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**SUBSTITUTE SENATE BILL 5176**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senate State Government, Tribal Affairs & Elections (originally sponsored by Senators Valdez, J. Wilson, Conway, Hasegawa, and Nobles)

AN ACT Relating to implementing prompt pay recommendations from the capital projects advisory review board; amending RCW 39.04.250 and 39.76.011; and repealing RCW 39.04.360.

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

**Sec.**  RCW 39.04.250 and 1992 c 223 s 5 are each amended to read as follows:

(1) The state or municipality must make payments on public works projects within 30 days of receipt of a properly completed invoice in accordance with RCW 39.76.011(3). Contract documents must include instructions for properly completing an invoice. Contracts must include:

(a) Payment cutoff dates;

(b) Invoice due dates;

(c) Review time frames;

(d) Notice procedures;

(e) Payment timelines, which must include a payment release schedule with dates, if properly completed invoices are received;

(f) Retainage withholding; and

(g) A payment release schedule, which must be included in any contracts made with subcontractors, at every tier, to ensure project payment release expectations are provided for the project.

(2) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ((~~ten~~)) 10 days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein. If a payment does not adhere to the requirements in subsection (1) of this section, payment is late and the public agency must provide a payment recovery schedule that includes interest in accordance with RCW 39.76.011, unless notice of a good faith dispute has been provided. If the prime contractor does not provide payment to a lower-tier subcontractor within 10 days of being paid by the public agency, payment is late and the contractor must provide a payment recovery schedule that includes one percent interest per month accruing on past due amounts owed to every subcontractor as of the date of the late invoice payment.

((~~(2)~~)) (3) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than ((~~one hundred fifty~~)) 100 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.

((~~(3)~~)) (4) In addition to all other remedies, any person from whom funds have been withheld in violation of this section ((~~shall be entitled to receive from~~)) must be paid by the person wrongfully withholding the funds, one percent per month interest accrued for every month ((~~and~~)) or portion thereof that payment including retainage is not made((~~, interest at the highest rate allowed under RCW 19.52.025~~)). In any action for the collection of funds wrongfully withheld, the prevailing party ((~~shall be~~)) is entitled to dispute costs ((~~of suit~~)) and reasonable attorneys' fees.

(5) No later than 30 days after satisfactory completion of any additional work or portion of any additional work by a contractor, subcontractor, or supplier on a public works project or private construction project, except private residential projects of 12 units or less, and receipt by the owner, state, or municipality of a request from the contractor for issuance of a change order to the contract, the owner, state, or municipality shall issue a change order to the contract for the full dollar amount of the work not in dispute to the contractor. Within 10 days of receipt of a change order from the owner, state, municipality, or upper-tier contractor, the contractor or subcontractor must issue change orders to lower-tier subcontractors impacted by the change. If the owner, state, or municipality does not issue such a change order within the 30 days, or the contractor or upper-tier subcontractor does not issue a change order to lower-tier subcontractors within 10 days after receipt of the approved change order, interest accrues on the dollar amount of the additional work satisfactorily completed and not in dispute until a change order is issued. The owner, contractor, subcontractor, state, or municipality shall pay their proportionate share of the interest at a rate of one percent per month.

(6) No later than 30 days after the commencement of any additional authorization by the owner, state, or municipality and a request by a subcontractor or supplier, the contractor must request a change order from the owner, state, or municipality. A lower-tier subcontractor or supplier must request a change order from the upper-tier contractor 30 days after the commencement of the additional work and a request from the lower-tier subcontractor. If a contractor or subcontractor has requested the change order from the owner, upper-tier contractor, state, or municipality within 30 days of the request from the subcontractor or supplier, the contractor or subcontractor is not liable for any interest on the unpaid dollar amount for any additional work satisfactorily completed and not in dispute if the owner, upper-tier contractor, state, or municipality has not issued the requested change order. This section does not provide any rights to a contractor, subcontractor, or supplier against a party with whom they are not a party to a written contract.

(7) An aggrieved party may bring a civil action for violations of this section in a court of competent jurisdiction for appropriate relief, including interest and reasonable attorneys' fees and costs.

(8) For the purposes of this section, as it pertains to obligations of an owner, state, or municipality, "additional work" is work beyond the scope defined in the contract between the contractor and the owner, state, or municipality.

**Sec.**  RCW 39.76.011 and 1992 c 223 s 1 are each amended to read as follows:

(1) Except as provided in RCW 39.76.020, every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) Except as provided otherwise in this subsection, a check or warrant is mailed or is available, or an electronic funds transfer is sent, on the date specified for the amount specified in the applicable contract documents but not later than ((~~thirty~~)) 30 days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If a contract is funded by grant or federal money, the public body shall pay the prime contractor for satisfactory performance within ((~~thirty~~)) 30 calendar days of the date the public body receives a payment request that complies with the contract or within ((~~thirty~~)) 30 calendar days of the date the public body actually receives the grant or federal money, whichever is later.

(b) On written contracts for public works, when part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made does not comply with the requirements of the contract, the public body shall notify the prime contractor in writing within eight working days after receipt of the payment request stating specifically why part or all of the payment is being withheld and what remedial actions must be taken by the prime contractor to receive the withheld amount. Payments for work where there is no disagreement in work or quantity must not be withheld and must follow the payment schedule outlined above. If payments are withheld due to the public body, interest accrues as outlined in subsection (1) of this section.

(c) If the notification by the public body required by (b) of this subsection does not comply with the notice contents required under (b) of this subsection, the public body shall pay the interest under subsection (1) of this section from the ninth working day after receipt of the initial payment request until the contractor receives notice that does comply with the notice contents required under (b) of this subsection.

(d) If part or all of a payment is withheld under (b) of this subsection, the public body shall pay the withheld amount within ((~~thirty~~)) 30 calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice. If the withheld amount is not paid within the ((~~thirty~~)) 30 calendar days, the public body shall pay interest under subsection (1) of this section from the ((~~thirty-first~~)) 31st calendar day until the date paid.

(e)(i) If the prime contractor on a public works contract, after making a request for payment to the public body but before paying a subcontractor for the subcontractor's performance covered by the payment request, discovers that part or all of the payment otherwise due to the subcontractor is subject to withholding from the subcontractor under the subcontract for unsatisfactory performance, the prime contractor may withhold the amount as allowed under the subcontract. If the prime contractor withholds an amount under this subsection, the prime contractor shall:

(A) Give the subcontractor notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the subcontractor payment;

(B) Give the contracting officer of the public body a copy of the notice furnished to the subcontractor under (e)(i)(A) of this subsection; and

(C) Pay the subcontractor within eight working days after the subcontractor satisfactorily completes the remedial action identified in the notice.

(ii) If the prime contractor does not comply with the notice and payment requirements of (e)(i) of this subsection, the contractor shall pay the subcontractor interest on the withheld amount from the eighth working day at an interest rate that is equal to the amount set forth in subsection (1) of this section.

(3) For the purposes of this section:

(a) A payment is considered to be made when mailed, sent via electronic funds transfer, or personally delivered to the party being paid.

(b) An invoice is considered to be received when it is date-stamped or otherwise marked as delivered. If the invoice is not date-stamped or otherwise marked as delivered, the date of the invoice is considered to be the date when the invoice is received.

NEW SECTION. **Sec.**  RCW 39.04.360 (Payment of undisputed claims—Change orders—Civil actions for violations) and 2024 c 199 s 1 & 2009 c 193 s 1 are each repealed.

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