

HOUSE BILL REPORT

ESHB 1127

As Passed House:

March 10, 2005

Title: An act relating to public building or construction contracts.

Brief Description: Concerning public building and construction contracts.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives B. Sullivan, Rodne, P. Sullivan, Jarrett, Kirby, Nixon, McCoy and Shabro).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/8/05, 2/16/05 [DPS].

Floor Activity:

Passed House: 3/10/05, 96-0.

Brief Summary of Engrossed Substitute Bill

- Defines "public construction project" as projects with phases, segments or component parts relating to a common geographic site or public transportation system. "Public construction project" does not mean the aggregation of unrelated construction projects.
- Exempts county governments, city governments, a public non-profit corporation authorized under RCW 67.40.020, port districts authorized under RCW 53.04, and a regional transit authority authorized under RCW 81.112.030 from the general prohibition on the use of "wrap-up" insurance when the actual or estimated aggregate value of a public construction project exclusive of insurance and surety costs, exceeds two hundred million dollars.
- Repeals several related laws.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Ericks, Vice Chair; Tom, Assistant Ranking Minority Member; Santos, Schual-Berke, Simpson, Strow and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Newhouse and Serben.

Staff: Jon Hedegard (786-7127).

Background:

Most public works construction in Washington is performed by private firms. State and local governments contract with private architectural and construction companies for the design and construction of facilities using specific procedures designated in statute. Typically, contractors, subcontractors, consultants, architects, the owner, and others involved in major public construction projects each obtain their own insurance or risk financing to cover their role or risk in the project.

A type of risk pooling known as a "wrap-up" insurance policy is routinely used on large private construction projects. A wrap-up insurance policy generally involves one large, comprehensive policy that covers the owner and all the companies involved in a construction project. This can reduce costs and simplify project management.

In 2003, a law was passed authorizing the use of wrap-up insurance policies for certain public construction projects:

- public nonprofit corporation for the state convention and trade center;
- projects in excess of \$100 million for port districts formed under 53.04 RCW;
- projects for a regional transit authority authorized under RCW 81.112.030; and
- public hospital projects in excess of \$100 million for counties with a population over one million.

On December 31, 2006, existing RCW 48.30.270 will expire and a new RCW 48.30.270 will become effective. The effect of the change will be to remove the provision exempting certain port projects. A related law, RCW 53.08.145, affecting ports and insurance will also expire on December 31, 2006.

Summary of Engrossed Substitute Bill:

County governments, city governments, a public non-profit corporation authorized under RCW 67.40.020, port districts authorized under RCW 53.04, and a regional transit authority authorized under RCW 81.112.030 are exempted from the general prohibition on the use of "wrap-up" insurance when the actual or estimated aggregate value of a public construction project exclusive of insurance and surety costs, exceeds \$200 million.

"Public construction project" is defined as projects with phases, segments or component parts relating to a common geographic site or public transportation system. "Public construction project" does not mean the aggregation of unrelated construction projects.

Repeals several related laws including:

- the expiration of the existing law;
- a reenacted section that will be effective December 31, 2006 and that section's effective date section; and

- a section related to insurance and ports due and that section's uncodified expiration section.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 2, which does not include an exception for port districts, which takes effect December 31, 2006.

Testimony For: This bill adds to the current list of projects that are allowed to use "wrap-up" insurance. The bill allows counties with a population of over one million people to purchase this insurance product for certain wastewater projects. This will save King County \$4 million to \$6 million on a current project. This type of insurance is controlled by the owner. It provides adequate and uniform liability coverage for subcontractors. Recently, the insurance marketplace has been difficult for contractors. For smaller contractors, it may remove a barrier that could prevent them from making a bid.

Testimony Against: This insurance product is complicated. The best way to use the product is to combine all property and casualty coverages, including Worker's Compensation Insurance. In Washington, Worker's Compensation Insurance can't be included. This leads to coverage problems. There may be gaps in coverage or double coverage. It also leads to possible ethical issues for agents. The market is improving. This is not the time to expand the list of exemptions. Instead, the current exemptions and these insurance products should be reviewed by the Joint Legislative Audit and Review Committee or the Office of the Insurance Commissioner. The benefits of these products should be assessed before the list of exemptions is lengthened.

Persons Testifying: (In support) Representative B. Sullivan, prime sponsor; Bob Abbott, Laborers District Council; Jennifer Hills and Chuck Williams, King County; and Deborah Bovee, Aon Corporation.

(Opposed) Bill Stauffacher, Independent Insurance Agents and Brokers of Washington.

Persons Signed In To Testify But Not Testifying: None.