

HOUSE BILL REPORT

EHB 2702

As Passed Legislature

Title: An act relating to bonds for retainage on public works.

Brief Description: Concerning public improvement bonds' retainage level.

Sponsors: Representatives Brown, Orr and Padden.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 4, 1994, DPA;
Passed House, February 12, 1994, 94-0;
Passed Legislature.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer and Veloria.

Staff: Chris Cordes (786-7117).

Background: If the state, or a county, city, town, district, board or other public body awards a public works contract, the awarding entity must reserve a contract retainage of no more than 5 percent of the money earned by the contractor as a trust fund. The trust fund provides payment for claims arising under the contract and of state excise taxes that may be due from the contractor. Persons performing labor or furnishing supplies also may obtain a lien on the money reserved by the awarding entity.

A contractor may submit a bond for all or part of the retainage if the awarding agency authorizes a bond. If a bond is submitted, it must be in a form acceptable to the awarding agency. The bond is subject to the claims and liens arising under the contract in the same manner as the retainage is subject to the claims and liens.

Summary of Bill: The requirement is deleted that the consent of a public body that awards a public works contract is necessary for a contractor to provide a bond in lieu of retainage under the contract. However, the bond must be in

a form acceptable to the awarding entity and must be from a bonding company that meets standards established by the awarding entity. The public entity must accept a bond meeting these requirements, unless the public entity can demonstrate good cause for refusing to accept it.

Fiscal Note: Requested January 25, 1994.

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

Testimony For: Contractors should have flexibility to determine whether a bond in lieu of the cash retainage on a public works project is the best method of conducting their business. This decision will not harm lienholders who will be protected by either the bond or the cash retainage. If contractors are forced to use the cash retainage method, they may have cash flow problems, which may jeopardize their business and raise the cost of public works projects. Occasionally, the retainage must be held during a dispute and that creates further cash flow problems if a bond cannot be used.

Testimony Against: Public agencies must have some flexibility to deny a bond in lieu of retainage when there have been problems with the contractor. Language could be added to permit the agency to refuse a bond when there is a good reason for the refusal.

Witnesses: (In favor) Representative Lisa Brown, prime sponsor; Duke Schaub, Associated General Contractors of Washington; and Paul Levernier, Levernier Construction Company. (Opposed) Jim Bush, Department of Transportation.