

COMMITTEE REPORT

HOUSE

(11)

FURTHER:

2/15/82

Date: Mar. 11, 1982

Mr. Speaker: (Taken from Rules 2/15/82)

The Committee on FINANCE has had SSHB 146

"An Act relating to payment procedures on certain public contracts."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSHB 146 (Fin) same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

_____ See letter to Rec

_____ no rec

_____ no rec

CHAIRMAN

Original sponsor: Brown by request

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to payment procedures on certain public
7 contracts."

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

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

10 CHAPTER 90. MISCELLANEOUS PROVISIONS.

11 Sec. 36.90.001. PUBLIC CONSTRUCTION CONTRACT PAYMENTS. (a) The
12 state shall initiate payment to the contractor for the amount due under
13 a public construction or public work contract within 15 days after the
14 contractor submits to the state a bill for materials or services and a
15 sworn statement that all employees employed on the project by the con-
16 tractor and all subcontractors have been paid not less than the estab-
17 lished prevailing rate of pay as determined and published by the Depart-
18 ment of Labor.

19 (b) If the state fails to make a payment due under this section,
20 it shall pay interest to the contractor under AS 45.45.010(a) on the
21 amount due. If a failure to make a payment due under this section
22 continues for 60 days or more, the state shall pay the contractor a
23 penalty of 10 percent of the amount due plus interest.

24 (c) The state or a political subdivision of the state is liable to
25 a contractor registered under AS 08.18 for interest at the rate provided
26 in AS 45.45.010(a) on retainage on a contract for public works or public
27 construction. Interest on retainage accrues from the date of approval
28 of a pay estimate until the date of payment to the contractor or applica-
29 tion toward the obligation of the contractor under the contract. A

1 contract provision purporting to waive the interest provisions of this
2 subsection is void as contrary to public policy.

3 * Sec. 2. AS 36.95.010 is amended to read:

4 Sec. 36.95.010. DEFINITIONS. In this title [AS 36.05 - 36.25]
5 unless the context requires otherwise

6 (1) "contractor" means the contractor including subcontractors
7 performing work necessary to facilitate public construction;

8 (2) "laborer, mechanic, or field surveyor" means a person who
9 engages in work which is basically physical or unskilled in nature; or
10 who engages in work, requiring the use of tools or machines, which
11 basically consists of the shaping and working of materials into some
12 type of structure, machine or other object; or who engages in outdoor
13 tasks related to the operation of finding and delineating contour,
14 dimensions, position, topography, as of any part of the earth's surface,
15 by preparation of measured plan or description of any area or other
16 portion of country or of road or line through any area or other portion
17 of country;

18 (3) "public construction" or "public works" means the on-site
19 field surveying, erection, rehabilitation, alteration, extension or
20 repair, including painting or redecorating of buildings, highways or
21 other improvements to real property under contract for the state, a
22 political subdivision of the state, or a regional school board with
23 respect to an educational facility under AS 14.08.161;

24 (4) "qualified" means one who, except for apprentices, is a
25 journeyman mechanic in his particular trade;

26 (5) "resident" means a person who maintains his domicile in
27 the state: domicile is the true and permanent home of a person from
28 which he has no present intention of removing and to which he intends to
29 return whenever he is away;

1 (6) "state or a political subdivision of the state" means any
2 state department, state agency, state university, borough, city, village,
3 school district or other state subdivision;

4 (7) "wages" includes fringe benefits;

5 (8) "retainage" means money withheld from a contractor until
6 completion of a contract or other contingency which the contractor has
7 earned as evidenced by approval of the applicable pay estimate.
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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. 66 SS HB 146 - Relating to payment procedures on
 Title certain public contracts
 Requested by Labor & Commerce Committee Date 2/3/82

II. FISCAL DETAIL
 Agency Affected Department of Transportation & Public Facilities
 Program Category Affected Design and Construction
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item
 amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

36.90.001 (a) Direct Cost is loss of interest on 20% of contract amount
 for 73 days. 20% of \$300 million = \$60 million. Assume
 State earns 12% on its money. Then, \$60 million (0.12)
 $(\frac{73}{365}) = \$1.44$ million.

Indirect Cost is increased cost of bonding (assume 0.5% of
 contract) \$300 million (.005) - \$1.50 million.

(b) Interest on retainage is calculated at \$135,000.

Estimated total annual cost of this bill is \$3,075,000.

