

Section 1: New Section – Intent

The legislature intends to do good things. But needs our help. 😊

The intent of this legislation is to ensure prompt payment is made to all subcontractors on public works projects.

Section 2: Payments received on account of work performed by subcontractor—Disputed amounts—Remedies: amend 39.04.250 as follows:

Change title: Payments to Prime Contractors and Subcontractors

Public agencies must make payment to prime contractors within 30 days of receipt of a properly completed invoice in accordance with RCW 39.76.011. Instructions for a properly completed invoice must be included in the contract documents. Invoice due date, review period, notice of remedies/remedial actions and payment timelines must be included in the contract. Payment timelines will include a payment schedule with dates if properly completed invoices are received and will also be required for any contracts made with subcontractors to ensure everyone is aware of payment schedule and dates.

(1) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor ~~shall~~ must pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein. If payments do not adhere to the payment schedule, the contractor or subcontractor must inform the impacted subcontractor of the reason for delay and anticipated new payment date.

(2) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than ~~one hundred fifty~~ 100 percent of the disputed amount or the estimated cost of the remedy whichever is greater. 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.

(3) In addition to all other remedies, any person from whom funds have been withheld in violation of this section ~~shall be entitled to receive from~~ must be paid by the person wrongfully withholding the funds, for every month and portion thereof that payment including retainage is not made, interest as defined in RCW 39.76.011 ~~at the highest rate allowed under RCW 19.52.025~~. In any action for the collection of funds wrongfully withheld, the prevailing party ~~shall be~~ is entitled to costs of suit and reasonable attorneys' fees.

RCW 39.04.360: (as amended by SB 6192): Amend as follows: This section should move to 39.04.251

(1) No later than 30 days after satisfactory completion ~~the commencement~~ of any additional work ~~or portion of any additional work~~ by a contractor, subcontractor, or supplier on a public works project or private construction project, except private residential projects of 12 units or less, and receipt by the

owner, state, or municipality of a request from the contractor for issuance of a change order to the contract, the owner, state, or municipality ~~shall~~ must issue a change order to the contract for the full dollar amount of the work not in dispute to the contractor. Within 10 days of receipt of a change order from the owner, state, municipality, or upper-tier contractor, the contractor or subcontractor must issue change orders to lower-tier subcontractors impacted by the change. If the owner, state, or municipality does not issue such a change order within the 30 days, or the contractor or upper-tier subcontractor does not issue a change order to lower-tier subcontractors within 10 days after receipt of the approved change order, interest must accrue on the dollar amount of the additional work satisfactorily completed and not in dispute until a change order is issued. The owner, contractor, subcontractor, state, or municipality ~~shall~~ must pay their proportionate share of the interest at a rate of one percent per month. For the purposes of this section, as it pertains to obligations of an owner, state, or municipality, additional work is work beyond the scope defined in the contract between the contractor and the owner, state, or municipality.

(2) No later than 30 days after ~~satisfactory completion~~ the commencement of any additional work ~~or portion of any additional work~~ authorized by the owner, state, or municipality and a request by a subcontractor or supplier, the contractor must request a change order from the owner, state, or municipality. A lower-tier subcontractor or supplier must request a change order from the upper-tier contractor 30 days after the completion of the additional work and a request from the lower tier subcontractor. If a contractor or subcontractor has requested the change order from the owner, upper-tier contractor, state, or municipality within 30 days of the request from the subcontractor or supplier, the contractor or subcontractor is not liable for any interest on the unpaid dollar amount for any additional work satisfactorily completed and not in dispute if the owner, upper-tier contractor, state, or municipality has not issued the requested change order. This section does not provide any rights to a contractor, subcontractor, or supplier against a party with whom they are not a party to a written contract.

(3) An aggrieved party may bring a civil action for violations of this section in a court of competent jurisdiction for appropriate relief, including interest and reasonable attorneys' fees and costs.

**RCW [39.76.011](#) Interest on unpaid public contracts—When payment is considered to be made.
Amended as follows**

(1) Except as provided in RCW [39.76.020](#), every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

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

(a) Except as provided otherwise in this subsection, a check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents but not later than ~~thirty~~ 30 days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If a contract is funded by grant or federal money, the public body ~~shall~~ must pay the prime contractor for satisfactory performance within ~~thirty~~ 30 calendar days of the date the public body receives a payment

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request that complies with the contract or within ~~thirty~~ 30 calendar days of the date the public body actually receives the grant or federal money, whichever is later.

(b) On written contracts for public works, when part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made does not comply with the requirements of the contract, the public body shall notify the prime contractor in writing within ~~eight~~ 8 working days after receipt of the payment request stating specifically why part or all of the payment is being withheld and what remedial actions must be taken by the prime contractor to receive the withheld amount. Payments for subcontracted work where there is no dispute must not be withheld and must follow the payment schedule outlined above. If payments are withheld due to the public body, interest will accrue as outlined in subsection (1).


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

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

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

(A) Give the subcontractor notice of the remedial actions that must be within 8 working days after determining the cause for the withholding but before the due date for the subcontractor payment;

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

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

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

(3) For the purposes of this section:

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

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

