

SENATE BILL REPORT

SB 5176

As Reported by Senate Committee On:
State Government, Tribal Affairs & Elections, January 24, 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, 1/24/25 [DPS-WM].

Brief Summary of First Substitute 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

Majority Report: That Substitute Senate Bill No. 5176 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Valdez, Chair; Krishnadasan, Vice Chair; Wilson, J., Ranking

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.

Member; Fortunato, Hasegawa, Kauffman, McCune, Riccelli and Short.

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 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 (First Substitute): 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.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT, TRIBAL AFFAIRS & ELECTIONS COMMITTEE (First Substitute):

- The statutory reference to RCW 39.76.011(3) in section 1(1) is revised; and
- Electronic funds transfer is added as a valid form of payment.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on First Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: Small businesses are one of the primary drivers of our state economy, and when payments are delayed these businesses struggle to meet payroll, provide health insurance, buy supplies, and make their union payments. For them, prompt payment is a lifeline. We routinely see projects that small businesses would like to pursue, but are constrained because they're unsure whether the clients will be able to pay on time. This is not just about administrative efficiency, it is about economic justice. Timely payments allow for small businesses to sustain their

operations. This bill is not just about uplifting our local community, it is about survival for many small businesses that build our state. This will foster equity, transparency, and economic stability in public contracting.

OTHER: The language in the bill references payments being mailed or personally delivered to the parties being paid. The concept of electronic payment should also be added as a form of valid payment. Additionally, the 30 day payment period should begin after receiving any required release from state agencies. There needs to be enough time for change orders to be fully negotiated before the clock starts to tick. There are concerns over the ability to monitor and enforce interest charges related to late payments.

Persons Testifying: PRO: Senator Javier Valdez, Prime Sponsor; Linneth Riley-Hall, Capital Projects Advisory Review Board (CPARB); Lekha Fernandes, CPARB (BE/DBI sub committee), OMWBE; Jerry VanderWood, Associated General Contractors (AGC); Van Collins, PO Box 65051; Julius Brooks, Yates Consulting; Jimmy Matta, Northwest Minority Builders Alliance (NWMBA) ; Axel Swanson, Washington State Association of County Engineers; Paula Sardinias, WBBA/Tabor 100; Chris Herman, Washington Public Ports Association.

OTHER: Scott Hazlegrove, WA Association of Sewer & Water Districts; Katie Whittier, Clark Regional Wastewater District, Discovery Clean Water Alliance; Joren Clowers; Kelsey Hulse, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.