

SENATE BILL REPORT

EHB 2702

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 25, 1994

Brief Description: Concerning public improvement bonds' retainage level.

SPONSORS: Representatives Brown, Orr and Padden

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Deccio, Fraser, McAuliffe, Newhouse, Pelz, Prince, Sellar, Sutherland, Vognild and Wojahn.

Staff: David Cheal (786-7576)

Hearing Dates: February 22, 1994; February 25, 1994

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:

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.

Appropriation: none

Revenue: none

Fiscal Note: requested January 25, 1994

TESTIMONY FOR:

Contractors should have a choice between cash retainage or a bond to secure their obligations in public works projects. Lienholders and other creditors will be protected by the bond, without tying up the cash of the contractor. When retainage is held for some time due to a dispute, the cash requirement is particularly burdensome.

TESTIMONY AGAINST:

Public agencies should have flexibility where the track record of the contractor is unknown. Resort to a bond if there are problems requires a lawsuit. Cash retainage provides more immediate and a less expensive remedy.

TESTIFIED: Ken Dunham, Inland NW AGC (pro); Jim Justin, AWC (con);
Bennie Barnes, City of Seattle (con)