

H B

146

COMMITTEE REPORT

HOUSE

3/11/81

FURTHER:

(5)

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had SSHB 146

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

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- 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:

CHAIRMAN

H. Labor & Commerce 1981-1982

all referred → Brown's office

✓ D.O.T
✓ External Affairs
✓ Administration
✓ Pete Adfield Dept.

Date Filed

" Rec'd.

Referrals _____

Comm. Hearing 1-20-82 - held - sent to Tom Afo & draft into bill amendments out to Feb 1-19-82

2-1-82 - Pass & members to sign out of comm. with amendments they wanted.

Comm. action - Pass with amendments as outlined by Jeff & on committee tape.

John - with & ZAA & person with another set of amendments!! signed out of committee

2-3-82 - Jerry Took & Clerk Office

J

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SC 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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
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) $\left(\frac{73}{365}\right)$ = \$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/PP
Original: Legislative Finance PHONE 465-3900
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:

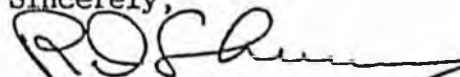
Interest on retainage accrues from the thirtieth day following the end of the pay period from which the retainage is withheld until the date of payment to the Contractor.

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)

AMENDMENT TO CSSH 146(L&C)

* Sec. 2. AS 36.95.010 is amended by adding a new section to read:

(8) "retainage" means money withheld from a contractor until completion of a contract or other contingency which the contractor has earned as evidenced by approval of the applicable pay estimate.

~~HB 578~~

Proposed Amendment #2

HB 146

HOUSE LABOR & COMMERCE
 STANDING COMMITTEE
 January 20, 1982
 1:10 p.m.

Members Present: Rep. Martin, Chairman
 Rep. Bylsma, Vice Chairman
 Rep. Randolph
 Rep. Gardiner
 Rep. Rogers

Members Absent: No members absent.

COMMITTEE CALENDAR

HB 146

Re payment procedures/public contracts

HB 595

An act continuing the existence of the Board of Welding Examiners; and providing for an effective date.

WITNESS REGISTER

Representative Brown
 Alaska State Legislature
 Pouch V
 Juneau, Alaska 99811
 465-3744
 Position Statement: Gave background on both bills.

Nick Coti, Management Analyst
 Division of Occupational Licensing
 Department of Commerce & Economic Development
 Juneau, Alaska 99811
 465-2534
 Position Statement: Supported HB 595.

Donald Lockman
 Testing Institute of Alaska and
 State Board of Welding Examiners
 Anchorage, Alaska
 276-3440
 Position Statement: Supported HB 595.

Ken Lomax
 ARCO Oil and Gas Company
 Anchorage, Alaska
 338-1271
 Position Statement: Supported HB 595.

Louie Rousseau
 Welding Application-Methods

Anchorage, Alaska
272-3543
Position Statement: Opposed HB 595.

Erwin Long
Arctic Foundations, Inc.
Anchorage, Alaska
276-5575
Position Statement: Opposed HB 595.

PREVIOUS ACTION

HB 146 Referred to committee 3/11/81; no previous action. No action taken by committee this date.

HB 595 Referred to committee 5/26/81; no previous action. No action taken by committee this date.

ACTION NARRATIVE

Tape #003
Recording
Number 1190

The meeting was called to order by Chairman Martin at 1:10 p.m. All members were present. The committee schedule called for the consideration of HB 595 and HB 146. Testifying before the committee regarding both bills was Representative Fred Brown, prime sponsor.

Number 1201

Rep. Brown, sponsor of HB 595 and HB 146, gave background on both bills. Chairman Martin limited further testimony and committee consideration to HB 595.

Number 1259

Nick Coti, Division of Occupational Licensing, Department of Commerce and Economic Development, spoke from prepared testimony in favor of continuing the Board of Welding Examiners.

Number 1371

Donald Lockman, of the Testing Institute of Alaska and the State Board of Welding Examiners, testified in favor of HB 595. Rep. Rogers questioned Lockman about his testimony.

Number 1634

Ken Lomax, of ARCO Oil and Gas Company, testified in favor of the bill, and presented written statements and letters to

the committee.

Number 1710

Louie Rousseau, of Welding Application-Methods, a technical services business in Anchorage, testified against the bill.

Number 0136, Side B

Erwin Long, of Arctic Foundations, Inc., a manufacturer of pressure vessels and geotech equipment, also testified against the bill. He said he does contract work for the Corps of Engineers, and finds the State Board of Welding examinations and certifications to be in conflict with federal requirements that certification must be done according to the American Society of Mechanical Engineers (ASME) code.

Number 0312

Donald Lockman gave rebuttal testimony in favor of the State Board of Welding Examiners.

Number 0348

No action was taken on HB 595, and the Chairman adjourned the meeting at 3:00 p.m. Hearing on HB 595 will be continued in February.

AGC-OK
other contractors OK
Dept. of Labor OK

Need fiscal note
\$135,000
contractors

Office copy
finalized CSSS HB 146

Original sponsor: Brown by request

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

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) At
12 the request of a contractor the state shall pay the contractor 20
13 percent of the amount of the contract on or before the date the state
14 gives the contractor notice to proceed with the public construction or
15 public work 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 a bill with a certified payroll to
19 the state for materials or services.

