

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 758** HLS 20RS 1079
 Bill Text Version: **REENGROSSED**
 Opp. Chamb. Action: **w/ HSE COMM AMD**
 Proposed Amd.:
 Sub. Bill For.:

| | | |
|---|---------|-----------------------------------|
| Date: May 26, 2020 | 5:59 AM | Author: ZERINGUE |
| Dept./Agy.: Statewide | | Analyst: Alan M. Boxberger |
| Subject: Provides relative to payments under public contract | | |

PUBLIC CONTRACTS RE1 SEE FISC NOTE LF EX See Note 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 not subject to waiver by contract. Proposed law provides a definition of liquidated damages and provides that any entity letting a public works construction contract, as per the contract, may withhold liquidated damages from any payments or monies otherwise due to the contractor, taking into consideration all granted time extensions, after the expiration of the forty-five day period set forth in R.S. 38:2242(B).

| 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 allowing the withholding of liquidated damages from any payments or monies otherwise due to the contractor and to the extent the contractor fails to meet its deliverable triggering liquidated damage provisions under the contract. 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).

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. Proposed law expresses legislative intent that liquidated and delay damages can be withheld from the amount owed to a contractor pursuant to the terms of the contract without violating the prompt payment clauses included in present law.

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 in the aggregate statewide.

REVENUE EXPLANATION

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

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| <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} |

Evan Brasseaux
Evan Brasseaux
Staff Director