

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 5/1/26

Referred: Labor and Commerce, Transportation

A BILL**FOR AN ACT ENTITLED**1 **"An Act relating to retainage on public and private construction contracts."**2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**3 * **Section 1.** AS 36.90.210 is amended to read:4 **Sec. 36.90.210. Required contractual terms.** (a) The prime contractor and a
5 subcontractor on a public construction or public works contract must include in a
6 subcontract between the prime contractor and subcontractor for the public construction
7 or public works a clause that requires the prime contractor to pay8 (1) the subcontractor for satisfactory performance under the
9 subcontract within eight working days after receiving payment from which the
10 subcontractor is to be paid;11 (2) the subcontractor all retainage due under the subcontract within **the**
12 **period provided in AS 45.45.940(c)** [EIGHT WORKING DAYS AFTER FINAL
13 PAYMENT IS RECEIVED FROM THE STATE OR POLITICAL SUBDIVISION]
14 or after the notice period under AS 36.25.020(b) expires, whichever is later;

15 (3) the subcontractor interest on an amount that is not paid in

1 accordance with (1) of this subsection for the period beginning on the day after the
 2 required payment date and ending on the day on which payment of the amount due is
 3 made; the interest shall be computed at an interest rate that is equal to the amount set
 4 out in AS 45.45.010(a);

5 (4) a penalty and interest on retainage withheld from the
 6 subcontractor as provided in AS 45.45.940(e) [AT AN INTEREST RATE THAT IS
 7 EQUAL TO THE AMOUNT SET OUT IN AS 45.45.010(a)].

8 (b) A subcontractor on a public construction or public works contract must
 9 include in each subcontract under which a person agrees to provide the subcontractor
 10 with services, other than as an employee, or supplies to be used in the public
 11 construction or public works project a clause that requires the subcontractor to pay

12 (1) the person for satisfactory performance under the subcontract
 13 within eight working days after receiving payment from which the person is to be
 14 paid;

15 (2) the person all retainage due under the subcontract within the
 16 period provided in AS 45.45.940(c) [WITH THE PERSON WITHIN EIGHT
 17 WORKING DAYS AFTER THE SUBCONTRACTOR RECEIVES ITS SHARE OF
 18 THE STATE-HELD RETAINAGE FROM THE PRIME CONTRACTOR OR
 19 ANOTHER SUBCONTRACTOR];

20 (3) the person interest on an amount that is not paid in accordance with
 21 (1) of this subsection for the period beginning on the day after the required payment
 22 date and ending on the day on which payment of the amount due is made; the interest
 23 shall be computed at an interest rate that is equal to the amount set out in
 24 AS 45.45.010(a);

25 (4) a penalty and interest on retainage withheld from the person as
 26 provided in AS 45.45.940(e) [AT AN INTEREST RATE THAT IS EQUAL TO THE
 27 AMOUNT SET OUT IN AS 45.45.010(a)].

28 * **Sec. 2.** AS 36.90.240 is amended to read:

29 **Sec. 36.90.240. Form of certain notices.** A notice under AS 36.90.230(a)(1)
 30 [AS 36.90.220(2) OR 36.90.230(a)(1)] must be in writing and must state the amount
 31 being withheld, the specific causes for the withholding under the terms of the

1 subcontract, and the remedial actions to be taken by the subcontractor to receive
2 payment of the amount withheld.

3 * **Sec. 3.** AS 36.90.250(a) is amended to read:

4 (a) The state or a political subdivision of the state shall pay to the prime
5 contractor **a penalty and** interest on retainage, including warranty retainage, on a
6 contract for public construction or public works **as provided in AS 45.45.940(e)** [AT
7 AN INTEREST RATE THAT IS EQUAL TO THE AMOUNT SET OUT IN
8 AS 45.45.010(a). INTEREST ON RETAINAGE ACCRUES FROM THE DATE OF
9 APPROVAL OF A PAY REQUEST UNTIL THE DATE OF PAYMENT TO THE
10 CONTRACTOR].

11 * **Sec. 4.** AS 36.90.265 is amended by adding a new subsection to read:

12 (b) AS 45.45.940 applies to a public construction or public works contract of a
13 political subdivision of the state.

14 * **Sec. 5.** AS 36.90.270 is amended to read:

15 **Sec. 36.90.270. Waiver of provisions prohibited.** A contract provision that
16 waives a provision required by AS 36.90.200 - 36.90.290 **or AS 45.45.940** is void.

17 * **Sec. 6.** AS 45.45 is amended by adding a new section to article 13 to read:

18 **Sec. 45.45.940. Retainage on a contract for private construction.** (a) In a
19 contract for private construction, a project owner, contractor, or subcontractor may not
20 withhold from a progress payment as retainage an amount that exceeds five percent of
21 the total amount of the progress payment. The total amount of the retainage withheld
22 from the progress payments may not exceed five percent of the total amount of the
23 contract price.

24 (b) A contractor or subcontractor may not withhold a percentage of an amount
25 as retainage that exceeds the percentage specified in the contract between the project
26 owner and the contractor.

27 (c) A contractor shall pay a subcontractor all retainage due under the
28 subcontract within 10 days after the contractor receives the retainage payment from
29 the project owner or within 30 days after the subcontractor's satisfactory completion of
30 the work required under the subcontract, whichever is sooner. A project owner shall
31 pay a contractor all retainage due under the contract within 30 days after the

1 contractor's satisfactory completion of the work required under the contract, unless the
2 contract provides for a different period.

3 (d) Money withheld as retainage shall be placed in an interest-bearing escrow
4 account. Interest earned on retainage shall be proportionately distributed with
5 retainage payments to the contractor and subcontractors from whom the retainage was
6 withheld.

7 (e) If the project owner fails to make a retainage payment to a contractor in
8 accordance with the construction contract, or if the contractor fails to make a retainage
9 payment to a subcontractor within the time specified in (c) of this section, the project
10 owner or contractor shall pay a penalty equivalent to two percent of the unpaid
11 amount, and interest shall accrue on the unpaid amount beginning the first calendar
12 day after the date on which the payment was due. Interest is calculated under this
13 subsection by using the prime rate, as defined in AS 44.88.599. A contractor or
14 subcontractor owed a penalty under this subsection may waive the penalty.

15 (f) Notwithstanding AS 09.30.065, in a civil action to recover damages under
16 this section, a court shall award attorney fees to a party recovering a money judgment
17 as follows:

18 (1) 40 percent of the amount of a judgment, including prejudgment
19 interest, that totals \$25,000 or less; and

20 (2) 20 percent on the portion of a judgment, including prejudgment
21 interest, that exceeds \$25,000.

22 (g) In this section,

23 (1) "contractor" means an entity that enters into a construction contract
24 with a project owner;

25 (2) "entity" means a person, the state, or a political subdivision of the
26 state;

27 (3) "project owner" means an entity that engages the services of a
28 contractor for the purpose of working on a construction project;

29 (4) "retainage" means money withheld from a contractor or
30 subcontractor until completion of a contract or satisfaction of another contingency;

31 (5) "subcontractor" means a person to which a contractor sublets all or

1 part of a contractor's initial undertaking.

2 * **Sec. 7.** AS 36.90.220(2) and 36.90.250(b) are repealed.

3 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. This Act applies to construction contracts, public construction
6 contracts, and public works contracts entered into on or after the effective date of this Act.