

SENATE BILL REPORT

ESHB 1830

As Reported By Senate Committee On:
Government Operations & Elections, March 30, 2005
Ways & Means, April 18, 2005

Title: An act relating to alternative public works contracting procedures.

Brief Description: Establishing the capital projects review board.

Sponsors: House Committee on State Government Operations & Accountability (originally sponsored by Representatives Hunt, Jarrett, Morrell, McDonald, Pettigrew, Hasegawa, Eickmeyer, Clibborn, Simpson and Ericks).

Brief History: Passed House: 3/14/05, 97-0.

Committee Activity: Government Operations & Elections: 3/30/05 [DPA-WM, w/oRec].
Ways & Means: 4/4/05, 4/18/05 [DPA, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Fairley, Haugen, Kline, McCaslin, Mulliken and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senator Benton.

Staff: Mac Nicholson (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Hewitt, Parlette, Pflug, Roach and Schoesler.

Staff: Dean Carlson (786-7305)

Background: Traditionally, public works projects are completed using the design-bid-build procedure, in which the architectural design phase of a project is separate from the construction phase. Under this process, an architectural firm is retained to design the facility and prepare construction documents. After the detailed design and construction documents are complete, the construction phase of the project is put out for competitive bid. A construction contract is then awarded to the lowest responsible bidder.

The Legislature has also authorized a limited number of state and local entities to use alternative public works contracting methods, including general contractor/construction manager (GC/CM) and the design-build procedure, in the construction of large public works projects as a means of addressing issues of design, schedule, or project complexity.

The design-build procedure is a multi-step competitive process to award a contract to a single firm that agrees to both design and build a public facility that meets specific criteria. The contract is awarded following a public request of proposals for design-build services. Following extensive evaluation of the proposals, the contract is awarded to the firm that submits the best and final proposal with the lowest price.

The GC/CM method employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The government agency contracts with an architectural and engineering firm to design the facility and, early in the project, also contracts with a GC/CM firm to assist in the design of the facility, manage the construction of the facility, act as the general contractor, and guarantee that the facility will be built within budget. When the plans and specifications for a project phase are complete, the GC/CM firm subcontracts with construction firms to construct that phase. Initial selection of GC/CM finalists is based on the qualifications and experience of the firm.

In 1994, a temporary independent oversight committee was created to review the utilization of design-build and GC/CM. The committee was composed of representatives from: state and local agencies; the construction and design industries; labor organizations; and four members of the Legislature, one from each caucus. The committee report, issued on January 21, 1997, recommended that the authorization to use the alternative methods on a pilot basis be extended to June 30, 2001, and that certain modifications be made to the alternative contracting procedures to increase the efficiency and effectiveness of the methods. Those recommendations were adopted in 1997 and, also that year, the oversight committee was eliminated. In 2001, the authorization to use alternative public works procedures again was extended to June 30, 2007.

The 2003-05 Capital Budget directed the Joint Legislative Audit and Review Committee (JLARC) to study the use of GC/CM contracting procedures in major public works projects. The study consists of a review of past and current projects constructed using GC/CM contracting procedures to determine the feasibility of assessing the public benefits and costs. The final report will be presented in June 2005.

Summary of Amended Bill: The Capital Projects Review Board (review board) is created in the Office of Financial Management (OFM) to oversee and evaluate public works construction processes, and to advise the legislature on policies related to major public works delivery methods.

The review board is comprised of eleven voting members and six nonvoting members. Voting members are appointed by the Governor as follows: one representative from construction general contracting; one representative from the design industries; two representatives from construction specialty subcontracting; one representative from a construction trades labor organization; one representative from the Office of Minority and Women's Business Enterprises; one representative from a higher education institution; one representative from the Department of General Administration; and one representative of a domestic insurer

authorized to write surety bonds for contractors in Washington State. All appointed members must be actively engaged in or authorized to use alternative public works contracting procedures.

Two members are at-large positions representing local public owners. The two at-large positions must serve on a rotating basis to be determined and appointed by the Association of Washington Cities (AWC), the Washington State Association of Counties (WSAC), and the Washington Public Ports Association (WPPA).

