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HOUSE BILL 2852

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Graves and Haler

Read first time 01/18/18. Referred to Committee on Capital Budget.

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) The rights provided for under this section shall serve as the  
20 exclusive remedy for all disputes, including but not limited to  
21 coverage disputes involving a performance bond or payment bond  
22 required under RCW 39.08.010, except as otherwise set forth in the  
23 bond or provided for in RCW 39.08.030.

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