

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 758** HLS 20RS 1079
 Bill Text Version: **ORIGINAL**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: May 4, 2020	8:08 AM	Author: ZERINGUE
Dept./Agy.: Statewide		Analyst: Alan M. Boxberger
Subject: Provides relative to payments under public contract		

PUBLIC CONTRACTS OR SEE FISC NOTE LF EX Page 1 of 1
 Provides relative to payments under public contract

Present law requires public entities to promptly pay obligations from public contracts and specifies that provisions of present law related to prompt payments are no subject to waiver by contract. Proposed law removes the exception that prompt payments under public contracts shall not be subject to waiver by contract.

EXPENDITURES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Annual Total						
REVENUES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

EXPENDITURE EXPLANATION

Proposed law may result in an indeterminable expenditure decrease for state or local governing entities to the extent that those entities elect to include contract provisions waiving requirements for prompt payment. Under present law any public entity that fails to pay any progressive stage payment within forty-five days following receipt of a certified request for payment or following a receipt of clear lien certificate, or following formal final acceptance, shall be liable for reasonable attorney fees and interest charged at one-half percent accumulated daily, not to exceed fifteen percent (thirty days maximum). To the degree that a public entity includes a waiver and fails to pay progressive state payments within the prescribed time period, any such attorney fees and interest charges may be nullified. The LFO assumes such expenditures are made from Local Funds for local governmental units, SGF (or alternate means of finance) for state entities, or from contingency authority for capital outlay projects where available. The prevalence and dollar value of such payments under present law is unknown and unavailable; therefore the potential expenditure impact is indeterminable but potentially significant.

For informational purposes, a recent ruling by the 4th Circuit Court of Appeals held that liquidated damages assessed against a public works contractor are a penalty and cannot be withheld from the amount owed to a contractor for satisfactory completion of a public works contract. The relevant public entity would be required to pursue claims to liquidated damages against the contractor for breach of contract. A more recent 1st Circuit Court of Appeals ruling found the opposite, allowing liquidated damages to be withheld from the amount owed to a contractor. The issue is not yet settled by the courts.

REVENUE EXPLANATION

There is no anticipated direct material effect on governmental revenues as a result of this measure.

<u>Senate</u>	<u>Dual Referral Rules</u>	<u>House</u>
<input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}		<input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
<input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}		<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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