

# HOUSE BILL REPORT

## HB 1420

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### As Reported by House Committee On:

Transportation  
Finance

**Title:** An act relating to public contracts for transportation improvement projects.

**Brief Description:** Concerning public contracts for transportation improvement projects.

**Sponsors:** Representatives Lias, Orcutt, Clibborn and Fey.

### Brief History:

#### Committee Activity:

Transportation: 2/4/13, 2/14/13 [DP];

Finance: 2/25/13, 2/28/13 [DPS].

#### Brief Summary of Substitute 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.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass. Signed by 30 members: Representatives Clibborn, Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Angel, Bergquist, Farrell, Fitzgibbon, Freeman, Habib, Hayes, Johnson, Klippert, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Rodne, Ryu, Sells, Shea, Takko, Tarleton, Upthegrove and Zeiger.

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*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.*

**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.

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.

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**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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, which takes effect June 30, 2016, after section 3 expires June 30, 2016.

**Staff Summary of Public Testimony:**

(In support) This bill adds projects other than highway projects to the current contract bond allowance, which is more efficient for businesses. The Office of Financial Management was asked to look at cost burdens that were placed on local governments, and the two issues dealt with in this bill came out of that effort.

In part, this bill moves federally funded projects from the retainage requirement to the contract bond. This comes from a federal requirement regarding the DBE businesses. Audit findings led to this change for highway charges, but now other federally funded projects will

receive the same treatment. Most sections of the bill are designed to deal with the technical changes that go along with this transition.

The WSDOT has mutually waived indirect costs for contracts with local agencies for many years. Rather than keeping track of the administrative costs for projects, which can be difficult to do, and exchanging funds when a project is over, it makes more sense to focus on the direct costs of the projects. These agreements can only be created between two public entities.

This would be an efficiency bill for the WSDOT and Sound Transit. For example, Sound Transit is currently doing work for the WSDOT as part of its work on the Point Defiance Bypass.

(With concerns) Sound Transit and the WSDOT generally contract with private industry to construct projects. Private engineers are concerned about any efforts to allow public entities to actually construct projects themselves. Public entities should not be allowed to engage in efforts that will allow them to underbid private contractors.

There are some concerns about exactly what the term "increases," which is used in various places in the bill, applies to.

(Opposed) None.

**Persons Testifying:** (In support) Representative Liias, prime sponsor; Julie Murray, Office of Financial Management; and Joni Earl, Sound Transit.

(With concerns) Mike Groesch, American Council of Engineering; Mike Ennis, Association of Washington Business; and Duke Schaub, Association of General Contractors.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Pollet, Reykdal, Springer, Vick and Wilcox.

**Staff:** Jeff Olsen (786-7175).

### **Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Transportation:**

The substitute bill specifies when the Employment Security Department, the Department of Labor and Industries, and the Department of Revenue may seek taxes, increases, and penalties including when retainage is not withheld and when the contract provides for payment of taxes. The substitute bill also corrects an RCW cite and clarifies the process for cooperative agreements on highway projects where indirect costs may be waived.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, which takes effect June 30, 2016, after section 3 expires June 30, 2016.

**Staff Summary of Public Testimony:**

(In support) In previous legislation, the Office of Financial Management was asked to look into costs placed on local governments. This bill addresses certain cost issues for local governments. Cooperative agreements on indirect costs with local government is more efficient.

(Opposed) There is a concern about prevailing wages that are paid under the contract. The state needs to drive down the costs of projects, and complete projects in less time.

**Persons Testifying:** (In support) Julie Murray, Office of Financial Management.

(Opposed) Paul W. Locke.

**Persons Signed In To Testify But Not Testifying:** None.