

SENATE BILL REPORT

ESB 6407

AS PASSED SENATE, FEBRUARY 18, 1992

Brief Description: Providing for awards in construction contract actions.

SPONSORS: Senators Madsen, Anderson, Matson and Vognild

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Matson, Chairman; Anderson, Vice Chairman; Bluechel, McDonald, and McMullen.

Staff: Dave Cheal (786-7576)

Hearing Dates: February 6, 1992; February 7, 1992

HOUSE COMMITTEE ON COMMERCE & LABOR

BACKGROUND:

Currently in a lawsuit based on a public works contract, each party pays its own attorneys' fees and costs regardless of the merits of their position or the eventual disposition of the case.

SUMMARY:

The prevailing party in an action arising out of a construction contract with a public owner is entitled to an award of attorneys' fees, costs, and interest. "Prevailing party" is defined as the party in whose favor final judgment is rendered. "Public owner" means the state, a municipality, or other public body. "Costs" means reasonable and necessary expenses incurred in the prosecution or defense of the action.

The rights provided under the bill are not subject to waiver.

The application of the bill is limited to cases where the amount in controversy is under \$250,000.

Appropriation: none

Revenue: none

Fiscal Note: requested February 4, 1992

TESTIMONY FOR:

The financial burden is eased on either the contractor or the public owner if they have to sue for their rights or defend their position.

TESTIMONY AGAINST:

Having to pay attorneys' fees makes agencies overly cautious in their contract enforcement decisions. Settlement and alternative dispute resolution is discouraged.

TESTIFIED: Duke Schaub, AGC of Washington (pro); Norman Anderson, Department of Transportation (con); Cliff Webster, Associated Builders and Contractors (pro)

HOUSE AMENDMENT(S):

The existing attorneys' fees provisions and "prevailing party" definitions of RCW 4.84.250 through 4.84.280 are substituted for the definition in the original bill. The plaintiff is the prevailing party if they recover as much or more than their settlement offers. The defendant is the prevailing party if the plaintiff receives nothing or the same or less than the defendant's settlement offer. Settlement offers must be served between 30 and 120 days after filing and serving the complaint.

Public owners are required to consider the ability of bidders to complete the contract within the prescribed schedule and compliance of the contractor with state and federal law, when they determine the lowest responsible bidder in awarding contracts.