

# HOUSE BILL REPORT

## ESB 6407

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*As Reported By House Committee on:  
Commerce & Labor*

**Title:** An act relating to public works construction contracts.

**Brief Description:** Providing for awards in construction contract actions.

**Sponsor(s):** Senators Madsen, Anderson, Matson and Vognild.

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, February 28, 1992, DPA.

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**HOUSE COMMITTEE ON  
COMMERCE & LABOR**

**Majority Report:** *Do pass as amended.* Signed by 10 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

**Staff:** Chris Cordes (786-7117).

**Background:** In Washington, attorneys' fees are not awarded to the prevailing party in a law suit unless the award is specifically authorized by statute or contract, or is awarded on equitable grounds. The "equitable grounds" exception is narrowly applied by the courts.

Washington statutes generally permit the award of the costs of a law suit and limited statutory attorneys' fees to the prevailing party. In addition, various statutes throughout the code authorize the award of reasonable attorneys' fees in specific kinds of cases, including cases involving claims for damages of \$10,000 or less and cases that are found to be frivolous and advanced without reasonable cause. Other than these general statutes, there are no statutory provisions authorizing the award of attorneys' fees in law suits arising out of public works contracts.

**Summary of Amended Bill:** The statutory procedures for awarding attorneys' fees in actions for damages of \$10,000 or less are made applicable to an action arising out of a public works contract in which a public body is a party. In

using these provisions, the maximum amount of the claim must be \$250,000, rather than \$10,000, and the parties are required to serve offers of settlement at least 120 days before trial, rather than 10 days. The parties may not waive these rights, but the waiver prohibition is not to be construed as prohibiting the parties from mutually agreeing, when a dispute arises, to submit the dispute to arbitration.

A public owner may determine the lowest responsible bidder on a public works contract by giving consideration to the ability of the contractor to complete the contract in a timely manner, and the compliance of the contractor with applicable law.

**Amended Bill Compared to Engrossed Bill:** The amendment strikes the provisions of the engrossed bill and provides that the statutory procedures for awarding attorneys' fees in actions for damages of \$10,000 or less will apply to an action arising out of a public works contract in which a public body is a party. In using these provisions, the maximum amount of the claim must be \$250,000, rather than \$10,000, and the parties are required to serve offers of settlement at least 120 days before trial, rather than 10 days. The parties may not waive the rights established in the bill, but the waiver prohibition is not to be construed as prohibiting the parties from mutually agreeing, when a dispute arises, to submit the dispute to arbitration. The amendment adds provisions that give a public owner the authority to determine the lowest responsible bidder by giving consideration to the ability of the contractor to complete the contract in a timely manner, and the compliance of the contractor with applicable law.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The purpose of the bill is to encourage settlements. If attorneys' fees and costs are awarded in an action, then a decision to pursue the law suit will be made on the merits of the case and not on the costs of going to court. Public agencies seem to react to litigation as if their attorneys are free. This discourages the pursuit of meritorious cases. Amendments are acceptable that would give public agencies more discretion over making decisions about the lowest responsible bidder on a contract.

**Testimony Against:** The bill creates incentives to sue the public agencies because, under the bill, if the party recovers any amount at all, he or she will get attorneys' fees. There is a problem with using these provisions if the

funding is from a federal source. A better solution for resolving small claims is mandatory arbitration. A number of amendments are needed if the bill is to be workable.

**Witnesses:** (In favor): Dick Ducharme, Utility Contractors of Washington; and Duke Schaub, Associated General Contractors. (Opposed): Norman Anderson and Bill Boland, Department of Transportation.