

SENATE BILL REPORT

SHB 2785

As Reported By Senate Committee On:
Government Operations, February 23, 1996

Title: An act relating to county public works projects.

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

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

Brief History:

Committee Activity: Government Operations: 2/21/96, 2/23/96 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass as amended.

Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Goings, Hale, Heavey, McCaslin and Winsley.

Staff: Diane Smith (786-7410)

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 Amended Bill: Counties with a population of one million or more 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, 10 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, counties subject to this legislation may not have public employees perform a public works project in excess of \$70,000 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.

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 a year-end 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.

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 the use of a small works roster, and exemptions from competitive bidding. Work performed by county employees to correct a declared emergency is not subject to the 10 percent limitation.

Amended Bill Compared to Substitute Bill: All substantive changes to the provisions for counties of less than one million population are removed. All provisions concerning counties of one million or more population are confined to a single new section. The existing statute concerning contracting on a competitive basis for all public works that are done by contract is retained and applies to all counties of less than one million population.

For counties of one million or more population, the penalty for exceeding the 10 percent limitation for in-house work as measured by the public works construction budget is reduced from 20 percent to 10 percent to be withheld from the motor vehicle fuel tax distribution.

Within the overall 10 percent maximum for in-house public works, counties of a million or more population may only allow their employees to perform public works projects of less than \$70,000 if more than one craft or trade is involved and less than \$25,000 if only craft is involved. For projects exceeding these dollar limits, the county must contract on a competitive basis with private firms.

The county's reporting requirements are limited only to year-end reports.

For all work that is contracted on a competitive basis, a small works roster may be used for projects from \$10,000 to \$100,000 in value.

The definition of emergency work is refined with emphasis that such work performed by county employees does not count toward the overall 10 percent limitation.

Street signalization and lighting are excluded from the bill as is all road construction.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill provides a reasonable level of work for both public and private employees doing work for King County. The agreement reached last year between the parties to the lawsuit has been maintained in this bill.

Testimony Against: This entire body of law is a mess and this makes it worse. Because King County is a home rule county, this bill is inappropriate. These are matters for the home rule charter. Ten percent is too much work. The \$50,000 threshold is a concern because it may be insufficient to assure that county service and maintenance staff can do daily routine work. There is a real potential for counties to do electrical jobs in-house. The collective bargaining clause sets a bad precedent. There is no incentive for a county to have a purchasing department.

Testified: Duke Schaub, AGC-WA (pro); Gary Lowe, Assn. of WA Counties; J. Pat Thompson, County and City Employees (con); Mike Shaw, King County (pro); Ron Forest, District Council of Carpenters (pro w/amendments); Dan Sexton, WA Assn. of Plumbers and Pipefitters (pro w/amendments).