

ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE



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HB 389

Sectional Analysis

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Version I (34-LS1573\I)

Section 1 *AS 36.90.210. Required contractual terms.*

Amends AS 36.90.210 (a) and (b), which outline the requirements under which contractors pay retainage on public construction and public works. New language modifies the timeline in which payments must be made in accordance with AS 45.45.940(c) and provides for a penalty on withheld retainage as specified in AS 45.45.940(e).

Section 2 *AS 36.90.240. Form of certain notices.*

Amends AS 36.90.240 with a conforming change to specify that a notice under AS 36.90.230(a)(1) must meet the requirements laid out in AS 36.90.240.

Section 3 *AS 36.90.250 Retainage*

Amends AS 36.90.250 (a) to require that the state or political subdivision of the state also must pay a penalty on withheld retainage in accordance with AS 45.45.940(e).

Section 4 *AS 36.90.265 Application to political subdivisions*

Adds a new subsection (b) to apply AS 45.45.940 to public construction contracts entered by political subdivisions of the state.

Section 5 *AS 36.90.270. Waiver of provisions prohibited.*

Amends AS 36.90.270, which prohibits contractual waiver of rights and requirements, to include AS 45.45.940.

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Section 6 AS 45.45 TRADE PRACTICES

Amends AS 45.45 to add a new section: “Section 45.45.940 Retainage on a contract for private construction”

Sec. 45.45.940 Retainage on a contract for private construction

Subsection (a) Limits retainage to no more than five percent of a progress payment and total contract price.

Subsection (b) Prevents contractors or subcontractors from withholding retainage at a higher percentage than specified in the prime contract.

Subsection (c) Establishes deadlines for payment of retainage to contractors and subcontractors following project completion or receipt of payment. To a subcontractor, within 10 days after receipt of payment from project owner. To a contractor, within 30 days of completion of work.

Subsection (d) Requires retainage to be held in an interest-bearing escrow account with interest distributed proportionally.

Subsection (e) Imposes a two percent penalty and interest (based on the prime rate defined in AS 44.88.599) for late retainage payments. Clarifies that a contractor or sub-contractor can waive the penalty.

Subsection (f) Establishes mandatory attorney fee awards in civil actions to recover retainage. Fee awards are based on a percentage of the judgment.

Subsection (g) Provides definitions for key terms including “contractor,” “entity,” “project owner,” “retainage,” and “subcontractor.”

Section 7

Repeals AS 36.90.220(2), which allows contractors to negotiate retainage rates in public construction and AS 36.90.250(b), which exempts interest payments from political subdivisions with a population of less than 500.

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Section 8 *Applicability.*

Adds an uncodified section specifying that the Act applies to construction contracts, public construction contracts, and public works contracts entered into on or after the effective date.