
HOUSE BILL 2652

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By Representatives Springer, Edmondson, Dunshee, H. Myers, Morris, Chappell, Finkbeiner, Zellinsky, R. Meyers, Mastin, Karahalios and R. Fisher

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1 AN ACT Relating to limitations on local government day labor
2 projects and contracts for purchases and public works projects;
3 amending RCW 35.22.620, 35.22.640, 35.23.352, and 35A.40.210; adding a
4 new section to chapter 43.41 RCW; adding new sections to chapter 35.21
5 RCW; and recodifying RCW 35.22.620, 35.22.625, 35.22.630, and
6 35.22.640.

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

8 **Sec. 1.** RCW 35.22.620 and 1993 c 198 s 9 are each amended to read
9 as follows:

10 (1) As used in this section, the term "public works" means as
11 defined in RCW 39.04.010 and the term "city" means any city or town.

12 (2) A (~~first-class~~) city may have public works performed by
13 contract pursuant to public notice and call for competitive bids. As
14 limited by subsection (3) of this section, a (~~first-class~~) city may
15 have public works performed by city employees in any annual or biennial
16 budget period equal to a dollar value not exceeding ten percent of the
17 public works construction budget, including any amount in a
18 supplemental public works construction budget, over the budget period.
19 The amount of public works that a (~~first-class~~) city has a county

1 perform for it under RCW 35.77.020 shall be included within this ten
2 percent limitation.

3 If a (~~first class~~) city has public works performed by public
4 employees in any budget period that are in excess of this ten percent
5 limitation, the amount in excess of the permitted amount shall be
6 reduced from the otherwise permitted amount of public works that may be
7 performed by public employees for that city in its next budget period.
8 Twenty percent of the motor vehicle fuel tax distributions to that city
9 shall be withheld if two years after the year in which the excess
10 amount of work occurred, the city has failed to so reduce the amount of
11 public works that it has performed by public employees. The amount so
12 withheld shall be distributed to the city when it has demonstrated in
13 its reports to the state auditor that the amount of public works it has
14 performed by public employees has been so reduced.

15 Whenever a (~~first class~~) city has had public works performed in
16 any budget period up to the maximum permitted amount for that budget
17 period, all remaining public works within that budget period shall be
18 done by contract pursuant to public notice and call for competitive
19 bids.

20 The state auditor shall report to the state treasurer any (~~first~~
21 ~~class~~) city that exceeds this amount and the extent to which the city
22 has or has not reduced the amount of public works it has performed by
23 public employees in subsequent years.

24 (3) In addition to the percentage limitation provided in subsection
25 (2) of this section, a (~~first class~~) city (~~with a population in~~
26 ~~excess of one hundred fifty thousand~~) shall not have public employees
27 perform a public works project in excess of fifty thousand dollars if
28 more than a single craft or trade is involved with the public works
29 project, or a public works project in excess of twenty-five thousand
30 dollars if only a single craft or trade is involved with the public
31 works project or the public works project is street signalization or
32 street lighting. (~~In addition to the percentage limitation provided~~
33 ~~in subsection (2) of this section, a first class city with a population~~
34 ~~of one hundred fifty thousand or less shall not have public employees~~
35 ~~perform a public works project in excess of thirty five thousand~~
36 ~~dollars if more than one craft or trade is involved with the public~~
37 ~~works project, or a public works project in excess of twenty thousand~~
38 ~~dollars if only a single craft or trade is involved with the public~~
39 ~~works project or the public works project is street signalization or~~

1 ~~street lighting. A public works project means a complete project.~~)
2 The restrictions in this subsection do not permit the division of the
3 project into units of work or classes of work to avoid the restriction
4 on work that may be performed by day labor on a single project.

5 (4) In addition to the accounting and record-keeping requirements
6 contained in RCW 39.04.070, every (~~first-class~~) city annually shall
7 prepare a report for the state auditor indicating the total public
8 works construction budget and supplemental public works construction
9 budget for that year, the total construction costs of public works
10 performed by public employees for that year, and the amount of public
11 works that is performed by public employees above or below ten percent
12 of the total construction budget. However, if a city budgets on a
13 biennial basis, this annual report shall indicate the amount of public
14 works that is performed by public employees within the current biennial
15 period that is above or below ten percent of the total biennial
16 construction budget.

17 (~~After September 1, 1987,~~) Each (~~first-class~~) city (~~with a~~
18 ~~population of one hundred fifty thousand or less~~) shall use the form
19 required by RCW 43.09.205 to account and record costs of public works
20 in excess of five thousand dollars that are not let by contract.

21 (5) The cost of a separate public works project shall be the costs
22 of materials, supplies, equipment, and labor on the construction of
23 that project. The value of the public works budget shall be the value
24 of all the separate public works projects within the budget.

