

# SENATE BILL REPORT

## SB 6235

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As Reported By Senate Committee On:  
Government Operations & Elections, February 05, 2008

**Title:** An act relating to public works procurement.

**Brief Description:** Addressing public works procurement.

**Sponsors:** Senators Haugen and Keiser.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/31/08, 2/05/08 [DPS].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6235 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline, McDermott and Pridemore.

**Staff:** Sharon Swanson (786-7447)

**Background:** Washington has one of the largest locally controlled port systems in the world with 76 ports in 33 of the state's 39 counties. The primary purpose of a port district is to promote economic development. Port districts are authorized to acquire, construct, maintain, operate, develop and regulate within the district; harbor improvements; rail or motor vehicle transfer and terminal facilities and other commercial transportation, transfer, handling, storage and terminal facilities; and industrial improvements.

The port districts are authorized to levy a tax of up to \$0.45 per \$1,000 of assessed value on property in the port district. In addition, special property tax levies are authorized for dredging canal construction, land leveling or filling; these levies cannot exceed the \$0.45 per \$1,000 rate.

On December 20, 2007, the Washington State Auditor released a Performance Audit Report of the Port of Seattle Construction Management. Included in the report were a series of recommendations for the port, including: ensuring competitive bidding applies to the procurement of consulting and other services; reasserting the port commission's responsibility for port management; and make it clear that employees of port districts may not waive established port policies related to competition in the procurement of goods and services without first notifying or seeking the approval of the elected commission.

**Summary of Bill:** The bill as referred to committee was not considered.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**SUMMARY OF BILL (Recommended Substitute):** Removes the exemption for port districts from the notification requirements of the small works roster contract procedures.

Adds other construction-related services to the services that governmental agencies must publicly announce requirements for and negotiate contracts for on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Other construction-related services are defined as consultant services provided by any person, other than as an employee of the agency, in connection with a furtherance of any public work, including project management, construction supervision, construction management, land surveying, environmental services, technical testing, and inspection services. Other construction-related services do not include legal services, accounting or auditing services, claims consultant services, or other similar services that may be required in connection with any public work.

Public work consultant services are defined as architectural, engineering, and other construction-related services provided by a consultant.

The definition of consultant is amended to include any person providing architectural, engineering, or other construction-related consultant services who is not an employee of the agency for which the services are provided.

The port commission must establish, by resolution, policies to comply with the competitive bidding requirements established in statute that set forth the conditions by which competitive bidding requirements for public works contracts may be waived.

When a public port district purchases property outside of the district's jurisdictional boundaries, as part of the planning process for developing the property, the port must study and disclose through the public hearings process in the impacted community the impact of the proposed development plans.

The pre-development planning study must include the impact on air quality, noise, and groundwater resources in the affected community, as well as the impact on both local and state transportation infrastructure that would result from development of the off-site property.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute As Passed Committee):** The definition of "other construction-related services" is changed. All port district commissioners throughout the state must be nominated by a district. The limitation on the term that a port commissioner can serve is removed.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 2008.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute Bill as Heard in Committee:**

PRO: Good and necessary bill. Perhaps add disbarment clause against contractors who have been convicted of fraud. The Port of Seattle does support many of the findings of the auditor, and we support most of the provisions in the substitute bill.

CON: This bill will require all school districts in the state to submit to the same process that we use to hire architects, to hire any consultant that has anything to do with our construction projects. We hire ten to 15 consultants for a major project. We would need to hire additional staff just to go through the paperwork to hire a consultant. The substitute addresses many of our technical concerns, but the language about "other construction services" causes concern. We would recommend selecting based on quality, and not just price. The bill purports to address problems at one public contracting entity, but applies the solution to everyone. The substitute is better, but still applies to more than just the Port of Seattle, which is the source of the problems.

**Persons Testifying:** PRO: Chris Gower, Citizen. Tay Yoshitani, Port of Seattle.

CON: Mitch Denning, Alliance of Education Association; Fred Long, Kent School District; Charlie Brown, Puget Sound School Coalition; Rick Slunaker, Associated General Contractors.