

HOUSE BILL REPORT

SHB 2785

As Amended by the Senate

Title: An act relating to county public works projects.

Brief Description: Providing a bidding procedure for public works projects in counties.

Sponsors: By House Committee on Government Operations (originally sponsored by Representatives Reams, Chopp, Cairnes, Thompson and Elliot).

Brief History:

Committee Activity:

Government Operations: 1/31/96, 2/2/96 [DPS].

Floor Activity:

Passed House: 2/12/96, 66-31.

Senate Amended.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Scott, Ranking Minority Member; R. Fisher; Honeyford; Hymes; Mulliken; D. Schmidt and Van Luven.

Minority Report: Without recommendation. Signed by 5 members: Representatives Rust, Ranking Minority Member; Conway; Hargrove; Scheuerman and Wolfe.

Staff: Bill Lynch (786-7092).

Background: In each county with a purchasing department, the purchasing department must contract on a competitive basis for all public works. When a county contracts for public works, regardless of whether there is a purchasing department, it must be done on a competitive basis according to statutory procedures. The county legislative authority may dispense with competitive bidding for contracts with an estimated value of less than \$10,000, and may use a small works roster to award contracts with an estimated value of \$10,000 up to \$100,000.

Some units of local government are specifically authorized to use their own employees (day labor) to perform public works. First class cities are authorized to have public works performed by city employees in any annual or biennial budget equal to a dollar

value that does not exceed 10 percent of the public works construction budget. If a first class city exceeds this limitation and does not reduce the amount of public works performed by its employees for two consecutive years, then 20 percent of the motor vehicle excise tax distribution to that city must be withheld. The amount withheld can be distributed to the city if it demonstrates to the State Auditor that it has reduced the amount of public works performed by its employees.

In addition to this overall limit, first class cities may not use public employees to perform a public works project in excess of a specific dollar amount, depending upon the size of the city and whether a single craft or more than one craft are involved on the project.

Counties are not specifically authorized in statute to use their own employees to perform public works, except for county road projects. A recent state Supreme Court decision held that counties with purchasing departments do not have authority to use day labor.

Summary of Bill: Counties with a population of one million or more, or counties that choose to follow the provisions of this legislation, are specifically authorized to use their own employees to perform public works in a similar manner that first class cities may use their own employees to perform public works.

A county subject to this legislation may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding 10 percent of the public works construction budget. If a county exceeds the permitted amount of public works performed by its employees, the amount in excess is reduced from the permitted amount of public works that may be performed by public employees in the county for its next budget period. If the county fails to reduce the amount of public works performed by public employees for two years following an excess, 20 percent of the motor vehicle fuel tax distributions must be withheld from the county. The amount of motor vehicle fuel tax withheld is distributed to the county later once it has demonstrated to the State Auditor that the amount of public works performed by public employees has been reduced as required.

In addition to the overall limitation on the amount of public works that may be performed by county employees in a budget period in counties subject to this legislation, counties with a population of 210,000 or more may not have public employees perform a public works project in excess of \$50,000 if more than a single craft or trade is involved, or a public works project in excess of \$25,000 or more if only a single craft or trade is involved or the project is street signalization or street lighting.

Counties subject to this legislation with a population of 125,000 or more but less than 210,000 may not have public employees perform a public works project in excess of

\$35,000 if more than a single craft or trade is involved, or a public works project in excess of \$25,000 if only a single craft or trade is involved or the project is street signalization or street lighting.

Counties subject to this legislation with a population of less than 125,000 may not have public employees perform a public works project in excess of \$30,000 if more than a single craft or trade is involved, or a public works project in excess of \$20,000 if only a single craft or trade is involved or the project is street signalization or street lighting.

The State Auditor is required to report to the State Treasurer any county that exceeds the amount of work performed by public employees and the extent to which the county has reduced the amount of work performed by these employees in subsequent years.

Every county subject to this legislation is required to prepare an annual report to the State Auditor indicating the total public works construction budget for the year, the total construction costs of public works performed by public employees for the year, and the amount of public works performed by public employees that are above or below the 10 percent of the total construction budget. If the county uses a biennial budget, however, the annual report must indicate the amount of public works that is performed by public employees within the current biennial period that is above or below 10 percent of the biennial construction budget.

Counties subject to this legislation must contract on a competitive basis for all public works that are done by contract. Procedures are established for the advertisement, filing, and awarding of bids. The contract must be awarded to the lowest responsible bidder. Any and all bids may be rejected for good cause. Additional provisions are added pertaining to emergency public works, the use of a small works roster, and exemptions from competitive bidding. The existing county statute pertaining to competitive bidding for public work is repealed.

EFFECT OF SENATE AMENDMENT(S): The penalty for performing public works with day labor in excess of the amount permitted is reduced from 20% to 10% withholding of the motor vehicle excise tax distribution to the county. The limit for day labor on a project in which more than one craft or trade is involved is raised from \$50,000 to \$70,000. Language is added to clarify that day labor may be used in an emergency without limitation, and that day labor limits do not apply to professional services performed by public employees in connection with a public works project. The limit on the amount of day labor that may be used on individual public works projects for counties with a population of less than 1,000,000 are removed. The existing statute on county competitive bidding is no longer repealed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This mirrors the law for first class cities. It addresses a problem arising from a recent court case. It strikes a good balance and should help prevent future lawsuits. Counties should be able to use their own employees to a limited extent.

Testimony Against: This is a King County problem. The solution should not be imposed on other counties in the state. The dollar thresholds established in the bill are unworkable. The penalty would affect jails and roads.

Testified: Representative Reams, prime sponsor; Gary Lowe, Washington Association of Counties; Doug Peterson and Duke Schaub, Associated General Contractors of Washington; Pat Thompson, County and City Employees; K. O. Rosenberg, Northeast Tri Counties; and Michael Shaw, King County.