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SENATE BILL 5848

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State of Washington

58th Legislature

2003 Regular Session

By Senators Brandland, Haugen, Esser, T. Sheldon, Johnson, Hargrove, Sheahan and Shin

Read first time 02/14/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to the timely payment by government on contract  
2 claims; amending RCW 39.76.011 and 39.76.020; and adding a new section  
3 to chapter 39.76 RCW.

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

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

7 (1) Except as provided in RCW 39.76.020, every state agency,  
8 county, city, town, school district, board, commission, or any other  
9 public body shall pay interest at a rate of one and one-half percent  
10 per month(~~(, but at least one dollar per month,)~~) on amounts due on  
11 written contracts for public works, personal services, goods and  
12 services, equipment, and travel, whenever the public body fails to make  
13 timely payment. Chapter 19.52 RCW does not apply to this section.

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

15 (a) Except as provided otherwise in this subsection, a check or  
16 warrant is mailed or is available on the date specified for the amount  
17 specified in the applicable contract documents but not later than  
18 thirty days of receipt of a properly completed invoice or receipt of  
19 goods or services, whichever is later. If a contract is funded by

1 grant or federal money, the public body shall pay the prime contractor  
2 for satisfactory performance within thirty calendar days of the date  
3 the public body receives a payment request that complies with the  
4 contract or within thirty calendar days of the date the public body  
5 actually receives the grant or federal money, whichever is later.

6 (b) On written contracts for public works, when part or all of a  
7 payment is going to be withheld for unsatisfactory performance or if  
8 the payment request made does not comply with the requirements of the  
9 contract, the public body shall notify the prime contractor in writing  
10 within eight working days after receipt of the payment request stating  
11 specifically why part or all of the payment is being withheld and what  
12 remedial actions must be taken by the prime contractor to receive the  
13 withheld amount.

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

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

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

37 (A) Give the subcontractor notice of the remedial actions that must

1 be taken as soon as practicable after determining the cause for the  
2 withholding but before the due date for the subcontractor payment;

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

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

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

14 (3) For the purposes of this section:

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

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

21 **Sec. 2.** RCW 39.76.020 and 1981 c 68 s 2 are each amended to read  
22 as follows:

23 RCW 39.76.010 does not apply to the following:

- 24 (1) Interagency or intergovernmental transactions;
- 25 (2) Amounts payable to employees or prospective employees of state  
26 agencies or local governmental units as reimbursement for expenses;
- 27 (3) Belated claims for any time of delinquency after July 31  
28 following the second year of the fiscal biennium;
- 29 (4)(a) Claims subject to a good faith dispute, when before the date  
30 of timely payment, notice of the dispute is:

- 31 (~~(a)~~) (i) Sent by certified mail;
- 32 (~~(b)~~) (ii) Personally delivered; or
- 33 (~~(c)~~) (iii) Sent in accordance with procedures in the contract;
- 34 (b) This subsection (4) is only applicable to the portion of the  
35 claim that is being disputed in good faith. Any portion of the claim  
36 that is not being disputed in good faith must be paid in a timely

1 manner and is subject to RCW 39.76.010 or 39.76.011 and section 3 of  
2 this act.

3 (5) Delinquencies due to natural disasters, disruptions in postal  
4 or delivery service, work stoppages due to labor disputes, power  
5 failures, or any other cause resulting from circumstances clearly  
6 beyond the control of the unit of local government or state agency;

7 (6) Contracts entered before July 26, 1981; and

8 (7) Payment from any retirement system listed in RCW 41.50.030 and  
9 chapter 41.24 RCW.

10 NEW SECTION. Sec. 3. A new section is added to chapter 39.76 RCW  
11 to read as follows:

12 Any person who prevails against a public body in any action brought  
13 to collect interest due under this chapter, shall be awarded the  
14 interest due, including interest on payments that were not withheld in  
15 good faith under RCW 39.76.020(4), plus all costs, including reasonable  
16 attorney fees, incurred in connection with the legal action. In  
17 addition, it shall be within the discretion of the court to award the  
18 person an amount not less than five dollars and not to exceed one  
19 hundred dollars for each day that payments upon which interest accrued  
20 were withheld.

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