25 (6) When any emergency shall require the immediate execution of
26 such public work, upon the finding of the existence of such emergency
27 by the authority having power to direct such public work to be done and
28 duly entered of record, publication of description and estimate may be
29 made within seven days after the commencement of the work. Within two
30 weeks of the finding that such an emergency existed, the city council
31 shall adopt a resolution certifying the existence of this emergency
32 situation.

33 (7) In lieu of the procedures of subsections (2) and (6) of this
34 section, a (~~first-class~~) city may use a small works roster process
35 and award contracts for public works projects with an estimated value
36 of one hundred thousand dollars or less as provided in RCW 39.04.155.

37 Whenever possible, the city shall invite at least one proposal from
38 a minority or woman contractor who shall otherwise qualify under this
39 section.

1 (8) The allocation of public works projects to be performed by city
2 employees shall not be subject to a collective bargaining agreement.

3 (9) This section does not apply to performance-based contracts, as
4 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
5 RCW.

6 (10) Nothing in this section shall prohibit any (~~first-class~~)
7 city from allowing for preferential purchase of products made from
8 recycled materials or products that may be recycled or reused.

9 (11) The dollar limitations in this section shall be adjusted
10 annually by the office of financial management as provided in section
11 5 of this act.

12 **Sec. 2.** RCW 35.22.640 and 1983 c 217 s 1 are each amended to read
13 as follows:

14 (1) Cities (~~of the first class~~) are relieved from complying with
15 the provisions of RCW 35.22.620 (as recodified by this act) with
16 respect to any public work or improvement relating solely to electrical
17 distribution and generating systems on public rights of way or on
18 municipally owned property: PROVIDED, That if a city-owned electrical
19 utility directly assesses its customers a service installation charge
20 for a temporary service, permanent service, or expanded service, the
21 customer may, with the written approval of the city-owned electric
22 utility, contract with a qualified electrical contractor licensed under
23 chapter 19.28 RCW to install any material or equipment in lieu of
24 having city utility personnel perform the installation. In the event
25 the city-owned electric utility denies the customer's request to
26 utilize a private electrical contractor for such installation work, it
27 shall provide the customer with written reasons for such denial:
28 PROVIDED FURTHER, That nothing herein shall prevent any (~~first-class~~)
29 city from operating a solid waste department utilizing its own
30 personnel.

31 If a customer elects to employ a private electrical contractor as
32 provided in this section, the private electrical contractor shall be
33 solely responsible for any damages resulting from the installation of
34 any temporary service, permanent service, or expanded service and the
35 city-owned electrical utility shall be immune from any tortious conduct
36 actions as to that installation.

37 (2) As used in this section, the term "city" includes all cities
38 and towns.

1 **Sec. 3.** RCW 35.23.352 and 1993 c 198 s 10 are each amended to read
2 as follows:

3 (1) ~~((Any second or third class city or any town may construct any~~
4 ~~public works, as defined in RCW 39.04.010, by contract or day labor~~
5 ~~without calling for bids therefor whenever the estimated cost of the~~
6 ~~work or improvement, including cost of materials, supplies and~~
7 ~~equipment will not exceed the sum of thirty thousand dollars if more~~
8 ~~than one craft or trade is involved with the public works, or twenty~~
9 ~~thousand dollars if a single craft or trade is involved with the public~~
10 ~~works or the public works project is street signalization or street~~
11 ~~lighting. A public works project means a complete project. The~~
12 ~~restrictions in this subsection do not permit the division of the~~
13 ~~project into units of work or classes of work to avoid the restriction~~
14 ~~on work that may be performed by day labor on a single project.~~

15 ~~Whenever the cost of the public work or improvement, including~~
16 ~~materials, supplies and equipment, will exceed these figures, the same~~
17 ~~shall be done by contract. All such contracts shall be let at public~~
18 ~~bidding upon publication of notice calling for sealed bids upon the~~
19 ~~work. The notice shall be published in the official newspaper, or a~~
20 ~~newspaper of general circulation most likely to bring responsive bids,~~
21 ~~at least thirteen days prior to the last date upon which bids will be~~
22 ~~received. The notice shall generally state the nature of the work to~~
23 ~~be done that plans and specifications therefor shall then be on file in~~
24 ~~the city or town hall for public inspections, and require that bids be~~
25 ~~sealed and filed with the council or commission within the time~~
26 ~~specified therein. Each bid shall be accompanied by a bid proposal~~
27 ~~deposit in the form of a cashier's check, postal money order, or surety~~
28 ~~bond to the council or commission for a sum of not less than five~~
29 ~~percent of the amount of the bid, and no bid shall be considered unless~~
30 ~~accompanied by such bid proposal deposit. The council or commission of~~
31 ~~the city or town shall let the contract to the lowest responsible~~
32 ~~bidder or shall have power by resolution to reject any or all bids and~~
33 ~~to make further calls for bids in the same manner as the original call.~~

