

Introduced: 4/19/71
Referred: State Affairs;
Judiciary

1 IN THE SENATE

BY ZIEGLER

2 SENATE BILL NO. 232

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public works contracts."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 36 is amended by adding a new chapter to read:

9 CHAPTER 30. LIEN FOR LABOR, MATERIALS,

10 TAXES ON PUBLIC WORKS.

11 Sec. 36.30.010. RETAINED PERCENTAGE. (a) Contracts for public
12 improvements or work, other than for professional services, by the
13 state, or a borough, city, school district, or other public body,
14 shall provide, and there shall be reserved by the public body from the
15 money earned by the contractor on estimates during the progress of
16 the improvement or work, a sum equal to 10 per cent of the first
17 \$100,000 and five per cent for all amounts over \$100,000 of those
18 estimates. This sum shall be retained by the state, borough, city,
19 school district, or other public body, as a trust fund for the protec-
20 tion and payment of a person or persons, mechanic, subcontractor or
21 materialman who perform any labor upon the contract or the doing of
22 the work, and all persons who supply that person or persons or sub-
23 contractors with provisions and supplies for the carrying on of the
24 work, and the state with respect to taxes imposed under AS 43 which
25 may be due from the contractor. Every person performing labor or
26 furnishing supplies toward the completion of the improvement or work
27 shall have a lien upon this reserved money. Notice of the lien of
28 a claimant shall be given in the manner and within the time provided
29 in AS 34.35. If the governing body or officer acting for the state,

1 borough, city, school district, or other public body, at any time
2 after 50 per cent of the original contract work has been completed,
3 finds that satisfactory progress is being made, the governing body
4 or officer may make any of the partial payments subsequently made
5 in full; but in no event may the amount to be retained be reduced to
6 less than five per cent of the amount of the entire contract.

7 (b) The money reserved under the provisions of (a) of this
8 section, at the option of the contractor, shall be

9 (1) retained in a fund by the public body until 30 days
10 following the final acceptance of the improvement or work as completed;
11 or

12 (2) placed in escrow with a bank or trust company by the
13 public body until 30 days following the final acceptance of the improve-
14 ment or work as completed.

15 (c) When the money reserved is to be placed in escrow, the public
16 body shall issue a check representing the sum of the money reserved
17 payable to the bank or trust company and the contractor jointly. The
18 check shall be converted into bonds and securities chosen by the
19 contractor and approved by the public body and the bonds and securities
20 shall be held in escrow. Interest on the bonds and securities shall
21 be paid to the contractor as the interest accrues.

22 (d) If the public body administering a contract, other than a
23 contract governed by the provisions of sec. 70 of this chapter, after
24 a substantial portion of the work has been completed, finds that an
25 unreasonable delay will occur in the completion of the remaining
26 portion of the contract for any reason not the result of a breach of
27 the contract, it may, if the contractor agrees, delete from the con-
28 tract the remaining work and accept as final the improvement at the
29 stage of completion then attained and make payment in proportion to the

1 amount of the work accomplished and in that event any amounts retained
2 and accumulated under this section shall be held for a period of 30
3 days following the acceptance. In the event that the work is terminated
4 before final completion as provided in this section, the public body
5 may thereafter enter into a new contract with the same contractor to
6 perform the remaining work or improvement for an amount equal to or
7 less than the cost of the remaining work as was provided for in the
8 original contract without advertisement or bid.

9 (e) The provisions of this chapter are exclusive and shall
10 supersede all other statutes and regulations in conflict with it.

11 Sec. 36.30.020. EXCESS OVER LIEN CLAIMS PAYABLE TO CONTRACTOR.
12 After the expiration of the 30 day period, and after receipt of the
13 Department of Revenue's certificate under sec. 60 of this chapter, and
14 the public body is satisfied that the taxes certified as due or to
15 become due by the Department of Revenue are discharged, and the claims
16 of materialmen and laborers who have filed their claims, together with
17 a sum sufficient to defray the cost of foreclosing the liens of the
18 claims, and to pay attorney fees, have been paid, the public body shall
19 pay to the contractor the fund retained by it or release to the con-
20 tractor the securities and bonds held in escrow. If the taxes have
21 not been discharged or the claims, expenses, and fees have not been
22 paid, the public body shall

23 (1) deduct the taxes and the claims, expenses and fees from
24 the fund retained by it and pay the remainder, if any, to the con-
25 tractor; or

26 (2) order the securities and bonds held in escrow to be
27 reconverted to money and returned to the public body which shall deduct
28 the taxes and the claims, expenses, and fees from that sum and pay the
29 remainder, if any, to the contractor.

