

HOUSE BILL REPORT

SSB 5250

As Reported by House Committee On:
Transportation

Title: An act relating to the design-build procedure for certain projects.

Brief Description: Concerning the design-build procedure for certain projects.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Haugen, King, White and Swecker).

Brief History:

Committee Activity:

Transportation: 3/10/11, 3/30/11 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires the Washington State Department of Transportation (WSDOT) to consider using the design-build procedure for projects costing more than \$10 million.
- Requires the WSDOT to provide an explanation for why the design-build procedure was not used for projects costing more than \$10 million, if requested.
- Requires the WSDOT to periodically evaluate the design-build procedure for projects, including projects costing less than \$10 million.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 29 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Eddy, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, McCune, Moeller, Morris, Moscoso, Overstreet, Reykdal, Rivers, Rodne, Rolfes, Ryu, Shea, Takko, Upthegrove and Zeiger.

Staff: Christie Parker (786-7322).

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.

Background:

The "design-build procedure" is a method of contracting under which the Washington State Department of Transportation (WSDOT) contracts with another party to both design and build the structures, facilities, and other items in the contract. This differs from the traditional "design-bid-build" method whereby the WSDOT designs the projects and contractors construct the projects. Under current law, the design-build procedure must describe the scope of services required, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and the procedures for issue resolution.

The 2001 Legislature authorized the WSDOT to use the design-build procedure for projects costing more than \$10 million to facilitate faster construction of transportation facilities and to reduce costly change orders. The 2006 Legislature authorized a pilot project to evaluate use of the design-build procedure for projects costing between \$2 million and \$10 million.

Current law requires the WSDOT to develop a process for using the design-build procedure for projects costing more than \$10 million. The law permits, but does not require, the WSDOT to use this procedure for projects costing more than \$10 million if the construction activities are highly specialized, there is opportunity for innovation and efficiency, and delivery time would be reduced.

Summary of Amended Bill:

The amended bill requires the WSDOT to consider using the design-build procedure for projects costing more than \$10 million. If the design-build procedure is not selected for projects over \$10 million, the WSDOT must provide a written explanation of why this procedure was not selected if requested by the legislative Transportation committees or by the Office of Financial Management. The WSDOT is directed to periodically evaluate the design-build procedure regarding cost, time to complete, efficiencies gained, and other pertinent information; this analysis shall include evaluation of projects costing less than \$10 million.

Amended Bill Compared to Substitute Bill:

The amended bill directs the WSDOT to develop a process for using the design-build procedure for competitively bid highway construction projects costing more than \$10 million rather than \$1 million.

Appropriation: None.**Fiscal Note:** Available.

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

Staff Summary of Public Testimony:

(In support) The intent of this bill is to encourage more design-build contracts because the WSDOT has been successful when using this method. The original bill did not specify a dollar amount threshold for when design-build would be used, but the substitute bill specifies that this should be used for projects costing a minimum of \$1 million. Design-build is best used for complex projects. Typical contracts are between \$15 million and \$124 million. We support the use of more design-build contracting, but are concerned about the \$1 million threshold because it is probably more economical for the WSDOT to do the design work for projects costing less than \$5 million. We support the provisions that require reports on the use and effectiveness of the design-build procedure. The design-build process saves time; it also shifts liability to the design-build firm and away from the state.

(Commented) The state takes ownership for all projects but the liability rests with the engineer. We conduct an "over-the-shoulder" review of design and inspections. The vast majority of projects are delivered with the design-bid-build method, but larger, more complex projects sometimes use the design-build method. Contractors take more risk with the design-build method and they charge the state for this risk; however, we are seeing costs steadily decrease on design-build jobs as more experience is gained.

(Opposed) We have concerns regarding the effects this bill would have on current law and practices. In the past, design-build was seen as a "tool in the toolbox" and engineers could determine which tool should be used on a case-by-case basis. The reporting requirement that requires an explanation of why design-build was not selected could be interpreted to mean that design-build is the preferred method to use for delivering projects. Studies conducted outside Washington indicate that there is some potential time savings by using the design-build method on large specialized projects, but the method has had mixed reviews regarding costs and its benefits may be project-size dependent. In Washington, the design-build process is relatively new. A 2003 study concluded that the engineering cost for the design-build pilot project was more than twice as expensive as the design-bid-build method and that total construction costs were 26 percent higher. The rush to legislatively mandate the design-build procedure should be checked until it is more thoroughly evaluated.

Persons Testifying: (In support) Duke Schaub, Associated General Contractors of Washington.

(Commented) Jeff Carpenter, Washington State Department of Transportation.

(Opposed) Vince Oliveri, Professional and Technical Employees Local 17.

Persons Signed In To Testify But Not Testifying: None.