. Task force expenditures are
3 subject to approval by the senate facilities and operations committee
4 and the house of representatives executive rules committee, or their
5 successor committees.

6 ~~((+5))~~ (6) The task force shall report its ~~((preliminary))~~
7 findings and recommendations to the legislature by ~~((January 1, 2008,~~
8 ~~and submit a final report to the legislature by))~~ December ~~((31, 2008))~~
9 1, 2009.

10 ~~((+6))~~ (7) This section expires ~~((July 1,))~~ December 15, 2009.

11 NEW SECTION. Sec. 13. The department of labor and industries, the
12 employment security department, and the department of revenue shall
13 coordinate and report to the appropriate committees of the legislature
14 by December 1st of each year on the effectiveness of efforts
15 implemented since July 1, 2008, to address the underground economy.
16 The agencies shall use benchmarks and measures established by the
17 institute for public policy and other measures it determines
18 appropriate.

19 NEW SECTION. Sec. 14. Section 11 of this act takes effect October
20 1, 2009.

Passed by the House April 23, 2009.

Passed by the Senate April 16, 2009.

Approved by the Governor May 11, 2009.

Filed in Office of Secretary of State May 11, 2009.

FINAL BILL REPORT

SHB 1555

C 432 L 09
Synopsis as Enacted

Brief Description: Addressing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Chase, Green, Dickerson, Rolfes, Goodman, Campbell, Morrell, Cody, Simpson, Ormsby, Van De Wege, Seaquist, Appleton, Miloscia, Hunt, Blake, Williams, Hudgins, Kenney, Sullivan, Priest, Eddy and Wood).

House Committee on Commerce & Labor
House Committee on Ways & Means
Senate Committee on Labor, Commerce & Consumer Protection
Senate Committee on Ways & Means

Background:

In 2007 the Legislature established a Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force met during the 2007 interim and developed recommendations which led to the passage of two bills in 2008, ESHB 3122 and 2SSB 6732. In addition, budget provisos were enacted. The 2008 legislation also extended the Task Force for an additional year. The Task Force met during the 2008 interim and submitted a final report to the Legislature. The final report contains a number of recommendations.

Summary:

Provisions are adopted addressing contractor registration, workers' compensation education and outreach, liens on public works retainage, and unemployment record-keeping:

- A contractor must maintain, and have available for inspection by the Department of Labor and Industries (L&I), a list of all direct subcontractors and a copy of their certificate of registration.
- Before issuing a business license to a person required to be registered as a contractor, a city, town, or county may verify that the person is registered and report violations to

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.

L&I. The Department of Licensing must conduct the verification for cities that participate in the Master License System.

- The L&I is directed to conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. The L&I must work with new employers on an individual basis and also establish mass education campaigns.
- The L&I and the Employment Security Department (ESD) have a priority lien on retainage on public works projects following the Department of Revenue (DOR). After payment of the contractor's employees who were not paid the prevailing wage, and payment of amounts owing to the DOR with respect to the contract and other amounts owing to the DOR, the ESD and L&I have a lien for taxes, increases, and penalties due with respect to the contract. Other amounts owing to L&I and the ESD are a lien after other statutory lien claims (laborers and suppliers) have been paid.
- A penalty is created for employers who fail to keep and preserve unemployment insurance records. The penalty may not exceed \$250 or 200 percent of the quarterly tax for each offense, whichever is greater.

The L&I, the ESD, and the DOR must report to the appropriate committees of the Legislature by December 1 each year on the effectiveness of efforts implemented since July 1, 2008, to address the underground economy. The agencies must use benchmarks and measures established by the Washington Institute for Public Policy and other measures it determines appropriate.

The Joint Legislative Task Force, originally scheduled to expire on July 1, 2009, is extended to December 15, 2009, and the scope is extended beyond construction. The membership of the committee is modified. A representative of cities and a representative of counties is added, and the business and labor members are no longer limited to construction representatives. In conducting its 2009 study, the task force may consider issues previously discussed by the task force and whether these issues need to be addressed in nonconstruction industries, the role of local governments in monitoring the underground economy, and the need to establish additional measures and benchmarks. The task force must report its findings and recommendations to the Legislature by December 1, 2009.

