
Transportation Committee

HB 1420

Brief Description: Concerning public contracts for transportation improvement projects.

Sponsors: Representatives Liias, Orcutt, Clibborn and Fey.

Brief Summary of Bill

- Exempts public improvement contracts that are funded in whole or in part by federal transportation funds from the contract retainage requirement.
- Allows the state to collect increases and penalties imposed pursuant to RCW Titles 50, 51, and 82 from the contract retainage for public improvement contracts, and allows taxes, increases, and penalties imposed by the state pursuant to those titles to be collected from the contract bond.
- Allows public agencies and the Washington State Department of Transportation to enter into agreements to mutually waive indirect costs associated with a project or work.

Hearing Date: 2/4/13

Staff: David Munnecke (786-7315).

Background:

State law requires that public improvement contract provisions include a contract retainage of no more than 5 percent of the monies 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 the contractor. The Department of Revenue (DOR), the Employment Security Department (ESD), and the Department of Labor and Industry (L&I) are authorized to collect taxes, increases, and penalties from the contract retainage. The contract retainage provisions apply to the state, as well as to counties, cities, towns, districts, boards, and other public bodies.

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.

State law also permits prime contractors to hold a contract retainage of no more than 5 percent of monies 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.

Employers on public works projects must pay prevailing wages and submit a statement of intent to pay prevailing wages after the contract is awarded but before work begins. After all of the work is complete, employers must submit an affidavit of wages paid. The forms are filed with the L&I and, when approved, are submitted by the employer to the agency administering the contract. A complaint concerning nonpayment of prevailing wage must be filed with the L&I within 30 days of the acceptance date of the public works project. Failure to file a complaint does not preclude a claimant from pursuing a private right of action for unpaid prevailing wages, and the statute of limitations for such causes of action is three years.

All state agencies are required to charge any other public agency the full cost of any services or materials that the state agency provides. Further, all services rendered or property transferred between public entities must be paid for at its true and full value.

Since 1993 the Washington State Department of Transportation (WSDOT) has entered into agreements with local government entities to mutually waive indirect costs associated with projects which the WSDOT performs for the local government entity or vice versa.

Summary of Bill:

All public improvement contracts 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.

The state's specific authority to collect taxes imposed pursuant to RCW Titles 50, 51, and 82 from the contract retainage for public improvement contracts is expanded to include increases and penalties.

Taxes, increases, and penalties incurred under RCW Titles 50, 51, and 82 are included in the items that can be recovered from the contract bond, and the state is exempted from the 30-day notice requirement that otherwise applies for claims on a contract bond. The DOR, the ESD, and the L&I are required to be notified within 30 days of the completion of any public work contract with a value of more than \$35,000.

On a public works contract that is exempt from the contract retainage requirement, the affidavit of wages paid must be submitted to the public entity disbursing the contract funds prior to final

acceptance of the public works contract. The restriction preventing prevailing wage filings by a subcontractor from being accepted sooner than 31 days after the acceptance of the public works project is removed.

The definition of an urban public transportation system is modified to include any public agency, and urban public transportation systems are added to the public entities that are granted the authority to enter into cooperative agreements related to various transportation projects.

Public agencies and the WSDOT are allowed to enter into reciprocal agreements to mutually waive indirect costs associated with a project or work. The projects or work must be specified in the agreement, and may be for an initial term of no more 10 years.

Appropriation: None.

Fiscal Note: Requested on January 31, 2013.

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