

# SENATE BILL REPORT

## SB 5418

---

---

As of February 7, 2023

**Title:** An act relating to expanding the definition of public work.

**Brief Description:** Expanding the definition of public work.

**Sponsors:** Senators Conway, Keiser, Hasegawa, Kuderer, Saldaña, Frame, Trudeau, Hunt and Wilson, C..

**Brief History:**

**Committee Activity:** State Government & Elections: 2/07/23.

### Brief Summary of Bill

- Expands the definition of public work to include work supported in part or in whole by grants or loans of public dollars, or by tax deferral or reimbursement.

---

## SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Staff:** Danielle Creech (786-7412)

**Background:** Public Works. Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest responsive bid. Various requirements apply to certain public works projects, including bonding, paying the prevailing wage, and apprentice utilization requirements.

Bond Requirements. A bond is required for public works contracts over \$150,000. For public works contracts of \$150,000 or less, the public body may accept 10 percent retainage in lieu of the bond. A performance bond is a guarantee that a contract for public works will be carried out according to the drawings and specifications. Performance bonds are

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

typically for the full value of the contract and provided by a surety. A performance bond also protects the state or municipality from a contractor default, bankruptcy, or failure to perform. Payment from the performance bond is available only to the project owner, and there cannot be other claims against it. A payment bond is a guarantee that the contractor pays the subcontractors and the material supplier will be paid for work or materials provided for a public works project.

Prevailing Wage. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision, cannot be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract exceeding \$10,000, a contractor required to pay prevailing wage must post a prevailing wage statement in a location readily visible to workers at the jobsite or local office.

Apprenticeship Utilization Requirements. Certain projects have apprenticeship utilization requirements (AURs), where 15 percent of labor hours for a given public works construction project be performed by registered apprentices. If the bidder has a history of receiving monetary penalties for not fulfilling the AURs, or is habitual in its use of the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten days immediately following the notice to proceed date. AURs apply to the following:

- state public works projects estimated to exceed \$1 million;
- Department of Transportation projects estimated to exceed \$2 million;
- all school district public works projects estimated to exceed \$1 million; and
- all public works projects by a state four-year institution of higher education estimated to exceed \$1 million.

AURs may also be found on projects not mandated by law, including projects sponsored by cities, counties or ports, renewable energy projects, clean energy projects, and several public and private entity projects.

**Summary of Bill:** The definition of public work is expanded to include work supported in part or in whole by grants or loans of public dollars, or by tax deferral or reimbursement. The definition also includes work for which the source of funds includes payments made through contracts with insurance companies on behalf of the insured state or municipality. Projects included under the expanded definition of public work must adhere to all applicable requirements of public works, including prevailing wage requirements, bid solicitation and award requirements, and AURs.

**Appropriation:** None.

**Fiscal Note:** Requested on February 6, 2023.

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

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