

HOUSE BILL REPORT

ESSB 6040

As Reported by House Committee On:
Capital Budget

Title: An act relating to prompt payment in public works.

Brief Description: Concerning prompt payment in public works.

Sponsors: Senate Committee on State Government & Elections (originally sponsored by Senators Valdez, Keiser, Conway, Hasegawa and Nobles).

Brief History:

Committee Activity:

Capital Budget: 2/23/24, 2/26/24 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Requires the Capital Projects Advisory Review Board to review the extent to which prompt pay statutes meet the needs of small businesses, particularly women and minority-owned businesses, as well as make findings and any recommendations the board develops.
- Requires the board to engage stakeholders as part of its work.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended. Signed by 26 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Abbarno, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Steele, Assistant Ranking Minority Member; Alvarado, Bateman, Christian, Eslick, Farivar, Fosse, Kloba, Kretz, Leavitt, Maycumber, Morgan, Mosbrucker, Orwall, Peterson, Reed, Rule, Sandlin, Shavers, Stearns and Waters.

Staff: Charlie Gavigan (786-7340).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Generally, the state or other public owner must pay the contractor on a public works project the amount due at the time specified in the contract, but not later than 30 days after the invoice or delivery of goods or services, whichever is later. When a contractor or subcontractor is paid for work performed on a public works project, they must pay subcontractors no later than 10 days after receipt of payment.

In the event of a good faith dispute over all or any portion of the amount due from the state or other public owner to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or other public owner may withhold no more than 150 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.

Anyone whose funds have been withheld in violation of law are entitled to receive interest at the highest rate allowed by statute for every month of nonpayment from the person wrongfully withholding the funds. In any action for the collection of wrongfully withheld funds, the prevailing party is entitled to costs of suit as well as reasonable attorneys' fees.

The Office of Minority and Women's Business Enterprises certifies minority and women-owned businesses to participate in public contracting and procurement. This program includes a comprehensive certification process and support services to assist these businesses in participating in public works projects and public contracts for goods and services.

Summary of Amended Bill:

The Capital Projects Advisory Review Board must review the extent to which prompt pay statutes meet the needs of small businesses, particularly women and minority-owned businesses, as well as make findings and any recommendations the board develops. The board is to engage stakeholders as part of its work.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill strikes the underlying provisions in the bill that: (1) require the state to promptly pay the prime contractor for work or materials provided by a subcontractor that is a women or minority-owned small business, and (2) require the prime contractor and each higher tier subcontractor to make payment until the women or minority-owned business subcontractor receives payment. It adds a requirement that the Capital Projects Advisory Review Board review the extent to which prompt pay statutes meet the needs of small businesses, particularly women and minority-owned businesses, as well as make findings and any recommendations the board develops. The board is to engage stakeholders as part

of its work.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Prompt pay is very important, especially for small and women and minority-owned businesses. Not being promptly paid negatively impacts cash flow and working capital. Late payments affect the ability to operate a business effectively and can result in having to lay off employees or even go out of business. Requiring prompt pay to women and minority-owned businesses is a significant step forward in equity. Delays threaten the health of small businesses, many of which operate on small margins. The negative impact of late payments cannot be overstated. It is time to act on this issue.

(Opposed) While slow payment on public works projects is a challenge, and the bill has improved as it has gone through the process, a more holistic approach is needed. Gather additional data and do something that works for everyone. There is a need for prompt pay, but issues still exist. Have the Capital Projects Advisory Review Board review this issue and make recommendations for consideration in the next Legislative session.

(Other) The Capital Projects Advisory Review Board is reviewing the prompt pay issue and its impact on women and minority-owned businesses, including cash flow. The board will have recommendations for the Legislature next session.

Persons Testifying: (In support) Senator Javier Valdez, prime sponsor; Paula Sardinias, We Build Back Black Alliance for Tabor 100; Brian Sims, United Evergreen Sign Company; Darci Henderson, Alltrus Clean; and Albert Sardinias, We Build Back Black Alliance.

(Opposed) Jerry VanderWood, Associated General Contractors of Washington; and Michael Transue, Mechanical Contractors Association of Western Washington and the Washington Aggregate and Concrete Association.

(Other) Janice Zahn, Capital Projects Advisory Review Board.

Persons Signed In To Testify But Not Testifying: None.