

HOUSE BILL REPORT

HB 2240

As Passed House:
February 13, 2012

Title: An act relating to public improvement contracts involving federally funded transit facility projects.

Brief Description: Concerning public improvement contracts involving federally funded transit facility projects.

Sponsors: Representatives Moscoso, Fitzgibbon and Miloscia.

Brief History:

Committee Activity:

Transportation: 1/16/12, 1/18/12 [DP].

Floor Activity:

Passed House: 2/13/12, 98-0.

Brief Summary of Bill

- Exempts public improvement contracts for transit facilities that are funded in whole or in part by federal transportation funds from the contract retainage requirement.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 21 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Eddy, Fitzgibbon, Hansen, Jinkins, Johnson, Klippert, Kristiansen, McCune, Moeller, Moscoso, Overstreet, Reykdal, Rivers, Shea, Takko, Upthegrove and Zeiger.

Staff: Christie Parker (786-7322).

Background:

State law requires that public improvement contract provisions include a "contract retainage" of no more than 5 percent of the moneys earned by the contractor. The retainage is to be set aside as a trust fund in the event that claims arise under the contract or taxes are not paid by

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the contractor. This provision applies to the state, as well as to counties, cities, towns, districts, boards, and other public bodies.

State law also permits prime contractors to hold a contract retainage of no more than 5 percent of moneys earned by subcontractors or suppliers. State law requires that all retainage be paid to the contractor within 60 days of completion of all contract work other than landscaping.

Federal disadvantaged business enterprise (DBE) regulations require prime contractors to pay subcontractors in full by no later than 30 days after the subcontractor's work is satisfactorily completed. This is referred to as the DBE "prompt payment requirement."

Public improvement contracts for highway, road, and street projects that are funded by federal transportation funds are exempted from the retainage requirement. Instead, the contract bond is used in the event of claims or unpaid taxes. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with the contractor's bond requirements are resolved.

Summary of Bill:

Public improvement contracts for transit facilities that are funded in whole or in part by federal transportation funds are added to the types of contracts exempted from the contract retainage requirement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will extend needed relief to transit agencies. Last year's bill resolved the conflict between DBE regulations and state law for highway, street, and road projects; this bill does the same for transit facility projects. Federal law requires that DBEs be paid upon successful completion of their portion of the work, regardless of whether the entire project is complete. This requirement is in conflict with state law. Being able to compete for future federal funds is important for Sound Transit, which has received \$1.6 billion in federal grant funding for light rail, multimodal facilities, and high occupancy vehicle direct access ramps.

(In support with amendment) It would be good if the bill could be expanded to include any project funded by federal Department of Transportation funds, such as marine projects, airport projects, and trail projects.

(With concerns) Perhaps the statutory language should be changed so that it explicitly states that the performance bond is held for taxes.

(Opposed) None.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; and Linneth Riley-Hall, Sound Transit.

(In support with amendment) David Morrison, King County Department of Transportation.

(With concerns) Drew Shirk, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.