H-4364.1

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**SUBSTITUTE HOUSE BILL 2852**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Graves and Haler)

AN ACT Relating to attorneys' fees on public works contracts; amending RCW 39.04.240; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that many small businesses, particularly minority and women-owned contracting businesses, have difficulty in securing bonds and contract work. Mandating these contractors to pay an award of attorneys' fees in disputes arising from public works contracts creates a disincentive for good faith settlement negotiations between a performance bond claimant and the contractor. It further unfairly increases costs for these talented entrepreneurs and small business owners who are already significantly under-represented in the industry and further denies them equitable competitive opportunities in public works contracting. Therefore, the legislature intends for the award of attorneys' fees in disputes arising from public works contracts to be paid only if the prevailing party recovers more than the amount offered in settlement.

**Sec.**  RCW 39.04.240 and 1999 c 107 s 1 are each amended to read as follows:

(1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract, including an action under a performance bond or payment bond required under RCW 39.08.010, in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum dollar limitation in RCW 4.84.250 shall not apply; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void as against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration.

(3) Except as otherwise provided for in RCW 39.08.030, set forth in the terms of a performance or payment bond, or otherwise provided for by contract or statute, the rights provided for under this section serve as the exclusive remedy for recovery of attorneys' fees and other costs in an action arising out of a public works contract, including but not limited to coverage disputes involving a performance bond or payment bond required under RCW 39.08.010.

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