IV. DATE February 11, 1982 PREPARED BY Jerome A. Murphy JM
 AGENCY DOT/PF
 PHONE 465-3900

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX 3-1000
JUNEAU, ALASKA 99811
(TELEX 099-45 337)

February 18, 1982

Re: CS SS HB 146(L&C)
Relating to Payment Procedures
on Certain Public Contracts

Honorable John Fuller, Chairman
House Rules Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Fuller:

We have reviewed the referenced version of House Bill 146(L&C) and believe that this proposed legislation is both unnecessary, as it applies to this Department, and not in the best interest of the State, in general. Should it be determined, however, that it should be pursued, the following comments and recommendations are hereby offered for your consideration.

It is recommended that subsection 36.90.001(a) be deleted. The payment, to the contractor, of 20% of the contract amount prior to beginning work is not only fiscally unsound but also would increase the risk of contractors not performing the work in a timely manner.

This Department already operates under policies which minimize the requirements of interim financing by Contractors without increasing the risk to the bondsmen or increasing the premium. In most contracts, a mobilization pay item allows the contractor to recover move-in and set-up costs very early in the job. Contractor payments are made monthly or semi-monthly at the Contractor's request. Retainage is held to a bare minimum on lump sum contracts and is not held at all on most highways, airports and harbors contracts. Provisions are made which pay for stockpiled materials on the job site prior to incorporation into the project and on buildings contracts bonding, insurance and bidding expenses are paid immediately after the notice to proceed is issued. These policies were developed through cooperative efforts with the contracting industry in an effort to minimize financial problems while still maintaining a competitive bidding atmosphere.

Regarding subsection (b), the language "Initiate Payment" is unclear. The initiation of the payment process may be interpreted to mean anything from the approval of a Contractors invoice or the signing of a monthly pay estimate to the actual mailing of the warrant to the Contractor, a process which could entail from three to ten days (or more), depending on the remoteness of the project site or its distance from the finance office.

It is suggested that the term "Intitate payment" be replaced with "Issue Payment", in which case the period of time allowed should be changed to 30 days in order to allow for the time necessary to transmit pay estimates or bills from a remote project site and to allow for the review and approval of complex pay estimates such as those involving multi-million dollar contracts with a multitude of pay items which must all be verified and approved prior to issuing a warrant.

It should also be pointed out that where subsection (b) uses the language "... the contractor submits... a bill for materials or services...", this terminology is not applicable to most all of the construction contracts administered by DOT/PF. Firstly, payment for public works contracts is not made directly for materials or services but for items of work for which unit prices are bid. Secondly, in most cases the contractor does not submit a bill. Instead, a pay estimate is prepared by the State and approved by the Contractor.

It is also unclear whether the Contractor under (b) would be paid on the regular basis as set up in the contract (monthly or semi-monthly), or whether he/she could submit weekly or even daily bills.

Subsection (b) is silent concerning the consequences of the Contractor's failure to submit the sworn statement regarding prevailing wages.

The following language is suggested for subsection (b) in order to clarify the above points:

(b) The State shall issue payment to the Contractor, for the amount due under the public construction or public works contract, within 30 days following the end of the pay period for which payment is being made. The Contractor shall submit a sworn statement, to the State at the end of the pay period, certifying that all employees employed on the project during the pay period by the Contractor and all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor. Failure, by the Contractor, to submit the above sworn statement shall be cause for the State to delay payment, without interest or penalty, until such a sworn statement is submitted.

In reference to subsection (c), it must be stated that this Department strongly opposes the principle of a penalty, other than interest on late payments. This Department has, we believe, an excellent record for making timely payments to Contractors and it is not anticipated that such a penalty provision would ever

be used, were it inacted. Our general contract provisions, in every construction contract, contain an administrative claims clause which provides the vehicle to remedy inequities or disputes whenever they may occur. Such an avenue has always been available to our Contractors and is believed to be much more equitable than an automatic penalty for an event, regardless of its causation or circumstance.

It is recommended that the interest payment provision in (c) be retained, but that the 10 percent penalty provision be deleted.

Regarding subsection (d), interest on retainage, the following language is suggested for the second sentence in order to clarify the beginning of accrual of interest:

Interest on retainage accrues from the thirtieth day following the end of the pay period from which the retainage is withheld until the date of payment to the Contractor.

Under definitions, Section 36.95.010, the term Contractor must apply only to the prime Contractor as the contract is only between the prime Contractor and the State. The term "unskilled" in (2) should not be used to describe a mechanic or a surveyor but could apply to a laborer. In (3), "Public Construction" or "Public Works", the terms "onsite" and "real property" would not apply to State ferries constructed under contract with this Department. It is suggested that "on-site" be deleted and the term "real Property" be changed to "public Property". (Reference Blacks Law Dictionary for these terms.) The definition of "retainage", (6), would be improved by re-wording as follows:

(6) "Retainage" means money, or other contingency which the Contractor has earned as evidenced by approval of the applicable pay estimate, which is withheld from the Contractor until the completion of the contract.

