

Memorandum

To: Members, Joint Legislative Task Force on the Underground Economy in the Construction Industry

From: Kathleen Buchli, Senate Committee Services

Date: 11/12/2008

Subject: Stop work order bill draft

At the October 1, 2008, meeting of the Joint Legislative Task Force on the Underground Economy in the Construction Industry, staff presented a side by side chart comparing stop work orders in several states. At the end of the meeting, a business representative selected items from the side by side chart and suggested that a bill could be drafted based on those selections. The co-chairs requested that a bill be drafted **for discussion purposes** based on those suggestions and be distributed before the November 12, 2008 meeting of the Task Force.

The attached bill draft is based on the selections of the business representative and contains questions from staff that need to be addressed by the Task Force. The bill does the following:

- Establishes a procedure that requires the Department of Labor and Industries to issue stop work orders if an employer misrepresents his or her employees as independent contractors or provides false information regarding the amount of employees to obtain a lower premium rate.
- Allows service of a stop work order to take effect immediately upon service. Service can be made at a worksite or to the employer. Service at the worksite is accomplished by posting the order in a conspicuous location at the worksite.
- Provides that service made at a worksite is effective to that worksite. When the service is made on the employer, the order is effective to all employer worksites for which the employer is not in compliance. The order remains in effect until the employer comes into compliance and pays any penalties.
- Penalizes employers who violate the stop work order with a \$1000 a day fine for each day the employer is not in compliance.
- Allows the employer to receive an order of conditional release from the stop work order if he or she has complied with coverage requirements and agreed to pay penalties through a payment schedule. If the terms of the schedule are not met, the stop work order will be reinstated and the unpaid balance of the penalty will become due.
- Provides for a probationary period of up to two years during which the employer may be required to file reports demonstrating compliance.
- Provides that a stop work order issued against a business is effective against successor businesses.

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Labor, Commerce, Research & Development
October 15, 2008 (11:11 AM)

1 AN ACT Relating to requiring the department of labor and
2 industries to issue stop work orders for violations of certain
3 workers' compensation provisions; and adding a new section to chapter
4 51.48 RCW.

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

7

8 NEW SECTION. Sec. 1. A new section is added to chapter 51.48 RCW
9 to read as follows:

10 (1) In addition to the penalties provided by this chapter, an
11 employer who fails to properly classify a person as a worker under RCW
12 51.08.181 **(This uses the Independent Contractor definition created last**
13 **year in ESHB 3122 - it limits this to only construction activities -**
14 **does the task force wish to expand this to non-construction work?)** or
15 who violates RCW 51.48.020(1) is subject to a stop work order issued
16 under this section.

17 (2) If the director determines after an investigation, that an
18 employer is in violation of RCW 51.48.020(1) or has failed to properly
19 classify a person as a worker under RCW 51.08.181, the director must

1 (Or, does the task force wish this to be permissive?) issue, not later
2 than seventy-two hours after making the determination, a stop work
3 order against the employer requiring the cessation of all business
4 operations of the employer. Service of the order must be in
5 accordance with subsection (3) of this section.

6 (3) When a stop work order is served on a worksite by posting a
7 copy of the stop work order in a conspicuous location at the worksite,
8 it is effective as to the employer's operations on that worksite.
9 When a stop work order is served on the employer, the order is
10 effective to all employer worksites for which the employer is not in
11 compliance. All business operations of the employer must cease
12 immediately upon service. The order remains in effect until the
13 director issues an order releasing the stop work order upon finding
14 that the employer has come into compliance and has paid any penalties
15 incurred under this chapter (Should this apply to all penalties under
16 the chapter or only those under this section?), or issues an order of
17 conditional release pursuant to subsection (6) of this section.

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

20 (5) An employer against whom a stop work order has been issued may
21 request a hearing before the director. The request must be made in
22 writing to the director within ten days of receiving the stop work
23 order at the worksite or in person. The hearing must be conducted in
24 accordance with chapter 34.05 RCW. (Stay order during hearing? Or,
25 require the hearing be held within 48 hours of receipt of the
26 request?)

27 (6) The director may issue an order of conditional release from
28 the stop work order if the employer has complied with the coverage
29 requirements of this chapter and agreed to pay penalties through a
30 payment schedule. If the terms of the schedule are not met, the stop
31 work order will be reinstated and the unpaid balance of the penalties
32 will become due. As a condition of release from a stop work order,
33 the director may require an employer who is found to have failed to
34 properly classify an individual as an employee to file with the

1 department periodic reports for up to a two year probationary period.
2 The periodic reports must demonstrate the employer's continued
3 compliance with this chapter.

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

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

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