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

25 (d) In this ^{subb.} section "state" means a department, office, agency,
26 ~~or~~ other organizational unit of the executive branch, except one
27 expressly excluded by law, but does not include an agency in the
28 judicial or legislative branches of the state government.

29 (e) The state ^{or political subdivisions of the state.} is liable to a contractor registered under AS 08.18

1 for interest at the rate provided in AS 45.45.010(a) on retainage on a
2 contract for public works or public construction. Interest on retainage
3 accrues from the date of approval of a pay estimate until the date of
4 payment to the contractor or application toward the obligation of the
5 contractor under the contract. A contract provision purporting to waive
6 the interest provisions of this subsection is void as contrary to public
7 policy.

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

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

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

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

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

29 (4) "qualified" means one who, except for apprentices, is a

1 journeyman mechanic in his particular trade;

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

6 (6) "retainage" means money withheld from a contractor until
7 completion of a contract or other contingency which the contractor has
8 earned as evidenced by approval of the applicable pay estimate;

9 (7) "state or a political subdivision of the state" means
10 any state department, state agency, state university, borough, city,
11 village, school district or other state subdivision;

12 (8) "wages" includes fringe benefits.
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Original sponsor: Brown by Request

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

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

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10 CHAPTER 90. MISCELLANEOUS PROVISIONS.

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

16 (b) The state shall initiate payment to the contractor for the
17 amount due under the contract within 15 days after the contractor
18 submits a bill to the state for materials or services.

19 (c) 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.

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1 or who engages in work, requiring the use of tools or machines, which
2 basically consists of the shaping and working of materials into some
3 type of structure, machine or other object; or who engages in outdoor
4 tasks related to the operation of finding and delineating contour,
5 dimensions, position, topography, as of any part of the earth's surface,
6 by preparation of measured plan or description of any area or other
7 portion of country or of road or line through any area or other portion
8 of country;

are these new definitions?

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

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

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

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22 any state department, state agency, state university, borough, city,
23 village, school district or other state subdivision;

24 (7) "wages" includes fringe benefits.
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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2700

HB 146

May 19, 1981

Mr. Ken Spray
House Labor & Commerce Committee
Alaska House of Representative
Pouch V
Juneau, Alaska 99811

Dear Mr. ~~Spray~~: *Ken*

My apologies for the confusion that has resulted from the hearings and conversations concerning a proposed committee substitute for House Bill 146, "An Act relating to payment procedures on certain public contracts." The confusion seems to relate to "certified" payroll as opposed to "certification." The following amendment is proposed to address the concerns expressed by members of the Department to provide security for the payment of wages to employees on public works projects.

Preferred Delete subsection (b), lines 16-19, page 1.
Amendment: Insert the following.

- (b) The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services with a certification issued by the Department of Labor that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

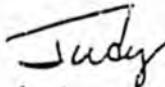
Alternative Delete section (b), lines 16-19, page 1.
Amendment: Insert the following.

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

Mr. Ken Spray
May 19, 1981
Page 2

Please contact Dale Cheek or me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Judy".

Judy G. Knight
Legislative Liaison

Enclosure

STATE OF ALASKA

L. Howard P. Position

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99811
Ph: 465-2700

May 19, 1981

Terry
HB 146
These concerns
are taken care of
in CSSS HB 146 (L.V.C.)

Mr. Ken Spray
House Labor & Commerce Committee
Alaska House of Representative
Pouch V
Juneau, Alaska 99811

Dear Mr. ~~Spray~~: *Ken*

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More than amendment

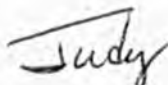
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May 19, 1981
Page 2

Please contact Dale Cheek or me if you have any questions.

Sincerely,

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Judy G. Knight
Legislative Liaison

Enclosure

HH
CARTER

1-27-82

ALASKA
STATE LEGISLATURE

MEMORANDUM

Division of Legal Services

Attn: Tom Mayo

Please see the (2) att'd amendments

into CSS HB 146 (LIC) per our committee meeting.

Kindly replicate as committee desired to pass
out by committee. THAXS.

Rep. Terry Westing
M. Hansen

HB 518

AMENDMENT TO CSSH 146(L&C)

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

CHAPTER 90. MISCELLANEOUS PROVISIONS.

Sec. 36.90.001. (e) INTEREST ON PUBLIC CONSTRUCTION CONTRACTS. (1) A person who contracts with a contractor registered under AS 08.18 for public works or public construction is liable to the contractor for interest at the rate provided in AS 45.45.010(a) on retainage.

(2) Interest accrues from the date of approval of a pay estimate until the date of payment to the contractor or application toward the obligation of the contractor under the contract.

(3) A contract provision purporting to waive the interest provisions of this section is void as contrary to public policy.

Proposed Amendment #1

To be enrolled with ^{1st} proper amendments.

Jan 20, 1982

- 1) Motion to delete sub ser. (b) as now in CS and add new wording.
- 2) Delete sub. (d) -
- 3) p 1 - (e) line 29 add. ✓