34 ~~When the contract is let then all bid proposal deposits shall be~~
35 ~~returned to the bidders except that of the successful bidder which~~
36 ~~shall be retained until a contract is entered into and a bond to~~
37 ~~perform the work furnished, with surety satisfactory to the council or~~
38 ~~commission, in accordance with RCW 39.08.030. If the bidder fails to~~
39 ~~enter into the contract in accordance with his or her bid and furnish~~

1 a bond within ten days from the date at which he or she is notified
2 that he or she is the successful bidder, the check or postal money
3 order and the amount thereof shall be forfeited to the council or
4 commission or the council or commission shall recover the amount of the
5 surety bond.

6 If no bid is received on the first call the council or commission
7 may readvertise and make a second call, or may enter into a contract
8 without any further call or may purchase the supplies, material or
9 equipment and perform the work or improvement by day labor.

10 (2) The allocation of public works projects to be performed by city
11 or town employees shall not be subject to a collective bargaining
12 agreement.

13 (3) In lieu of the procedures of subsection (1) of this section, a
14 second or third class city or a town may use a small works roster
15 process and award public works contracts with an estimated value of one
16 hundred thousand dollars or less as provided in RCW 39.04.155.

17 Whenever possible, the city or town shall invite at least one
18 proposal from a minority or woman contractor who shall otherwise
19 qualify under this section.

20 (4) After September 1, 1987, each second class city, third class
21 city, and town shall use the form required by RCW 43.09.205 to account
22 and record costs of public works in excess of five thousand dollars
23 that are not let by contract.

24 (5) The cost of a separate public works project shall be the costs
25 of the materials, equipment, supplies, and labor on that construction
26 project.

27 (6)) Any purchase by a second class city, third class city, or
28 town of supplies, material, or equipment ((or services other than
29 professional services)), except for public work or improvement, where
30 the cost thereof exceeds seven thousand five hundred dollars shall be
31 made upon call for bids.

32 ((7)) Bids shall be called annually and at a time and in the
33 manner prescribed by ordinance for the publication in a newspaper of
34 general circulation in the city or town of all notices or newspaper
35 publications required by law. The contract shall be awarded to the
36 lowest responsible bidder.

37 ((8)) For advertisement and formal sealed bidding to be dispensed
38 with as to purchases between seven thousand five hundred and fifteen

1 thousand dollars, the city legislative authority must authorize by
2 resolution, use of the uniform procedure provided in RCW 39.04.190.

3 ~~((9))~~ These requirements for purchasing may be waived by
4 resolution of the city or town council which declared that the purchase
5 is clearly and legitimately limited to a single source or supply within
6 the near vicinity, or the materials, supplies, equipment, or services
7 are subject to special market conditions, and recites why this
8 situation exists. Such actions are subject to RCW 39.30.020.

9 ~~((10))~~ (2) This section does not apply to performance-based
10 contracts, as defined in RCW 39.35A.020(3), that are negotiated under
11 chapter 39.35A RCW.

12 ~~((11))~~ (3) Nothing in this section shall prohibit any second or
13 third class city or any town from allowing for preferential purchase of
14 products made from recycled materials or products that may be recycled
15 or reused.

16 (4) The dollar limitations in this section shall be adjusted
17 annually by the office of financial management as provided in section
18 5 of this act.

19 **Sec. 4.** RCW 35A.40.210 and 1989 c 11 s 8 are each amended to read
20 as follows:

21 Procedures for any public work or improvement contracts or
22 purchases for code cities shall be governed by the following statutes,
23 as indicated:

24 (1) For code cities of twenty thousand population or over, RCW
25 35.22.620 (as recodified by this act); and

26 (2) For code cities under twenty thousand population; RCW 35.23.352
27 and 35.22.620 (as recodified by this act).

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.41 RCW
29 to read as follows:

30 Commencing in 1995, the office of financial management shall adjust
31 the dollar limitations provided in RCW 35.22.620 (as recodified by this
32 act) and 35.23.352. The base year for the adjustment shall be the end
33 of the third quarter in 1994. Prior to each November 1, 1995, and
34 prior to each November 1st thereafter, the office of financial
35 management shall establish another figure for the third quarter of that
36 year. The office of financial management may use the implicit price

1 deflators for state and local government purchases of goods and
2 services calculated by the United States department of commerce.

3 NEW SECTION. **Sec. 6.** RCW 35.22.620 (as amended by this act),
4 35.22.625, 35.22.630, and 35.22.640 are each recodified as sections in
5 chapter 35.21 RCW.

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