1 Sec. 36.30.030. FORECLOSURE OF LIEN; LIMITATION OF ACTION;
2 RELEASE OF FUNDS. A person, firm, or corporation filing a claim against
3 the reserve fund has four months from the time of the filing of the
4 claim in which to bring an action to foreclose the lien. The lien
5 shall be enforced by action in the superior court of the judicial dis-
6 trict where filed, and shall be governed by the laws regulating the
7 proceedings in civil actions concerning the manner of trial and the
8 proceedings and laws to secure property so as to hold it for the satis-
9 faction of any lien against it. However, the public body is not
10 required to make any detailed answer to any complaint or other pleading
11 but need only certify to the court the name of the contractor, the
12 work contracted to be done, the date of the contract, the date of
13 completion and final acceptance of the work, the amount retained, the
14 amount of taxes certified due or to become due to the state, and all
15 claims filed with it showing respectively the dates of filing, the
16 names of claimants, and amounts claimed. The certification shall
17 operate to arrest payment of as much of the funds retained as is
18 required to discharge the taxes certified due or to become due and
19 the claims filed in accordance with this chapter. If a claimant fails
20 to bring action to foreclose his lien within the four-month period,
21 the reserve fund shall be discharged from the lien of his claim and
22 the funds shall be paid to the contractor. The four-month limitation
23 may not, however, be construed as a limitation upon the right to sue
24 the contractor or his surety where no right of foreclosure is sought
25 against the fund.

26 Sec. 36.30.040. TAX LIENS; PRIORITY OF LIENS. The amount of all
27 taxes, increases and penalties due or to become due under AS 43 from
28 a contractor or his successors or assignees with respect to a public
29 improvement contract in which the contract price is \$5,000 or more

1 shall be a lien before all other liens upon the amount of the retained
2 percentage withheld by the disbursing officer under the contract, and
3 the amount of all other taxes, increases and penalties due and owing
4 from the contractor shall be a lien upon the balance of the retained
5 percentage remaining in the possession of the disbursing officer after
6 all other statutory lien claims have been paid.

7 Sec. 36.30.050. DUTIES OF DISBURSING OFFICER UPON FINAL ACCEPTANCE
8 OF CONTRACT. Upon final acceptance of a contract, the state, borough,
9 city or other officer charged with the duty of disbursing or author-
10 izing disbursement or payment of these contracts shall immediately
11 notify the Department of Revenue of the completion of the contract.
12 The officer shall not make any payment from the retained percentage
13 fund or release any retained percentage escrow account to any person,
14 until he has received from the Department of Revenue a certificate
15 that all taxes, increases and penalties due from the contractor, and
16 all taxes due and to become due with respect to the contract have
17 been paid in full or that they are, in the department's opinion, readily
18 collectible without recourse to the state's lien on the retained
19 percentage.

20 Sec. 36.30.060. PAYMENTS TO DEPARTMENT OF REVENUE. If within
21 30 days after receipt of notice by the Department of Revenue of the
22 completion of the contract, the amount of all taxes, increases and
23 penalties due from the contractor or any of his successors or assignees
24 or to become due with respect to the contract have not been paid, the
25 Department of Revenue may certify to the disbursing officer the amount
26 of all taxes, increases and penalties due from the contractor, together
27 with the amount of all taxes due and to become due with respect to the
28 contract and may request payment of them to the Department of Revenue
29 in accordance with the priority provided by this chapter. The

1 disbursing officer shall, within 10 days after receipt of the certifi-
2 cate and request, pay to the Department of Revenue the amount of all
3 taxes, increases and penalties certified to be due or to become due
4 with respect to the particular contract, and, after payment of all
5 claims which by statute are a lien upon the retained percentage withheld
6 by the disbursing officer, shall pay to the Department of Revenue the
7 balance, if any, or so much of it as shall be necessary to satisfy the
8 claim of the Department of Revenue for the balance of all taxes,
9 increases or penalties shown to be due by the certificate of the Depart-
10 ment of Revenue. If the contractor owes no taxes imposed under AS 43,
11 the Department of Revenue shall so certify to the disbursing officer.

12 Sec. 36.30.070. PAYMENT OF RESERVED FUNDS BY DEPARTMENT OF HIGH-
13 WAYS; UNFORESEEN CONDITIONS. When final completion of a contract
14 executed by the state Department of Highways for the construction of
15 any highway building, road, bridge, street, or any part of a public
16 highway is delayed by any unforeseen condition beyond the control of
17 the contractor and the reservation of money earned as required by this
18 chapter works undue hardship on the contractor, then the Department of
19 Highways, 30 days after completion of all work required under the
20 contract other than that delayed by the unforeseen condition, if no
21 taxes have been certified as due or to become due by the Department of
22 Revenue and no claims filed by any materialman or laborer, may order
23 funds reserved for the work actually completed paid to the contractor
24 upon the contractor's delivering good and sufficient bond with two or
25 more sureties, or with a surety company, in the amount of the reserved
26 funds then paid to the contractor, to the effect that no taxes shall
27 be certified or claims filed for work done other than that delayed by
28 the unforeseen condition within a period of 30 days following final
29 acceptance of the improvement or work as completed. If the taxes are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

certified or claims filed, recovery may be had on the bond by the Department of Revenue and the materialmen and laborers filing claims.

Sec. 36.30.080. DEFINITIONS. In this chapter "public body" means the state or any political subdivision of the state including, without limitation, a borough, city, school district, or other governmental unit.

Sec. 36.30.090. SEVERABILITY. If any section, provision or part of this chapter is adjudged to be invalid or unconstitutional, the adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional.