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## State Government Committee

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### HB 2538

**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 Summary of Bill

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

**Hearing Date:** 1/31/02

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

#### Background:

Invitations to bid on contracts of one million dollars 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 court of appeals of the state of Washington 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.

#### 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."

**Rulemaking Authority:** No express authority.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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