

# HOUSE BILL REPORT

## HB 2933

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**As Reported by House Committee On:**  
Technology & Economic Development  
Capital Budget

**Title:** An act relating to small works rosters.

**Brief Description:** Concerning small works rosters.

**Sponsors:** Representatives Gregerson, Santos and Ryu.

**Brief History:**

**Committee Activity:**

Technology & Economic Development: 2/2/16, 2/4/16 [DPS];  
Capital Budget: 2/8/16 [DP2S(w/o sub TED)].

**Brief Summary of Second Substitute Bill**

- Increases the project cost threshold for small works roster projects from \$300,000 to \$400,000.
- Increases the project cost threshold for limited public works projects from \$35,000 to \$150,000.
- Requires that recovery of unpaid wages and benefits must be the first priority for actions filed against the retainage for public improvement contracts under the small works roster process.
- Directs the Joint Legislative and Audit Review Committee to review the implementation and report back to the Legislature.
- On July 1, 2017, the threshold for small works roster projects is increased from \$400,000 to \$500,000.

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### HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Morris, Chair; Tarleton, Vice Chair; Fey, Hudgins, Rossetti, Santos and Wylie.

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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.*

**Minority Report:** Do not pass. Signed by 4 members: Representatives Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Magendanz and Young.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Harmsworth and Nealey.

**Staff:** Nikkole Hughes (786-7156).

**Background:**

Small Works Roster and the Limited Public Works Process.

Public work includes all work, construction, alteration, and repair or improvement other than ordinary maintenance which is executed at a cost to the state or a local government. For public works projects estimated to cost \$300,000 or less, state agencies and expressly authorized local governments may use the small works roster process to award contracts. A small works roster contains any responsible contractor who requests to be on the roster, which may be a single general list or lists for different specialties or categories of work. Under the small works process, instead of advertising the contract opportunity, the state agency or local government may solicit bids from at least five contractors on the appropriate small works roster. After soliciting the bids, the state agency or local government awards the contract to the lowest responsible bidder.

The small works roster process also allows for a limited public works process for projects estimated to cost \$35,000 or less. Under the limited public works process, the state agency or local government solicits bids from at least three contractors from the appropriate small works roster and awards the contract to the lowest responsible bidder. For limited public works projects, the state agency or local government may waive payment and performance bond requirements and retainage requirements. "Retainage" means a portion, not to exceed 5 percent, of the contractor's payment that is withheld by the contracting agency until the project is complete. The retainage is used to satisfy claims a person such as a laborer or supplier may have under the contract and to pay any taxes or penalties which may be due from the contractor.

A state agency or local government may use the limited public works process to solicit and award small works roster contracts to small businesses that are registered as contractors with gross revenues of \$1 million or less. When using the small works or limited public works processes for a project, state agencies and local governments must attempt to equitably distribute opportunities for the project among the listed contractors.

Department of Enterprise Services.

The Department of Enterprise Services (DES) manages procurement of goods and services for state agencies. Among the duties and responsibilities of the DES is the development of procurement policies and procedures that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusinesses, minibusinesses, and minority and women-owned businesses to the maximum extent practicable.

"Microbusiness" means any business entity that has a gross revenue of less than \$1 million annually.

"Minibusiness" means any business entity that has a gross revenue of between \$1 million and \$3 million annually.

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### **Summary of Substitute Bill:**

#### Small Works Roster and the Limited Public Works Process.

The project cost threshold under which a state agency or authorized local government may use the small works roster process is increased to \$500,000. For projects awarded under the small works roster process, a state agency or authorized local government may waive certain retainage requirements and assume liability for the contractor's nonpayment of taxes and of laborers, subcontractors, mechanics, material persons, and suppliers. The state agency or local government retains the right of recovery against the contractor for any payments made on the contractor's behalf. If retainage is not waived, recovery of unpaid wages and benefits must be the first priority of actions filed against the retainage.

The project cost threshold under which a state agency or authorized local government may use the limited public works process is increased to \$150,000. A state agency or authorized local government may use the limited public works process to solicit and award small works roster contracts to minibusinesses and microbusinesses. A state agency or authorized local government using the limited public works process must equitably distribute opportunities for the project among the listed contractors.

"Equitably distributes" means a state agency or authorized local government may not favor certain contractors on the appropriate small works roster over other contractors on the same roster who perform similar services.

#### Department of Enterprise Services.

The DES must work with the Municipal Research and Services Center to notify local governments authorized to use small works rosters of this authority and to provide guidance on how to use the authority. The guidance may take the form of a manual.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- removes all sections relating to the Office of Minority and Women's Business Enterprises; and
- requires that recovery of unpaid wages and benefits must be the first priority for actions filed against the retainage for public improvement contracts under the small works roster process.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill levels the playing field and allows the Office of Minority and Women's Business Enterprises to invite agencies to participate in contracts with qualified businesses. This bill will allow for greater participation by small contractors on public works jobs. This bill does not adjust retainage amounts and should make workers a priority.

(Opposed) None.

(Other) This bill makes large increases in the project cost thresholds for small works roster and limited public works projects. This bill removes the retainage requirement by the contractor for small works roster projects, which puts the government entity at risk.

**Persons Testifying:** (In support) Representative Gregerson, prime sponsor; and Neil Hartman, Washington Building and Construction Trades Council.

(Other) Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association, and Mechanical and Electrical Contractors; and Kathleen Collins, Sheet Metal and Air Conditioning Contractors of Western Washington.

**Persons Signed In To Testify But Not Testifying:** None.

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**HOUSE COMMITTEE ON CAPITAL BUDGET**

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology & Economic Development. Signed by 8 members: Representatives Tharinger, Chair; Stanford, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kilduff, Kochmar, Peterson and Riccelli.

**Staff:** Steve Masse (786-7115).

**Summary of Recommendation of Committee On Capital Budget Compared to Recommendation of Committee On Technology & Economic Development:**

The threshold level of small works roster projects is increased from \$300,000 to \$400,000 instead of \$500,000. The second substitute directs the Joint Legislative and Audit Review Committee to review the implementation and report back to the Legislature. On July 1, 2017, the threshold for small works roster projects is increased from \$400,000 to \$500,000.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill will allow for greater participation by small contractors on public works jobs, and make small projects easier to procure.

(Opposed) None.

**Persons Testifying:** Representative Gregerson, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.