

SENATE BILL REPORT

SB 5969

As Reported by Senate Committee On:
Government Operations & Elections, February 23, 2009

Title: An act relating to listing subcontractors on public works projects.

Brief Description: Regarding listing subcontractors on public works projects.

Sponsors: Senator McDermott.

Brief History:

Committee Activity: Government Operations & Elections: 2/19/09, 2/23/09 [DPS, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5969 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach, Ranking Minority Member.

Staff: Edward Redmond (786-7471)

Background: The procedures for identification of subcontractors in competitive bidding for public works are governed by statute and apply to the state, state agencies, local governments, and institutions of higher education. Invitations to bid on prime contracts for public works that cost \$1 million or more for construction, alteration, or repair are subject to the statutory identification requirements.

The prime contractor is required to submit the names of certain subcontractors, with whom the prime contractor, if awarded the bid, will subcontract. This information must be submitted as part of the bid or, at the latest, within one hour after the published time for bid submission. The subcontractors that must be identified are those that will perform work in any one of three categories: (1) HVAC (heating, ventilation, and air conditioning); (2) plumbing; or (3) electrical. A bid is deemed nonresponsive and void if the prime contractor fails to submit the required information.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): The statutory procedures governing substitution of subcontractors in competitive bidding for public works are revised. A prime contractor may substitute a listed subcontractor for the following additional reasons: (1) the subcontractor does not meet the requirements for a responsible bidder; and (2) for good cause as determined by an arbitrator or the courts including, but not limited to, clerical errors or misinterpretation of the scope of the project. Actions brought may be resolved through binding arbitration or in the superior court of the county in which the public work is located.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The proposed substitute was submitted after a task force concluded its final meeting. The proposed substitute addresses the concerns that have been raised in the testimony. Rebound worked on the bid shopping case that prompted this legislation to be brought today. Not only did bid shopping occur in that case, but it occurred in the furtherance of bid shopping. Meaning, that the subcontractor had to prove what went on in the mind of the general contractor when there was a substitution. This is an impossible burden to prove. The issue is not about settlements, it is about the burden of proof.

CON: The current law has been working and there is no reason to undo it. Contrary to what you will hear, there have been significant settlements in favor of subcontractors under current law. The current law allows us to challenge bid shoppers and get settlements. Besides being unnecessary, this bill also has a number of technical errors that make it unworkable on its face. The ultimate effect of this bill would be to increase cost, increase litigation, and hurt projects. Additionally, the added language that a prime contractor can substitute a subcontractor for any other reason that a court or arbitrator finds as good cause is far too broad and increases the likelihood of litigation.

Persons Testifying: PRO: Miriam Israel Moses, Rebound.

CON: Van Collins, Associated General Contractors; Larry Stevens, Mechanical Contractor's Association, National Electrical Contractor's Association.