

SENATE BILL REPORT

ESSB 6040

As Amended by House, March 1, 2024

Title: An act relating to prompt payment in public works.

Brief Description: Concerning prompt payment in public works.

Sponsors: Senate Committee on State Government & Elections (originally sponsored by Senators Valdez, Keiser, Conway, Hasegawa and Nobles).

Brief History:

Committee Activity: State Government & Elections: 1/19/24, 1/30/24 [DPS, DNP].

Floor Activity: Passed Senate: 2/13/24, 34-15.

Passed House: 3/1/24, 95-0.

Brief Summary of Engrossed First Substitute Bill

- Requires the state to pay a prime contractor within 30 days for work satisfactorily completed or materials delivered by a subcontractor of any tier that is a certified small business or recognized women or minority-owned business.
- Requires a prime contractor and each higher tier subcontractor to make payment within ten days to its subcontractor until the subcontractor that is a certified small business or recognized women or minority-owned business receives payment.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6040 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

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.

Signed by Senators Wilson, J., Ranking Member; Dozier and Fortunato.

Staff: Danielle Creech (786-7412)

Background: Under current law when a contractor or subcontractor is paid for work performed on a public works project, they must pay subcontractors no later than ten days after receipt of payment. In the event of a good faith dispute over all or any portion of the amount due from the state or municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state, municipality, prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Those not a party to a dispute are entitled to full and prompt payment of their portion of a draw, progress payment, final payment, or released retainage.

Anyone whose funds have been withheld in violation of law are entitled to receive interest at the highest rate allowed by statute for every month of non-payment from the person wrongfully withholding the funds. In any action for the collection of wrongfully withheld funds, the prevailing party is entitled to costs of suit as well as reasonable attorneys' fees.

Summary of Engrossed First Substitute Bill:

The state must pay a prime contractor within 30 days for work satisfactorily completed or materials delivered by a subcontractor of any tier that is a certified small business or recognized women or minority-owned business. A prime contractor and each higher tier subcontractor must make payment within ten days to its subcontractor until the subcontractor that is a certified small business or recognized women or minority-owned business receives payment.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill marks a significant step toward equitable treatment for small minority and woman contractors in public works projects. Prompt payment is a right, not an administrative nicety. Delayed payment can be devastating for small businesses which often operate on thin margins. This will help level the playing field to give small businesses an equal opportunity to thrive alongside larger companies which often have more resources to withstand payment delays. A rising tide lifts all ships and that is precisely what this bill is meant to do.

CON: This bill will cause unintended consequences. This will transfer a problem from one

segment of the industry to another. Some general contractors are small businesses, others are certified firms. If they are forced to act as a bank and forcing them to pay before they themselves have been paid that just doesn't seem fair and could be a dire problem for small general contractors. For a solution to work well, it needs to work well for everyone.

OTHER: There is widespread support for the underlying policy and intent of the bill, but there is concern about unintended consequences. This should be sent to CPARB for more stakeholder engagement to be brought back with recommendations for the next legislative session. One concern is that acceptance is not defined in law so it leaves ambiguity as to when the 30 day timeline begins. There are concerns about if contractors are going to be required to finance the contracts for their subcontractors.

Persons Testifying: PRO: Senator Javier Valdez, Prime Sponsor; Brian Sims, Tabor 100; Darci Henderson, Tabor 100; Albert Sardinas, WBBA; Miguel Beltran, City of Seattle.

CON: Van Collins, ACEC Washington; Jerry VanderWood, Associated General Contractors (AGC).

OTHER: William Frare, Washington State Department of Enterprise Services; Janice Zahn, CPARB Chair; Brandy DeLange, Association of Washington Cities; Axel Swanson, Washington Association of County Engineers; Chris Herman, Washington Public Ports Association; Sarah Erdmann, Office of Minority & Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the requirement for the state to promptly pay a prime contractor for work or materials delivered by a subcontractor that is women or minority-owned small business.
- Removes the requirement for the prime contractor and each higher tier subcontractor to make payment until the women or minority-owned subcontractor receives payment.
- Requires the Capital Projects Advisory Review Board (CPARB) to review the extent to which prompt pay statutes meet the needs of small businesses, particularly women and minority-owned businesses, as well as present its findings and recommendations to the Legislature before November 1, 2024.
- Sets forth minimum requirements for the CPARB review.