
SUBSTITUTE HOUSE BILL 2852

State of Washington 65th Legislature 2018 Regular Session

By House Capital Budget (originally sponsored by Representatives Graves and Haler)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to attorneys' fees on public works contracts;
2 amending RCW 39.04.240; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that many small
5 businesses, particularly minority and women-owned contracting
6 businesses, have difficulty in securing bonds and contract work.
7 Mandating these contractors to pay an award of attorneys' fees in
8 disputes arising from public works contracts creates a disincentive
9 for good faith settlement negotiations between a performance bond
10 claimant and the contractor. It further unfairly increases costs for
11 these talented entrepreneurs and small business owners who are
12 already significantly under-represented in the industry and further
13 denies them equitable competitive opportunities in public works
14 contracting. Therefore, the legislature intends for the award of
15 attorneys' fees in disputes arising from public works contracts to be
16 paid only if the prevailing party recovers more than the amount
17 offered in settlement.

18 **Sec. 2.** RCW 39.04.240 and 1999 c 107 s 1 are each amended to
19 read as follows:

1 (1) The provisions of RCW 4.84.250 through 4.84.280 shall apply
2 to an action arising out of a public works contract, including an
3 action under a performance bond or payment bond required under RCW
4 39.08.010, in which the state or a municipality, or other public body
5 that contracts for public works, is a party, except that: (a) The
6 maximum dollar limitation in RCW 4.84.250 shall not apply; and (b) in
7 applying RCW 4.84.280, the time period for serving offers of
8 settlement on the adverse party shall be the period not less than
9 thirty days and not more than one hundred twenty days after
10 completion of the service and filing of the summons and complaint.

11 (2) The rights provided for under this section may not be waived
12 by the parties to a public works contract that is entered into on or
13 after June 11, 1992, and a provision in such a contract that provides
14 for waiver of these rights is void as against public policy. However,
15 this subsection shall not be construed as prohibiting the parties
16 from mutually agreeing to a clause in a public works contract that
17 requires submission of a dispute arising under the contract to
18 arbitration.

19 (3) Except as otherwise provided for in RCW 39.08.030, set forth
20 in the terms of a performance or payment bond, or otherwise provided
21 for by contract or statute, the rights provided for under this
22 section serve as the exclusive remedy for recovery of attorneys' fees
23 and other costs in an action arising out of a public works contract,
24 including but not limited to coverage disputes involving a
25 performance bond or payment bond required under RCW 39.08.010.

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