Votes on Final Passage:

House	95	1	
Senate	31	16	(Senate amended)
House	95	1	(House concurred)

Effective: July 26, 2009
October 1, 2009 (Section 11)

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5904

Chapter 63, Laws of 2009

61st Legislature
2009 Regular Session

PREVAILING WAGE--PUBLIC WORKS--INDEPENDENT CONTRACTOR

EFFECTIVE DATE: 07/26/09

Passed by the Senate March 7, 2009
YEAS 27 NAYS 15

BRAD OWEN

President of the Senate

Passed by the House April 1, 2009
YEAS 63 NAYS 34

FRANK CHOPP

Speaker of the House of Representatives

Approved April 10, 2009, 3:09 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5904** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 13, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5904

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Prentice, Keiser, Franklin, Hobbs, and Kline)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to defining independent contractor for purposes of
2 prevailing wage; and adding a new section to chapter 39.12 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12 RCW
5 to read as follows:

6 For the purposes of this chapter, an individual employed on a
7 public works project is not considered to be a laborer, worker, or
8 mechanic when:

9 (1) The individual has been and is free from control or direction
10 over the performance of the service, both under the contract of service
11 and in fact;

12 (2) The service is either outside the usual course of business for
13 the contractor or contractors for whom the individual performs
14 services, or the service is performed outside all of the places of
15 business of the enterprise for which the individual performs services,
16 or the individual is responsible, both under the contract and in fact,
17 for the costs of the principal place of business from which the service
18 is performed;

1 (3) The individual is customarily engaged in an independently
2 established trade, occupation, profession, or business, of the same
3 nature as that involved in the contract of service, or the individual
4 has a principal place of business for the business the individual is
5 conducting that is eligible for a business deduction for federal income
6 tax purposes other than that furnished by the employer for which the
7 business has contracted to furnish services;

8 (4) On the effective date of the contract of service, the
9 individual is responsible for filing at the next applicable filing
10 period, both under the contract of service and in fact, a schedule of
11 expenses with the internal revenue service for the type of business the
12 individual is conducting;

13 (5) On the effective date of the contract of service, or within a
14 reasonable period after the effective date of the contract of service,
15 the individual has an active and valid certificate of registration with
16 the department of revenue, and an active and valid account with any
17 other state agencies as required by the particular case, for the
18 business the individual is conducting for the payment of all state
19 taxes normally paid by employers and businesses and has registered for
20 and received a unified business identifier number from the state of
21 Washington;

22 (6) On the effective date of the contract of service, the
23 individual is maintaining a separate set of books or records that
24 reflect all items of income and expenses of the business which the
25 individual is conducting; and

26 (7) On the effective date of the contract of service, if the nature
27 of the work performed requires registration under chapter 18.27 RCW or
28 licensure under chapter 19.28 RCW, the individual has a valid
29 contractor registration pursuant to chapter 18.27 RCW or an electrical
30 contractor license pursuant to chapter 19.28 RCW.

Passed by the Senate March 7, 2009.

Passed by the House April 1, 2009.

Approved by the Governor April 10, 2009.

Filed in Office of Secretary of State April 13, 2009.

FINAL BILL REPORT

SSB 5904

C 63 L 09
Synopsis as Enacted

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).

Senate Committee on Labor, Commerce & Consumer Protection
House Committee on Commerce & Labor

Background: Laborers, workers, and mechanics on all public works and public building service maintenance contracts must be paid prevailing wages. Prevailing wage is the rate of hourly wage, usual benefits, and overtime paid in the locality, or largest city in the county where the work is being performed. The prevailing wage is determined by the industrial statistician at the Department of Labor and Industries.

Summary: Independent contractor is defined for prevailing wage purposes. An individual employed on a public works project is not considered to be a laborer, worker, or mechanic, and consequently not required to be paid prevailing wages, when:

- the individual has been and is free from control or direction over the performance of services;
- the service is outside the usual course of business for the contractor for whom the individual performs services;
- the individual is customarily engaged in an independently established trade;
- the individual is responsible for filing paperwork with the Internal Revenue Service;
- the individual has an active and valid certificate of registration with the Department of Revenue for the business the individual is conducting;
- the individual maintains separate books and records; and
- the individual has a valid contractor registration or license if the nature of the work requires registration or licensure.

