

SENATE BILL REPORT

SB 5176

As of January 23, 2025

Title: An act relating to implementing prompt pay recommendations from the capital projects advisory review board.

Brief Description: Implementing prompt pay recommendations from the capital projects advisory review board.

Sponsors: Senators Valdez, Wilson, J., Conway, Hasegawa and Nobles.

Brief History:

Committee Activity: State Government, Tribal Affairs & Elections: 1/17/25.

Brief Summary of Bill

- Requires payment on public works projects within 30 days of receipt of a properly completed invoice, and all subcontractors to be paid within ten days after payment is received by the prime contractor, with 1 percent interest per month charged on all late payments.
- Sets forth requirements for public works contracts and modifies requirements for requesting change orders.
- Adjusts the rate of withholding in good faith disputes from 150 percent to 100 percent.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL AFFAIRS & ELECTIONS

Staff: Danielle Creech (786-7412)

Background: Under current law when a contractor or subcontractor is paid for work performed on a public works project, they must pay subcontractors no later than ten days after receipt of payment. In the event of a good faith dispute over all or any portion of the

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amount due from the state or municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state, municipality, prime contractor or subcontractor 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 the suit as well as reasonable attorneys' fees.

In 2024, the Legislature passed ESSB 6040, directing the Capital Projects Advisory Review Board (CPARB) to conduct a study on prompt pay. The Legislature required CPARB to engage with a broad range of stakeholders in considering possible recommendations related to the extent to which prompt pay statutes meet the needs of small businesses, particularly women and minority-owned businesses. The Legislature also required the study to include consideration of the following requirements:

- for state and local entities to pay the prime contractor within 30 days for work satisfactorily completed or materials delivered by a subcontractor of any tier that is a small business or women or minority-owned business enterprise; and
- within ten days of payment, the prime contractor and each higher-tier subcontractor must make payment to its subcontractor until the small business or women or minority-owned business has received payment.

CPARB presented its findings and recommendations to the Senate State Government and Elections Committee at its December 12, 2024 meeting.

Summary of Bill: The state or municipality must pay on public works projects within 30 days of receipt of a properly completed invoice, and all subcontractors must be paid within ten days after payment is received by the prime contractor. For all late payments where there is no good faith dispute provided, the payor must provide a payment recovery schedule that includes 1 percent interest per month accruing on past due amounts. In the event of a good faith dispute, the payor may withhold no more than 100 percent of the disputed amount.

All contracts must contain the following:

- payment cutoff dates;
- invoice due dates;
- review timeframes;
- notice procedures;
- payment timelines, which must include a payment release schedule with dates, if properly completed invoices are received;
- retainage withholding; and
- a payment release schedule, which must be included in contracts made with subcontractors at every tier to ensure project payment release expectations are

provided for the project.

Change Orders. Within 30 days after satisfactory completion of any additional work by a contractor, subcontractor, or supplier on a public works project—or private construction project, excluding private residential projects of 12 units or less—and receipt by the owner, state or municipality of a request for issuance of a change order, the owner, state or municipality must issue a change order for the full dollar amount of the work not in dispute to the contractor. Within ten days of receipt of a change order, upper-tier contractors must issue change orders to lower-tier subcontractors impacted by the change. If the change order is not issued within the required timeframe, the payor(s) must pay 1 percent interest per month. If a contractor or subcontractor has requested the change order from the owner, upper-tier contractor, state, or municipality within the required timeframe and it is not issued within the required timeframe, the requestor is not liable for any interest on the unpaid dollar amount for any additional work satisfactorily completed.

Appropriation: None.

Fiscal Note: Requested on January 09, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.