

# HOUSE BILL REPORT

## HB 2538

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### As Reported by House Committee On:

State Government

**Title:** An act relating to identification of subcontractors on public works contracts.

**Brief Description:** Prohibiting substitution of subcontractors on larger public works contracts.

**Sponsors:** Representatives Conway, Campbell, Romero, Hunt, O'Brien, Jackley, Wood, Chase, Ogden, Simpson and Kenney.

### Brief History:

#### Committee Activity:

State Government: 1/31/02, 2/1/02 [DP].

#### Brief Summary of Bill

- In cases of bid shopping, entitles original subcontractors to recover damages from the prime contract bidder and the substituted subcontractor.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass. Signed by 6 members: Representatives Romero, Chair; Miloscia, Vice Chair; McMorris, Ranking Minority Member; McDermott, Schmidt and Upthegrove.

**Staff:** Marsha Reilly (786-7135).

#### Background:

Invitations to bid on contracts of \$1 million or more for the construction, alteration, or repair of public buildings or public works of the state or institutions of higher education require each bidder to include the names of its subcontractors for heating, ventilation and air conditioning, plumbing, and electrical as part of the bid, or within one hour after the published bid submittal time.

The contract bidder may not list more than one subcontractor for each category of work unless subcontractors vary with bid alternates. In that case, the bidder must indicate

which subcontractor will be used for which alternate. Failure to submit the names of its subcontractors or naming two or more subcontractors for the same work will render the bid unresponsive and, therefore, void.

In 2001 the Washington court of appeals ruled that a general contractor had engaged in the practice of bid shopping, but also found that the statute did not afford the original subcontractor a remedy.

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**Summary of Bill:**

Prime contract bidders may not substitute a listed subcontractor, in furtherance of bid shopping, before or after the award of the prime contract is made. Originally listed subcontractors are entitled to recover damages from the prime contract bidder and the substituted subcontractor, but may not seek damages from the public entity inviting the bid.

Changes are made to delineate references in statute from "contracts" to "prime contracts," and from "contract bidders" to "prime contract bidders."

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** Currently the law states that bid shopping is illegal but there is no remedy available through courts. Bid shopping and bid peddling are pervasive problems in the construction industry, depriving taxpayers the full benefits of fair competition among contractors and subcontractors. It is damaging to small businesses and defrauds the government by introducing undisclosed substitutions to a product for which the government has already contracted.

Current law provides protection from bid shopping to protect the interests of taxpayers and the government. However, it lacks provisions for the subcontractor to see remuneration for financial loss as a result of bid shopping.

Bid shopping occurs when prime contractors ask, require or otherwise pressure subcontractors to lower bids for subcontract work after winning a prime contract. Prime contractors profit by awarding work to subcontractors who provide bids lower than those listed on the contract, then pocket the difference.

The practice of bid shopping amounts to a financial incentive for prime contractors to cut

corners on state construction, and undermines the state's interest in obtaining full value for taxpayer dollars spent on construction.

**Testimony Against:** This bill does not allow for legal substitutions in cases where the subcontractor goes bankrupt, is not registered, has judgments pending, or is otherwise unable to perform. It is very difficult to prove bid shopping as there are no standards or legal procedure available.

**Testified:** (In support) Richard King, IBEW Local 191; Lorne McCandlish, McCandlish Electric; Mel Buttrum, Service Electric Company; and Larry Stevens, National Electrical Contractors Association.

(Opposed) Duke Schaub, Associated General Contractors of Washington.