Votes on Final Passage:

Senate	27	15
House	63	34

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.

Effective: July 26, 2009

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5613

Chapter 196, Laws of 2009

61st Legislature
2009 Regular Session

DEPARTMENT OF LABOR AND INDUSTRIES--STOP WORK ORDERS--COMPENSATION

EFFECTIVE DATE: 07/26/09

Passed by the Senate March 4, 2009
YEAS 31 NAYS 17

BRAD OWEN

President of the Senate

Passed by the House April 9, 2009
YEAS 60 NAYS 38

FRANK CHOPP

Speaker of the House of Representatives

Approved April 23, 2009, 4:17 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5613** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 24, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5613

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Keiser, Franklin, Kline, McDermott, Tom, and Fraser)

READ FIRST TIME 02/17/09.

1 AN ACT Relating to authorizing the department of labor and
2 industries to issue stop work orders for violations of certain workers'
3 compensation provisions; and adding a new section to chapter 51.48 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.48 RCW
6 to read as follows:

7 (1) In addition to the penalties provided by this chapter, an
8 employer performing services that require registration under chapter
9 18.27 RCW or licensing under chapter 19.28 RCW who violates RCW
10 51.14.010 may be subject to a stop work order issued under this
11 section.

12 (2) If the director determines after an investigation that an
13 employer is in violation of RCW 51.14.010, the director may issue a
14 stop work order against the employer requiring the cessation of
15 business operations of the employer. Service of the order must be in
16 accordance with subsection (3) of this section.

17 (3) When a stop work order is served on a worksite by posting a
18 copy of the stop work order in a conspicuous location at the worksite,
19 it is effective as to the employer's operations on that worksite. When

1 a stop work order is served on the employer, the order is effective to
2 all employer worksites for which the employer is not in compliance.
3 Business operations of the employer must cease immediately upon service
4 consistent with the stop work order. The order remains in effect until
5 the director issues an order releasing the stop work order upon finding
6 that the employer has come into compliance and has paid any premiums,
7 penalties, and interest under this title or issues an order of
8 conditional release pursuant to subsection (6) of this section.

9 (4) An employer who violates a stop work order is subject to a one
10 thousand dollar penalty for each day not in compliance.

11 (5) An employer against whom a stop work order has been issued may
12 request reconsideration from the department or may appeal to the board
13 of industrial insurance appeals. The request must be made in writing
14 to the department or the board within ten days of receiving the stop
15 work order at the worksite or in person. If the department conducts a
16 reconsideration, it must be concluded within ten days of receiving the
17 request for reconsideration by the employer. The stop work order
18 remains in effect during the period of reconsideration or appeal,
19 unless the employer furnishes to the department a cash deposit or bond
20 in the amount of five thousand dollars or one thousand dollars per
21 covered worker identified, whichever is greater. At time of a final
22 order upholding a stop work order, the bond or cash deposit will be
23 seized and applied to the premium, penalty, and interest balance of
24 that employer. In an appeal before the board, the appellant has the
25 burden of proceeding with the evidence to establish a prima facie case
26 for the relief sought in such appeal. RCW 51.52.080 through 51.52.106
27 govern appeals under this section. Further appeals taken from a final
28 decision of the board under this section are governed by the provisions
29 relating to judicial review of administrative decisions contained in
30 RCW 34.05.510 through 34.05.598, and the department has the same right
31 of review from the board's decisions as do employers.

32 (6) The director may issue an order of conditional release from the
33 stop work order if the employer has complied with the coverage
34 requirements of this title and agreed to pay premiums, penalties, and
35 interest through a payment schedule. If the terms of the schedule are
36 not met, the stop work order may be reinstated and the unpaid balance
37 will become due.

1 (7) Stop work orders and penalties assessed under this chapter
2 remain in effect against any successor corporation or business entity
3 that has one or more of the same principals or officers as the employer
4 against whom the stop work order was issued and which is engaged in the
5 same or equivalent trade or activity.