The above comments are made in the interest of making the proposed legislation a more meaningful and concise document, as it would apply to the Department of Transportation and Public Facilities, which will hopefully accomplish its intended purpose without unduly increasing the cost or adversely affecting the quality of construction projects built with public funds.

Sincerely,



R.D. Shumway, P.E.
Deputy Commissioner

Enclosure: Copy of CS SS HB 146(L&C)

CORRECTION

2/4/82

Please discard all copies of
CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146(L&C)
and retain this corrected version.

Original sponsor: Brown by request

Offered: 2/3/82
Referred: Rules

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146 (L&C)

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7 public contracts."

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

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

10 CHAPTER 90. MISCELLANEOUS PROVISIONS.

11 Sec. 36.90.001. PUBLIC CONSTRUCTION CONTRACT PAYMENTS. (a) At
12 the request of a contractor the state shall pay the contractor 20 percent
13 of the amount of the contract on or before the date the state gives the
14 contractor notice to proceed with the public construction or public work
15 covered by the contract.

16 (b) The state shall initiate payment to the contractor for the
17 amount due under the public construction or public work contract within
18 15 days after the contractor submits to the state a bill for materials
19 or services and a sworn statement that all employees employed on the
20 project by the contractor and all subcontractors have been paid not less
21 than the established prevailing rate of pay as determined and published
22 by the Department of Labor.

23 (c) If the state fails to make a payment due under this section,
24 it shall pay interest to the contractor under AS 45.45.010(a) on the
25 amount due. If a failure to make a payment due under this section
26 continues for 60 days or more, the state shall pay the contractor a
27 penalty of 10 percent of the amount due plus interest.

28 (d) The state or a political subdivision of the state is liable to
29 a contractor registered under AS 08.18 for interest at the rate provided

1 in AS 45.45.010(a) on retainage on a contract for public works or public
2 construction. Interest on retainage accrues from the date of approval
3 of a pay estimate until the date of payment to the contractor or applica-
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5 contract provision purporting to waive the interest provisions of this
6 subsection is void as contrary to public policy.

7 * Sec. 2. AS 36.95.010 is amended to read:

8 Sec. 36.95.010. DEFINITIONS. In this title [AS 36.05 - 36.25]
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10 (1) "contractor" means the contractor including subcontractors
11 performing work necessary to facilitate public construction;

12 (2) "laborer, mechanic, or field surveyor" means a person who
13 engages in work which is basically physical or unskilled in nature; or
14 who engages in work, requiring the use of tools or machines, which
15 basically consists of the shaping and working of materials into some
16 type of structure, machine or other object; or who engages in outdoor
17 tasks related to the operation of finding and delineating contour,
18 dimensions, position, topography, as of any part of the earth's surface,
19 by preparation of measured plan or description of any area or other
20 portion of country or of road or line through any area or other portion
21 of country;

22 (3) "public construction" or "public works" means the onsite
23 field surveying, erection, rehabilitation, alteration, extension or
24 repair, including painting or redecorating of buildings, highways or
25 other improvements to real property under contract for the state, a
26 political subdivision of the state, or a regional school board with
27 respect to an educational facility under AS 14.08.161;

28 (4) "qualified" means one who, except for apprentices, is a
29 journeyman mechanic in his particular trade;

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(5) "resident" means a person who maintains his domicile in the state: domicile is the true and permanent home of a person from which he has no present intention of removing and to which he intends to return whenever he is away;

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Original sponsor: Brown by request

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19 field surveying, erection, rehabilitation, alteration, extension or
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21 other improvements to real property under contract for the state, a
22 political subdivision of the state, or a regional school board with
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Introduced: 3/11/81
Referred: Labor & Commerce

1 IN THE HOUSE BY BROWN BY REQUEST

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to payment procedures on certain
7 public contracts."

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

9 * Section 1. AS 35.15 is amended by adding a new section to read:

10 Sec. 35.15.155. CONTRACT PAYMENTS. (a) The department shall pay
11 a contractor 20 percent of the amount of the contract on or before the
12 date the department gives the contractor notice to proceed with the
13 work covered by the contract.

14 (b) The department shall pay the contractor the amount due under
15 the contract within 15 days after the contractor submits a bill to the
16 department for materials or services.

17 (c) If the department fails to make a payment due under this
18 section, it shall pay interest to the contractor under AS 45.45.01C(a)
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