

SUBJECT: Workers' compensation for independent contractors of well operators

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek, Woolley
0 nays
1 absent — Solomons

WITNESSES: For — Alex Mills, North Texas Oil and Gas Association, Permian Basin Petroleum Association and West Central Texas Oil and Gas Association
Against — None

BACKGROUND
:

Under the Labor Code, general contractors and their subcontractors may enter into written agreements by which the general contractors provides workers' compensation insurance coverage to the subcontractor and its employees.

A general contractor with workers' compensation insurance that enters into a contract with a subcontractor who does not have employees must be treated under the Labor Code as the employer of the subcontractor for purposes of workers' compensation insurance and may agree to deduct insurance premiums from the contract price or other amount owed to the subcontractor.

The Labor Code defines “subcontractor” as a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform. “Independent contractor” means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily acts as an employer by paying wages and directing activities; is free to determine the manner in which the work or service is performed; is required to furnish necessary tools, supplies or materials to perform the work or service; and possesses the skills required for the specific work or service.

DIGEST: CSHB 3138 would amend the Labor Code to provide that an independent contractor with no employees who performs work or provides a service for an oil or gas well operator would be treated in the same manner as an independent contractor with employees and would not be entitled to coverage under the workers' compensation insurance policy of the general contractor unless the two parties agreed to such coverage.

The bill would take effect September 1, 1997.

SUPPORTERS SAY: CSHB 3138 would solve problems that arise for oil and gas well operators from the ambiguous definitions in current law. Under one reading, an "independent contractor" is a person who has employees. Under this definition, contract pumpers hired by well operators could be considered employees of the operator rather than independent contractors, despite the fact that contract pumpers typically are farmers or ranchers who perform services for a number of well operators in their area merely as a sideline. Normally, the work they perform consists of such services as checking the oil tank gauges and inspecting wells to make sure they are pumping correctly and there are no environmental problems.

Under current law, well operators must provide workers' compensation for many contract pumpers because technically they are subcontractors who have no employees. This bill would clarify current law so that well operators would not have to provide workers' compensation insurance for contract pumpers who are actually independent contractors without employees. It is accepted practice for independent contractors to be responsible for securing their own insurance coverage.

The bill by itself would not preclude independent contractors from obtaining workers' compensation insurance. For example, contract pumpers would still be able to enter into an agreement with the general contractor for the provision of and payment for such insurance coverage.

OPPONENTS SAY: Working around oil wells can be very dangerous, and CSHB 3138 would effectively remove the entitlement now enjoyed by many independent contractors' to the workers' compensation insurance that protects them in case of injury. Although the bill would allow independent contractors and general contractors to enter into an agreement for workers' compensation

coverage, independent contractors often would not have the bargaining power to accomplish this. Furthermore, there is a danger that oil and gas well operators would develop a standardized industrywide form requiring that certain workers agree in writing that they are independent contractors ineligible for workers' compensation insurance in order to get a job. In this way, oil and gas well operators would be relieved from having to provide or pay for workers' compensation insurance for those workers.

OTHER
OPPONENTS
SAY:

CSHB 3138 would adversely affect the entire workers' compensation insurance system by continuing the trend of removing workers from the system. The system works best when as many workers as possible are covered by workers' compensation insurance and their employers are funding the system with premium payments.

NOTES:

The original version of the bill would have added a new definition of "independent contractor" relating specifically to persons performing work or providing services for oil and gas well operators.

The companion bill, SB 445 by Haywood, passed the Senate on April 9 and was reported favorably, without amendment, by the House Business and Industry Committee on April 23, making it eligible to be considered in lieu of HB 3138.