

# SENATE BILL REPORT

## SB 5133

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As of January 16, 2024

**Title:** An act relating to modifying the responsible bidder criteria for public works projects.

**Brief Description:** Modifying the responsible bidder criteria for public works projects.

**Sponsors:** Senators Keiser, Conway, Kuderer, Randall, Saldaña and Valdez.

**Brief History:**

**Committee Activity:** Ways & Means: 1/16/24.

**Brief Summary of Bill**

- Modifies responsible bidder criteria to ensure bidders on public works projects comply with apprenticeship utilization requirements.
- Requires bidders who have a demonstrated history of noncompliance with apprenticeship utilization requirements to submit an apprenticeship utilization plan to obtain contracts.
- Requires the Department of Labor & Industries develop an attestation document for bidders to attest to responsible bidder criteria.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5133 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Hasegawa and Kuderer.

**Minority Report:** Do not pass.

Signed by Senators Dozier and Fortunato.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Wilson, J., Ranking Member.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Danielle Creech (786-7412)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Shani Bauer (786-7468)

**Background:** Responsible Bidder Criteria. Responsible bidder criteria was established in 2007. Current law stipulates that the bidders must have:

- a certificate of registration;
- a current state unified business identifier number;
- if applicable, industrial insurance coverage, an employment security department number, and a state excise tax registration number;
- received training on the requirements related to public works, with the exception of bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years; and
- within the three year period immediately preceding the date of the bid solicitation not have been determined by a final and binding citation and notice of assessment or through a civil judgment to have willfully violated any statutory provisions relating to minimum wage requirements and labor standards, or deductions, contributions, and payment of wages.

Before a public works contract is awarded bidders must submit a signed statement verifying under penalty of perjury they have not been found to make such violations. The Department of Labor and Industries (L&I) must keep records of entities that have satisfied training requirements or are exempt, and make the records available on its website.

Supplemental Responsible Bidder Criteria. In addition to the bidder responsibility criteria listed above, the state or municipality may adopt relevant supplemental responsible bidder criteria applicable to a particular project. This information must be provided in the invitation to bid or bidding documents. In a timely manner before the bid submittal deadline, potential bidders may make requests for modification to the supplemental criteria. The state or municipality must evaluate the information and respond prior to the bid submittal deadline. If the request results in a change to criteria the state or municipality must issue an addendum to the bidding documents detailing the new criteria. If a bidder fails to supply requested information concerning responsibility within the time and manner requested the state or municipality may base its determination on any related available information or find the bidder not responsible.

The state or municipality must provide, in writing, the reasons for determination if the bidder is found not responsible. Bidders may present additional information to the state or municipality to appeal the determination within the timeline specified in the bidding documents which the state or municipality must consider before issuing final determination. If the determination affirms the bidder is not responsible, the state or municipality cannot execute a contract with any other bidder until two days after the bidder found not

responsible has received the final determination.

The Capital Projects Advisory Review Board (CPARB) must develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility guidelines which must be posted on the CPARB's website.

Apprenticeship Utilization Plans. If the bidder has a history of receiving monetary penalties for not fulfilling the apprentice utilization requirements, 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.

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

**Summary of Bill (Proposed Substitute):** In order to be considered a responsible bidder for projects with apprenticeship utilization requirements, a bidder must:

- be listed as an active training agent in L&I's tracking system;
- attest that apprenticeship utilization requirements will be met for project work in apprentice-able occupations; and
- have a designated person trained on public works and wage requirements within three years prior to bid submittal or have completed a public works project within the prior three years without violation.

L&I must develop an attestation document listing all required responsible bidder criteria. Before an award of a public works contract, the bidder must submit a completed and signed responsible bidder attestation to the contracting agency. The contracting agency must verify all responsible bidding criteria prior to awarding the contract.

