

- SUBJECT:** Revised payment bond and change order threshold for public contracts
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 15 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Geren, Harless, Hilderbran, Jones, Lucio, Maldonado, Oliveira, Swinford, S. Turner  
0 nays
- WITNESSES:** For — Jack Zill, Dallas/Fort Worth International Airport; (*Registered, but did not testify*): Colleen Dziuban, Dallas/Fort Worth International Airport  
Against — None
- BACKGROUND:** Government Code, sec. 2253.021(a) requires a prime contractor that makes a public work contract with a governmental entity to execute a payment bond with the entity if the amount of the contract exceeds \$25,000. The payment bond is for the protection and use of the bond's beneficiaries, who have a duty under a contract to provide public work labor with a prime contractor or subcontractor. The bond must be in the amount of the contract and executed before any work begins.  
  
In public work contracts between municipalities and contractors, if any change in plans or quantity of work becomes necessary after the performance of the contract has begun, Local Government Code, sec. 252.048 allows the governing board of the municipality to approve change orders implementing the required changes. Under sec. 252.048(c), if a change order involves a change of \$25,000 or less, the governing board may allow a municipal administrative official to approve the change orders.
- DIGEST:** CSHB 2515 would raise from \$25,000 to \$50,000 the threshold amount for which a prime contractor would have to execute a payment bond with a governmental entity for a public work contract, if the governmental entity was a municipality or a joint airport board created under Transportation Code, sec. 22.074. The bill also would authorize the governing board of a municipality to permit a municipal administrative official to approve change orders in a contract between the municipality and a contractor if

the change order involved an increase or decrease of \$50,000 or less, rather than the current \$25,000 or less.

The bill would apply only to a contract or change order entered into on or after the bill's September 1, 2009 effective date. Existing law would continue to govern contracts entered into beforehand.

**SUPPORTERS  
SAY:**

By raising the payment bond threshold for public work contracts to \$50,000, CSHB 2515 would increase business opportunities for small businesses, including historically underutilized businesses and minority- and women-owned business enterprises, that may not be able to obtain a payment bond. Raising the limit also would reduce the costs of these contracts for governmental entities. The typical fee for payment bonds is 0.5 percent of the contract amount, which is absorbed by the governmental entity. The bill would allow governmental entities to enter into relatively small public works contracts without having to pay the fee.

CSHB 2515 would equalize the threshold for payment bonds and change orders with other statutory contractual thresholds. The last change to the threshold occurred in 1995 and has since been outpaced by inflation. Recently, the Legislature has undertaken to raise contractual limits in a variety of areas. The 80th Legislature in 2007 increased the threshold for requiring a municipality to conduct competitive bidding from \$25,000 to \$50,000, and similar legislation (HB 2573 by Gonzalez Toureilles) has been filed with the 81st Legislature in 2009 to raise the threshold for counties. This bill would make current thresholds more consistent by giving municipalities and joint boards the same flexibility enjoyed by other governmental entities.

The proposed increase in the threshold for change orders would allow governmental entities to save the additional staff time required to obtain formal approval for relatively low dollar change orders. CSHB 2515 would address any increased risk for unexpected change orders by allowing a municipality to make the decision whether to adopt the higher amount.

**OPPONENTS  
SAY:**

No apparent opposition.

NOTES:

The committee substitute differs from the original bill by referring to a joint airport board created under Transportation Code, ch. 22, subch. D, while the original bill referred to Chapter 22 generally.

A similar bill, SB 1639 by Harris, has been referred to the Senate Intergovernmental Relations Committee.