The nonvoting members are as follows: one member of the Public Hospital District Project Review Board and one member of the School District Project Review Board who must be appointed by their respective board; and four legislative members, one from each of the four corners appointed by the Speaker of the House or the President of the Senate.

The review board will convene as soon as practical after July 1, 2005, and will meet as often as necessary. OFM must employ a director who must serve as a non-voting member, and must provide staff to support the review board.

The review board, in consultation with OFM, will develop standardized statewide performance indicators and benchmarks for all major public works projects. At a minimum, the measures should allow basic comparisons of project performance by type, scope, cost, schedule, quality, and contracting procedure. The review board must also: establish criteria to determine effective and feasible use of alternative contracting procedures; develop qualification standards for general contractors bidding on alternative public works projects; and develop and recommend to the Legislature policies regarding alternative public works contracting procedures.

Both the School District Project Review Board and the Public Hospital District Project Review Board must be subcommittees of the Capital Projects Review Board.

A city that: (1) is located in a county authorized under this chapter to use alternative public works procedures; (2) reports in the state auditor's local government financial reporting system combined general fund, special revenue, debt service, capital projects, and enterprise funds revenues that exceed sixty million dollars; and (3) has a population greater than twenty-five thousand but less than forty-five thousand, is authorized to use the general contractor/construction manager or design-build procedure for one demonstration project valued over ten million dollars.

Any such city must enter into a contract before January 1, 2006.

If funding for the act is not provided by June 30, 2005, the sections of the bill creating the capital projects review board are null and void.

Ways & Means Amended Bill Compared to Government Operations & Elections

Amended Bill: The striking amendment reduces the fiscal impact by eliminating the data collection requirements. The amendment also authorizes alternative public works procedures for an additional city in a county that is a member of the Puget Sound Regional Council. The deadline in section 3 is delayed until March 1, 2006

Government Operations & Elections Amended Bill Compared to Original Bill: The amended bill provides that the two local government representatives will be appointed on a

rotational basis by AWC, WSAC, and WPPA. The amended bill requires the review board to include competitive negotiation contracting as part of their evaluation of other potential alternative public works procedures. The amended bill allows certain qualified cities to use alternative public works procedures for one demonstration project.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Testimony For: The alternative public works processes are a valuable tool to local jurisdictions and the language in the bill should go back to what was passed out of committee. The review concept is a good idea, but the original bill expanded the scope of the alternative works process to allow certain cities to use alternative public works processes, and that expansion needs to be put back into the bill. The bill in its current state does not reflect the original motivation behind the bill and some cities are concerned about the bill moving forward in its current state. While JLARC is studying the issue, no smoking gun has been found and JLARC has some good things to say about the process, so there is no need to wait until JLARC finishes their study before expanding the process to include other cities. The alternative public works program is very complex and shouldn't be expanded until JLARC completes their study. Another representative from labor added to the oversight committee. The original alternative public works program established an oversight board, and for some reason that board was taken out when the sunset on the original program was extended. The oversight board should be put back in. The oversight board will allow experts in the field to review the procedures and provide an venue to resolve issues that arise. The oversight board provides a more organized way to examine the alternative process and compare results with more traditional public works processes. The board should be housed in CTED rather than OFM, and there should be more public sector participation on the board. **CONCERNS:** Additional authority for alternative public works should not be granted until the advisory board completes their work.

Testimony Against: None.

Who Testified: PRO: Larry Stevens, Mechanical and Electrical Contractors; Ed Kommers, Mechanical Contractors Association; Michael Transue, Associated General Contractors of Washington; Scott Merriman, OFM; Scott Taylor, Wash. Ports Assoc; Gordon Walgren, City of Bremerton; Gary Sexton, City of Bremerton; Doug Levy, cities of Puyallup and Renton; CONCERNS: Stan Bowman, American Institute of Architects Wash. Council . OTHER: Sharon Wylie, Clark County; Ed Triezenberg, Carpenters Union; Dave Johnson, Washington State Building Construction Trades Council; Ashley Probart, Association of Washington Cities; Craig Olson, Office of Financial Management.