A bidder who has received two strikes within a five-year period for noncompliance with apprenticeship utilization requirements must submit an apprentice utilization plan which includes the start date of the project, the expected apprentice hours by apprentice-able occupation, and how the contractor will recruit and retain apprentices for the contracting agency's review and acceptance prior to award of the public works project.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 on Proposed Substitute (State Government & Elections) (Regular Session 2023):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will ensure a robust workforce for the next

generation. It is good for contractors to be trained on public contracting policy within the last three years so labor and wage standards are met. It will increase clarity and standards for bidder metrics in performing public works projects. This will level the playing field between reputable contractors and dishonest contractors, and will allow the responsible contractors who follow through with their expectations and hire apprentices and win bids

CON: A threshold for these new requirements should be established. This bill will eliminate nearly every non-union contractor from bidding on public works. Small business contractors will not be able to participate and will be considered irresponsible bidders by the state. It attempts to stop on the job training, which is the most flexible option for contractors and should be embraced as an accessible option, rather than frowned upon. In order to become a registered training agent, they must be a part of an approved apprenticeship program which are not available to most small, rural, disadvantaged contractors. Washington does not have enough of these programs and is unable to create legitimate new programs as they would be prey to system abuse from industry competitors. Requiring these new criteria will ensure workforce shortages. This bill will not promote apprenticeship opportunities, but rather suppress the labor market and increase construction costs. This hurts Washington State, the trades, and the employees.

OTHER: Responsible bidder criteria ensures that public dollars are spent appropriately. The training that will be required is already available, and the removal of the grandfathering clause will increase demand. The Department of Labor and Industries will require time to implement these new criteria and change their website, and will need funding for additional staff. Concern about impacts that are not yet known.

**Persons Testifying (State Government & Elections):** PRO: Senator Karen Keiser, Prime Sponsor; Mark Riker, Washington State Building & Construction Trades Council; Mike Bridges, IBEW L 48; Richard Geyer, Roofers L 153; Mario Silva, Cement Masons & Plasterers L 528; Chad Campbell, Operating Engineers L 612; Todd Mitchell, Heat & Frost Insulators L 7; Betsy Shedd, Operating Engineers L 302.

CON: James King, Independent Business Association; Sophia Steele, Associated Builders and Contractors; Nathan Turner, WSECA; Jerry VanderWood, Associated General Contractors (AGC).

OTHER: Tammy Fellin, Labor & Industries; Brandy DeLange, Assoc. of Washington Cities; Axel Swanson, Assoc. of Washington Counties; Chris Herman, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying (State Government & Elections):** No one.

**Staff Summary of Public Testimony On Proposed Substitute (Ways & Means):** PRO: This bill has the potential to increase the number of publicly funded projects that utilize apprentices. With all of the federal and state investments in new clean energy projects, we

are going to need a skilled workforce to do the work. The number of people signed up to join a training program exceeds the number of positions available. Many contractors are unaware of their requirements. This bill will ensure contractors are educated as to the requirement to utilize apprentices and will help increase the number of positions available.

The bill has been revised to eliminate the requirement to utilize a database to register apprentices. No changes are made to apprentice utilization requirements in statute.

CON: This bill mandates utilization of apprentice programs which will end up eliminating the ability of small contractors to take on public works jobs. These programs take a lot of time and are costly to establish. Small contractors often cannot access partner agencies that would assist in the placement of apprentices. While the intention is commendable, the bill should exclude small contractors.

While the substitute has addressed some of the issues, we still have concerns. Subcontractors are still covered by language that would require the use of apprentices in apprentice-able occupations. Legislation last year was a dramatic expansion of apprentice requirements. Businesses are still trying to digest those requirements and put them into practice. There is a better time down the road for this legislation.

OTHER: We would like to continue to work on concerns with this bill. Cities have concerns around the requirement to verify all bidder criteria. We also have questions around verifiable apprenticeship programs. We believe more clarity is needed here.

This bill adds new criteria for a contractor at the same time contractors are trying to implement new apprenticeship requirements recently adopted into legislation. This bill should be delayed. L&I is working diligently to ensure contractors are trained. The bill could be better timed when there is information as to how the new program is working.

Ports support apprentice programs as a way to build the workforce. We are concerned this bill stacks additional requirements on existing work that members are doing to comply with HB 1050 from last year. Members are continuing to diligently work on implementation of apprentice requirements.

**Persons Testifying (Ways & Means):** PRO: Senator Karen Keiser, Prime Sponsor; Erin Fraiser, Washington State Building & Construction Trades Council; Heather Kurtenbach, Ironworkers L 86; Chris Ellis, Bricklayers and Allied Craftworkers L 1 WA/AK.

CON: Max Martin, Associated Builders and Contractors of WA; Jerry VanderWood, AGC of Washington.

OTHER: Brandy DeLange, Association of Washington Cities; Axel Swanson, Washington State Association of County Engineers; Chris Herman, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.