

# SENATE BILL REPORT

## SB 5734

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As Reported by Senate Committee On:  
State Government, February 17, 2017

**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: 2/15/17, 2/17/17 [DP].

### Brief Summary of Bill

- Gives the contractor or general contractor/construction manager the option to have the public entity retain 10 percent, instead of 50 percent, of the contract amount in lieu of the bond requirement for public works contracts up to \$150,000, instead of \$35,000.
- Identifies the recovery of unpaid wages and benefits as the first priority for any claims against the amount retained.
- 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.

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### SENATE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Hunt, Ranking Minority Member; Kuderer and Pearson.

**Staff:** Melissa Van Gorkom (786-7491)

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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.*

**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; 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 amount 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, 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 limited public works 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 contractor or general contractor/construction manager has the option to have the public entity retain 10 percent, instead of 50 percent, of the contract amount in lieu of the bond requirement for public works contracts up to \$150,000, instead of \$35,000.

The recovery of unpaid wages and benefits is identified as the first priority for any claims filed against retainage held by a state agency or authorized local government.

The threshold amount for contracts from 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.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Small contractors profit can be tied up in the retainage. Cost and availability of bonds are barriers to entry for some small businesses and this bill would help with that. This bill brings the state in alignment with federal requirements and helps the state reach its goal to assist minority and women business owners. Current requirements give larger contractors an advantage, this bill levels the playing field between large contractors and small contractors. This bill allows contractors to retain 10 percent for 30 days, which helps all small businesses get more work. Contracting agencies have the ability to waive this ability, so that reduces the risk of this bill.

**Persons Testifying:** PRO: Senator Maralyn Chase, Prime Sponsor; Earl Key, Director, Office of Equal Opportunity, Washington State Department of Transportation; Bill Frare, Department of Enterprise Services; Jerry VanderWood, Associated General Contractors; Frank Lemos, Commission on Hispanic Affairs/Commissioner.

**Persons Signed In To Testify But Not Testifying:** No one.