
SENATE BILL 5176

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By Senators Valdez, J. Wilson, Conway, Hasegawa, and Nobles

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

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

5 **Sec. 1.** RCW 39.04.250 and 1992 c 223 s 5 are each amended to
6 read as follows:

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

12 (a) Payment cutoff dates;

13 (b) Invoice due dates;

14 (c) Review time frames;

15 (d) Notice procedures;

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

18 (f) Retainage withholding; and

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

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

16 (~~(2)~~) (3) In the event of a good faith dispute over all or any
17 portion of the amount due on a payment from the state or a
18 municipality to the prime contractor, or from the prime contractor or
19 subcontractor to a subcontractor, then the state or the municipality,
20 or the prime contractor or subcontractor, may withhold no more than
21 (~~one hundred fifty~~) 100 percent of the disputed amount. Those not a
22 party to a dispute are entitled to full and prompt payment of their
23 portion of a draw, progress payment, final payment, or released
24 retainage.

25 (~~(3)~~) (4) In addition to all other remedies, any person from
26 whom funds have been withheld in violation of this section (~~shall be~~
27 ~~entitled to receive from~~) must be paid by the person wrongfully
28 withholding the funds, one percent per month interest accrued for
29 every month (~~and~~) or portion thereof that payment including
30 retainage is not made (~~, interest at the highest rate allowed under~~
31 RCW 19.52.025)). In any action for the collection of funds wrongfully
32 withheld, the prevailing party (~~shall be~~) is entitled to dispute
33 costs (~~of suit~~) and reasonable attorneys' fees.

34 (5) No later than 30 days after satisfactory completion of any
35 additional work or portion of any additional work by a contractor,
36 subcontractor, or supplier on a public works project or private
37 construction project, except private residential projects of 12 units
38 or less, and receipt by the owner, state, or municipality of a
39 request from the contractor for issuance of a change order to the
40 contract, the owner, state, or municipality shall issue a change

1 order to the contract for the full dollar amount of the work not in
2 dispute to the contractor. Within 10 days of receipt of a change
3 order from the owner, state, municipality, or upper-tier contractor,
4 the contractor or subcontractor must issue change orders to lower-
5 tier subcontractors impacted by the change. If the owner, state, or
6 municipality does not issue such a change order within the 30 days,
7 or the contractor or upper-tier subcontractor does not issue a change
8 order to lower-tier subcontractors within 10 days after receipt of
9 the approved change order, interest accrues on the dollar amount of
10 the additional work satisfactorily completed and not in dispute until
11 a change order is issued. The owner, contractor, subcontractor,
12 state, or municipality shall pay their proportionate share of the
13 interest at a rate of one percent per month.

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

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

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

37 **Sec. 2.** RCW 39.76.011 and 1992 c 223 s 1 are each amended to
38 read as follows:

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

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

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

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

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

39 (d) If part or all of a payment is withheld under (b) of this
40 subsection, the public body shall pay the withheld amount within

1 ((~~thirty~~)) 30 calendar days after the prime contractor satisfactorily
2 completes the remedial actions identified in the notice. If the
3 withheld amount is not paid within the ((~~thirty~~)) 30 calendar days,
4 the public body shall pay interest under subsection (1) of this
5 section from the ((~~thirty-first~~)) 31st calendar day until the date
6 paid.

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

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

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

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

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

31 (3) For the purposes of this section:

32 (a) A payment is considered to be made when mailed or personally
33 delivered to the party being paid.

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

1 NEW SECTION. **Sec. 3.** RCW 39.04.360 (Payment of undisputed
2 claims—Change orders—Civil actions for violations) and 2024 c 199 s
3 1 & 2009 c 193 s 1 are each repealed.

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