

HOUSE BILL REPORT

HB 1601

As Passed Legislature

Title: An act relating to venue of actions by or against counties.

Brief Description: Concerning venue of actions by or against counties.

Sponsors: Representative Rodne.

Brief History:

Committee Activity:

Judiciary: 2/18/15, 2/19/15 [DP].

Floor Activity:

Passed House: 3/3/15, 97-0.

Passed Senate: 4/13/15, 42-2.

Passed Legislature.

Brief Summary of Bill

- Voids any contract provision in a public works contract with any county that requires an action be brought in the superior court of that county.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Brent Campbell (786-7152).

Background:

Venue for Actions By or Against Counties.

"Venue" refers to the court in which a case may be heard. All actions against any county may be commenced in the superior court of that county or in the superior court of either of the two nearest judicial districts. All actions by any county must be commenced in the superior court

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of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

Contracts Against Public Policy.

Contract terms are generally enforceable based on the theory of freedom of contract. However, a contract or its terms may be void and unenforceable if the contract violates certain principles of contract law. For example, a contract may be unenforceable if there is no consideration, if it is unconscionable, or if it contravenes public policy.

Contract terms are unenforceable on grounds of public policy when the interest in their enforcement is clearly outweighed by a public policy against the enforcement of the terms. In order to determine whether a contract violates public policy, courts ask if the contract has a tendency to be against the public good, or to be injurious to the public.

Examples of contracts, or their terms, that are declared by statute to be void as against public policy in Washington include, but are not limited to, contracts that require:

- a bidder on a public building or construction contract to obtain or procure any surety bonds or insurance specified in connection with the contract; and
- a party to a construction contract to indemnify against liability for negligence caused by the sole negligence of the person requesting indemnification.

Summary of Bill:

Any provision in a public works contract with any county that requires a civil action be commenced in the superior court of that county is void and unenforceable as against public policy. This does not apply to any provisions that require a dispute be submitted to arbitration.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a simple bill that voids public works contracts with venue provisions that require suit in the same county.

This bill solves a very straightforward issue with no substantive change to the law. The law currently allows parties contracting with a county to file suit in neighboring counties. This bill is only meant to ensure that contractors can avail themselves of this existing law and to stop counties from subverting the intent of that law.

This bill is about fairness. Bargaining power between contractors and counties is heavily in favor of the counties. When a project is announced contractors may only submit a bid and

then the lowest bid is selected. There is no way to negotiate away venue clauses, so these clauses are forced on any contractor who wants the bid.

If you get to the point where you finally see a judge, you should have the option to see a judge who is not on the payroll of the other party.

(Opposed) There is no problem here. Very few projects managed by counties end up in litigation, and superior court judges are fair and treat the counties the same as any other party. This bill will add costs to the county by requiring time away from the county. This time away might also delay other projects.

Persons Testifying: (In support) Representative Rodne, prime sponsor; Dave Ducharme; Brett Hill; Mike Pellitteri, Pellco Construction; and Tymon Berger, Ashbaugh-Beal.

(Opposed) Gary Rowe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.