

SENATE BILL REPORT

SB 5418

As of February 7, 2023

Title: An act relating to expanding the definition of public work.

Brief Description: Expanding the definition of public work.

Sponsors: Senators Conway, Keiser, Hasegawa, Kuderer, Saldaña, Frame, Trudeau, Hunt and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 2/07/23.

Brief Summary of Bill

- Expands the definition of public work to include work supported in part or in whole by grants or loans of public dollars, or by tax deferral or reimbursement.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Danielle Creech (786-7412)

Background: Public Works. Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest responsive bid. Various requirements apply to certain public works projects, including bonding, paying the prevailing wage, and apprentice utilization requirements.

Bond Requirements. A bond is required for public works contracts over \$150,000. For public works contracts of \$150,000 or less, the public body may accept 10 percent retainage in lieu of the bond. A performance bond is a guarantee that a contract for public works will be carried out according to the drawings and specifications. Performance bonds are

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typically for the full value of the contract and provided by a surety. A performance bond also protects the state or municipality from a contractor default, bankruptcy, or failure to perform. Payment from the performance bond is available only to the project owner, and there cannot be other claims against it. A payment bond is a guarantee that the contractor pays the subcontractors and the material supplier will be paid for work or materials provided for a public works project.

Prevailing Wage. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision, cannot be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract exceeding \$10,000, a contractor required to pay prevailing wage must post a prevailing wage statement in a location readily visible to workers at the jobsite or local office.

Apprenticeship Utilization Requirements. Certain projects have apprenticeship utilization requirements (AURs), where 15 percent of labor hours for a given public works construction project be performed by registered apprentices. If the bidder has a history of receiving monetary penalties for not fulfilling the AURs, or is habitual in its use of the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten days immediately following the notice to proceed date. AURs apply to the following:

- state public works projects estimated to exceed \$1 million;
- Department of Transportation projects estimated to exceed \$2 million;
- all school district public works projects estimated to exceed \$1 million; and
- all public works projects by a state four-year institution of higher education estimated to exceed \$1 million.

AURs may also be found on projects not mandated by law, including projects sponsored by cities, counties or ports, renewable energy projects, clean energy projects, and several public and private entity projects.

Summary of Bill: The definition of public work is expanded to include work supported in part or in whole by grants or loans of public dollars, or by tax deferral or reimbursement. The definition also includes work for which the source of funds includes payments made through contracts with insurance companies on behalf of the insured state or municipality.

Projects included under the expanded definition of public work must adhere to all applicable requirements of public works, including prevailing wage requirements, bid solicitation and award requirements, and AURs.

Appropriation: None.

Fiscal Note: Requested on February 6, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill provides clarity around the funds of public work projects. It maintains prevailing wage standards and meets training objectives of apprenticeship utilization. This will bring more apprentices into the industry which will help with labor shortages. When public dollars are spent on projects, those workers should earn living wages.

CON: The definition of public work in the bill is too broad, and section two extends prevailing wage far beyond what is acceptable and could include janitorial staff. The fiscal impact and burden may be significant and impede on the ability to get work done. It may additionally financially impact nonprofit partners. Many employers are already adhering to prevailing wage standards. This will negatively impact affordable housing and market rate housing. It will subject all public housing to public works requirements which will raise costs and extend timelines. This is the last thing the state should do during a housing crisis. This bill tears down long-standing statute and will have unintended consequences, such as disproportionately impacting minority, rural, and women owned contracting businesses.

OTHER: There will be some implementation issues. Commercial and residential projects handle prevailing wage rates differently. Small builders should be exempt from this bill as they have high material costs, supply shortages, and operate on a very thin margin. These small builders who build low-income housing are not the kind of builders that this bill intends to effect.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Heather Kurtenbach, Ironworkers Local 86; Erin Frasier, Washington State Building & Construction Trades Council; Chris Ellis, Bricklayers and Allied Craftworkers Local 1.

CON: Josie Cummings, Building Industry Association of Washington; Sophia Steele, Associated Builders and Contractors; Jerry VanderWood, WA Construction Industry Council and AGC; Van Collins, ACEC and AELC; Jesse Simpson, Housing Development Consortium; Andrew Calkins, Association of Washington Housing Authorities; Chris Herman, Washington Public Ports Association; Axel Swanson, Washington State Association of County Engineers; Brandy DeLange, Association of Washington Cities; Brian Lloyd, Beacon Development Group; Joren Clowers, Washington Association of Sewer & Water Districts; Linda Garcia, Washington State Community Action Partnership.

OTHER: Tammy Fellin, Labor & Industries; Maureen Fife, Tacoma/Pierce County Habitat for Humanity.

Persons Signed In To Testify But Not Testifying: No one.