

HOUSE BILL REPORT

HB 2129

As Reported by House Committee On: State Government

Title: An act relating to bringing Washington state government contracting provisions into compliance with federal law as it relates to small works bonding requirements.

Brief Description: Bringing Washington state government contracting provisions into compliance with federal law as it relates to small works bonding requirements.

Sponsors: Representative Santos.

Brief History:

Committee Activity:

State Government: 1/12/16, 2/4/16 [DP].

Brief Summary of Bill

- Increases the threshold amount of a public works contract allowing a public entity to retain a percentage of payment in lieu of requiring a surety bond from \$35,000 to \$150,000.
- Decreases the percentage of the amount of a public works contract retained by the public entity in lieu of a surety bond from 50 to 25 percent.
- Increases the threshold amount of a public works contract allowing a public entity to accept full payment and performance bond from an individual surety from \$100,000 to \$150,000.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 4 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Frame and Moscoso.

Minority Report: Without recommendation. Signed by 3 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Hawkins.

Staff: Sean Flynn (786-7124).

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:

A state or local entity awarding a public works contract must require the contractor to execute a surety bond conditioned upon the contractor faithfully performing all the provisions of the contract, paying all labor, subcontractor, and material supplier costs, as well as payment of all taxes and penalties when required. The bond must be equal to the full contract price, except cities and towns may set the amount of the bond for not less than 25 percent of the contract price.

For public works contracts up to \$35,000, the contractor has the option to have the public entity retain 50 percent of the contract in lieu of the bond requirement. The retained payment is withheld until 30 days after final acceptance or upon the settlement of any liens, or any necessary releases by the Department of Revenue, the Department of Labor and Industries, or the Employment Security Department. In addition, state and local entities may waive the bond requirement for contracts up to \$35,000 when using a small works roster process for awarding contracts. For contracts up to \$100,000, the contracting public entity may accept full payment and performance bond from an individual surety.

Summary of Bill:

The maximum threshold amount of a public works contract that allows the public entity to withhold payment in lieu of requiring a surety bond is increased from \$35,000 to \$150,000. The percentage retained by public entity is decreased from 50 percent to 25 percent. The threshold amount for contracts for which the public entity may accept full payment and performance bond from an individual surety is increased from \$100,000 to \$150,000.

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) The limitation on public works contracts allowed to opt out of the bonding requirements prevents small businesses from competing for state contracts because they do not have access to capital to afford the surety bonds. Providing greater allowance to opt out of the bond requirement will provide small businesses with the opportunity to invest the money they save into growing their businesses. These changes will align state contracting requirements with standards in the federal Miller Act.

It is important for small businesses to have equal access to public contracts, including minority businesses. The bill should be amended further to increase the ability of small businesses to participate in public works contracting.

(Opposed) None.

Persons Testifying: Representative Santos, prime sponsor; Frank Lemos, Minority Business Advisory Council; and Jerry VanderWood, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: None.