

SENATE BILL REPORT

HB 1601

As of March 13, 2015

Title: An act relating to venue of actions by or against counties.

Brief Description: Concerning venue of actions by or against counties.

Sponsors: Representative Rodne.

Brief History: Passed House: 3/03/15, 97-0.

Committee Activity: Law & Justice: 3/12/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Venue for Actions By or Against Counties. Venue refers to the court in which a case may be heard. All actions against any county may be commenced in the superior court of that county or in the superior court of either of the two nearest judicial districts. All actions by any county must be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

Contracts Against Public Policy. Contract terms are generally enforceable based on the freedom of parties to contract. However, a contract or its terms may be void and unenforceable if the contract violates certain principles of contract law. For example a contract may be unenforceable if there is no consideration, if it is unconscionable, or if it contravenes public policy. Contract terms are unenforceable on grounds of public policy when the interest in their enforcement is clearly outweighed by a public policy against the enforcement of the terms. In order to determine whether a contract violates public policy, courts ask if the contract has a tendency to be against the public good, or to be injurious to the public.

Examples of contracts, or their terms, that are declared by statute to be void as against public policy in Washington include, but are not limited to, contracts that require the following:

- a bidder on a public building or construction contract to obtain or procure any surety bonds or insurance specified in connection with the contract; and
- a party to a construction contract to indemnify against liability for negligence caused by the sole negligence of the person requesting indemnification.

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.

Summary of Bill: Any provision in a public works contract with any county that requires a civil action commence in the superior court of that county is void and unenforceable as against public policy. This does not apply to any provisions that require a dispute to be submitted to arbitration.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The purpose of the bill is to preserve statutory rights of contractors on county public works projects to bring actions against counties in neighboring jurisdictions when legal disputes occur. Existing state law provides plaintiffs this right in disputes with counties. However, counties have been including clauses in public works contracts that require contractors to waive their statutory rights under law as a condition to getting a contract. Contractors do not have the ability to negotiate these clauses. This is about the appearance of fairness. The county being sued is also paying the salary of the judge. Suing is a serious matter which could bankrupt a small company. To ensure fairness, it is important that a contractor be able to file a lawsuit in an adjoining county.

CON: Most projects are completed without litigation. It is costly for a county to defend against litigation where the venue of the lawsuit is in a different county. There is no data showing that counties receive more favorable judicial treatment when defending a lawsuit in their county. The bill should be amended to allow a contractor to negotiate an alternative venue for legal disputes.

Persons Testifying: PRO: Dave Ducharme, Tymon Berger, Mark Scoccolo, National Utility Contractors Assn. of WA, Assn. General Contractors.

CON: Gary Rowe, WA State Assn. of Counties; Jennifer Joly, Pierce County.