6 (8) The department may adopt rules to carry out this section.

Passed by the Senate March 4, 2009.

Passed by the House April 9, 2009.

Approved by the Governor April 23, 2009.

Filed in Office of Secretary of State April 24, 2009.

FINAL BILL REPORT

SSB 5613

C 196 L 09
Synopsis as Enacted

Brief Description: Authorizing the department of labor and industries to issue stop work orders for violations of certain workers' compensation provisions.

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

Senate Committee on Labor, Commerce & Consumer Protection
House Committee on Commerce & Labor

Background: Employers in the state must secure payment of industrial insurance by either insuring with the State Fund or qualifying as a self-insurer. An employer who fails to secure industrial insurance is liable for a penalty of \$500 or a sum double the amount of premiums incurred prior to securing payment, whichever is greater. Criminal penalties may also apply. Employers who insure with the State Fund must provide a true and accurate payroll to the Department of Labor and Industries (Department) and pay the appropriate premium. An employer who knowingly misrepresents the amount of payroll or employee hours is liable for up to ten times the amount of the difference in premiums paid and what the employer should have paid, as well as the reasonable expenses of audit and collection.

General and specialty contractors must register with the Department, and a contractor who fails to register is subject to an order issued by the Director of the Department to restrain further construction work at the job site by the contractor. General and specialty electrical contractors must obtain a license from the Department.

Summary: If the Director of the Department of Labor and Industries (Director) determines after an investigation that a general or specialty contractor or a general or specialty electrical contractor has failed to secure payment on industrial insurance compensation by paying into the State Fund or qualifying as a self-insurer, the Director may issue a stop-work order against the employer. A stop-work order may be served on a worksite by posting a copy in a conspicuous location, in which case the order is effective as to the employer's operations on that worksite. A stop-work order may be served on the employer, in which case the order is effective as to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service, consistent with the stop-work order. An employer who violates a stop-work order is subject to a \$1,000 penalty for each day not in compliance.

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.

A stop-work order remains in effect until the Director: (1) releases the order upon finding that the employer has come into compliance and paid any premiums, penalties, and interest owing under industrial insurance; or (2) issues an order of conditional release. The Director may issue a conditional release order if the employer has complied with the coverage requirements and has agreed to pay penalties through a penalty schedule. If the terms of the payment schedule are not met, the stop-work order may be reinstated.

An employer against whom a stop-work order has been issued may request reconsideration from the Department or appeal to the Board of Industrial Insurance Appeals (Board) within ten days of receiving the stop-work order. If the Department conducts a reconsideration, it must be concluded within ten days of receiving the request for consideration. The stop-work order remains in effect during the period of reconsideration or appeal, unless the employer furnishes to the Department a cash deposit or bond in the amount of \$5,000 or \$1,000 per covered worker identified. If the stop-work order is upheld, the cash deposit or bond will be seized and applied to the premium, penalty, and interest balance of that employer. In an appeal before the Board, the appellant has the burden of proceeding with the evidence to establish a prima facie case. The Administrative Procedure Act applies to judicial review, and the Department has the same right of review as do employers.

Stop-work orders and penalties are effective against any successor corporation or business entity that has one or more of the same principals or officers as the employer under the stop-work order and which is engaged in the same or equivalent trade or activity.

The Department may adopt rules to carry out the provisions.

Votes on Final Passage:

Senate	31	17
House	60	38

Effective: July 26, 2009

APPENDIX B

Executive Branch commitments on addressing issues related to the Underground Economy.

Executive Branch (Department of Revenue, Labor and Industries, and Employment Security) commitments on addressing issues related to the Underground Economy.

