

HOUSE BILL REPORT

SB 5734

As Reported by House Committee On:
State Government, Elections & Information Technology

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: Senators Chase, Baumgartner, Miloscia, Saldaña, Keiser, Conway, Hasegawa, McCoy, Braun, Honeyford, Brown, Kuderer, Rivers and Warnick.

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 3/15/17, 3/22/17 [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 percent to 10 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, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: Do pass. Signed by 9 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Irwin, Kraft and Pellicciotti.

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. The bond requirement may be waived for contracts up to \$35,000 when the public entity is using the 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 for which the public entity is allowed to withhold 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 10 percent. The option may be invoked by the general contractor/construction manager, as well as the contractor. The recovery of unpaid wages and benefits must be the first priority for any action against retainage held by a public entity.

The threshold amount of a contract 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) Bonding requirements present barriers to entry in state contract bidding for small and minority firms because bonding is more expensive for small contractors. This makes it harder for small contractors to compete with large contractors in bidding. Raising the threshold for public works contracts that require a bond will level the playing field for small contractors and allow new firms to enter the bidding process. It will also provide equal

opportunities by assisting contactors from disadvantaged communities to compete in the bidding process, which will help the state meet its goals for contracting with minority and veteran businesses. The threshold changes bring the state in line with federal contracting requirements.

(Opposed) None.

Persons Testifying: Senator Chase, prime sponsor; Bill Frare, Department of Enterprise Services; Jerry VanderWood, Associated General Contractors; and Earl Key, Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.