1. Continue to share data on a continual basis including information on unregistered businesses, audit data on businesses found to own money, and other areas of mutual interest concerning tax discovery and combating the underground economy.
2. Continue to meet quarterly to discuss data exchange issues, new methods for finding fraud, and to discuss specific cases of mutual interest.
3. Provide an annual underground economy report each December first on multi-agency efforts to combat the underground economy (as required in SSB 1555).
4. Continue to cross-train auditors in all three agencies on what to look for to assist their counterparts in the other agencies. An online e-learning tool has already been developed for this purpose.
5. Collaborate on research projects - The three agencies participated in the 2007 study on the impact of the underground economy in Washington on state revenue.
6. Managers and staff continue informal sharing when coordinating individual cases, special projects or other items of interest to the agencies.
7. The agencies will continue to collaborate on specific cases of mutual interest up to and including work to assist local prosecutors on cases that rise to a felony level.

APPENDIX C

Materials Available at: www.leg.wa.gov/JointCommittee/UECI/Pages/default.aspx

In addition to the materials provided during 2007 and 2008, the following materials provided to the Task Force in 2009 are available on the Legislature's website at the address listed above.

July 15, 2009

- Agenda
- Agency Presentations
 - Monitoring Agency Activities Targeting Underground Economic Activity, Washington State Institute for Public Policy
 - Update from the Employment Security Department, Employment Security Department
 - Update from the Department of Labor and Industries, Department of Labor and Industries
 - Update from the Department of Revenue, Department of Revenue
 - Master License Service City Partners, Department of Licensing
 - Master Licensing Process, Department of Licensing
 - Report on implementation of SB 6173 - resellers' permits, Department of Revenue
- Staff Presentations
 - 2009 Underground Economy Legislation, Senate Committee Services and Office of Program Research
 - Recommendations of the Underground Economy Task Force, Senate Committee Services
 - 2008 Task Force Recommendations: Items not addressed in 2009 enacted legislation, Office of Program Research

September 16, 2009

- Agenda
- Agency Presentations
 - Shared Work Program Fact Sheet, Employment Security Department
 - Proposals to Stakeholders, Employment Security Department
 - Audit Dollar Collection Status, Employment Security Department
- Staff Presentations
 - Retainage Double Amendment, Senate Committee Services
 - Penalties for Contractors in Other States, Office of Program Research
 - Summary of HB 2815 (Oregon) – Interagency Compliance Network , Office of Program Research

November 20, 2009

- Agenda
- Agency Presentations
 - Underground Economy Draft Benchmark Report, Department of Labor and Industries, Department of Revenue, and Employment Security Department
 - Local Government Opportunities and Challenges, Underground Economy Subcommittee on Local Government Opportunities and Challenges
 - Comparison of the Oregon Interagency Compliance Network, Employment Security Department
 - Reseller Permit, Department of Revenue
- Staff Presentations
 - Update on E2SSB 5850 - Human Trafficking, Senate Committee Services
 - Selected Laws of Other States Addressing the For Hire Vehicle Industry, Office of Program Research
 - Summary of HB 2815 (Oregon) – Interagency Compliance Network, Office of Program Research
- Materials on the Parcel Delivery Industry
 - FedEx Ground Contractor Operating Agreement
 - Letter Regarding Employment Classification of FedEx Ground Drivers, Attorneys General of Iowa, Kentucky, Missouri, Montana, New Jersey, Ohio, Rhode Island, and Vermont
 - Letter Regarding FedEx Ground Litigation, Attorneys General of New York, Montana, and New Jersey
- Materials on Oregon's Independent Contractor Law and Interagency Compliance Network
 - Overview of Oregon's Independent Contractor Law, submitted by Oregon State Representative Paul Holvey, Eugene, OR
 - Independent Contractors under Oregon Law, submitted by Oregon State Representative Paul Holvey, Eugene, OR
 - Report of the Oregon Independent Contractor Steering Committee, House Committee on Consumer Protection
 - Enrolled House Bill 2815, State of Oregon 75th Legislative Assembly, 2009 Session
 - HB 2815 Measure Summary from the Joint Committee on Ways and Means, State of Oregon 75th Legislative Assembly, 2009 Session
- Other Materials
 - Oregon Statute, 701.098 Grounds for Discipline, submitted by Dave Johnson, WA State Building & Construction Trades Council, AFL-CIO
 - Exempt Contractors Chart, submitted by Dave Johnson, WA State Building & Construction Trades Council, AFL-CIO
 - Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities
 - For the full report, go to: <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>