

H B  
1, 46

originally by Brown - he had wanted the 20%  
part, ~~but~~ to solve a particular problem, but  
that's now taken care of.

revised fiscal note from finance - 135.0  
but finance disallowed the  
fiscal note

0  
carrier:



COMMITTEE REPORT

HOUSE

2/3  
Ruler

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 SSHB 146 (L&C)  same title  
 new title
- and recommends it 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:

Be Byline

Rogers No Rec

Terry Martin, ch.

David Randolph Raleigh

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Terry Martin  
CHAIRMAN

*Sofo*

*took out the state paying 20% to contractor at his request when contract is signed*

Original sponsor: Brown by request

Offered: 3/12/82  
Referred: Rules

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. *(b) in the CS*

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) "retention" 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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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)

3 J, 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  
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 *added from orig. version*  
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. *not in original version*

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

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

*rewritten from HB 510 (L&C-1)*

CSSSHL 146(L&C)

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-  
4 tion toward the obligation of the contractor under the contract. A  
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 *From CSHB 518 (L&C)*  
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  
journeyman mechanic in his particular trade;

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

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

8 (7) "wages" includes fringe benefits;

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

FROM: Sharon Macklin

CSSSHB 146 - An act relating to payment  
procedures on certain public contracts

This bill provides procedures for payment to contractors for  
certain state contracts:

Includes:

(a) 20% payment to contractors on request, on or before  
notice to proceed.

(b) 15 day payment clause for materials and supplies

(c) 10% interest penalty payment to contractor by the  
state if failure to make payments within 60 days.

(d) interest payment to contractors on the portion of  
the contract considered retainage, from date of approval  
of a pay estimate.

definition of retainage added to definitions in  
title 36.

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

Portions of HB 518 were added to this bill, which require the state to pay interest on retainage portions of contracts. The bill carried with it a fiscal note of about \$65,000, which is the amount DOT estimated it would have to pay out on money it held. DOT's assumption was that they would rather pay interest than hire more inspectors to go out to projects so that payments could be made on time. DOT prepared a new fiscal note in the case the bill were amended to say that interest need be paid only on contracts made after the effective date of the bill: they said it would be impossible to estimate the fiscal impact.

I asked legal services if the bill should go to finance, and Billy Berrier believes it should. Finance can choose to tell the department to comply with the intent of the legislation, that they won't give them the money to pay out interest, but Rules can't. Or, they could adopt an effective date amendment, and get DOT to come up with some estimate of cost estimate on the kind of work they would envision doing, how often they would fail to make payments in time, and what that would cost.

So, the bill should go to finance to be straightened out.

# Alaska State Legislature



Speaker of the House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

Official Business

## MEMORANDUM

TO: Representative Bob Bettisworth  
Representative Al Adams

FROM: Speaker Joe Hayes *JAH*

DATE: February 23, 1982

RE: CSSSHB 146

CSSSHB 146 relating to payment procedures on certain public contracts was returned to the Finance Committee last week and is now in the Transportation and Public Facilities Sub-Committee. I would appreciate it if you would analyze this bill and pass it quickly out of committee so that we may calendar it as soon as possible. I feel it is an important piece of legislation and one which we should work to see passed.



Box 1710 602 Railroad Avenue  
Cordova, Alaska 99574  
Phone: (907) 424-3237  
or 424-3238

"The Friendly City"

March 3, 1982

James A. Poor  
Mayor

Perry D. Lovett,  
Manager

Donna M. Sherby,  
Clerk / Treasurer

Council Members  
Don Narranco  
Jay Bynum  
Richard Groff  
R.J. Kopchak  
Garry Purvis  
Joe Gunderson

Representative Sally Smith, Chairperson  
House Rules Committee  
Pouch V  
Juneau, AK 99811

RE: CS for Sponsor Substitute for  
HB 146 (L&C)

Dear Representative Smith:

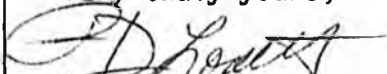
The proposed bill is unacceptable to the City of Cordova and should be unacceptable for the State of Alaska. This bill proposes to pre-pay the low-bidder 20% prior or at the time of the "Notice to Proceed," pay interest on pay estimates and on top of that, a 10% penalty. Then, we talk in the same breath about the high rate of inflation!!

Every contractor we deal with receives their money due within the 30 day period specified in the contract documents, and I am quite sure that they build into the cost of the project interim financing and other costs of "doing business." I do not believe that the contractors we do business with had suddenly lost their ability to conduct their affairs to the point that they require the Alaska State Legislature to pass laws to force their clients to front-end 20% of the contract plus interest plus penalties!!

I trust the legislature in its wisdom will discharge their duty by either rejecting or tabling this bill into oblivion.

The cost of projects are expensive enough without forcing us into the legal fees that would surely go with pre-payment which will encourage a proliferation of would-be contractors. Let's stay with and support the contractors who have proven themselves here in our state.

Very truly yours,

  
Perry D. Lovett  
City Manager

cc: Senator J. Kerttula  
Representative B. Cato

ALASKA STATE LEGISLATURE



HOUSE OF REPRESENTATIVES

REPRESENTATIVE SALLY SMITH • 321 CHURCH STREET • FAIRBANKS, ALASKA 99701 • II. JUNEAU; POUCH V • JUNEAU, ALASKA 99811

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March 8, 1982

Perry D. Lovett  
City Manager  
Box 1210  
Cordova, Alaska 99574

Dear Mr. Lovett:

I have received your letter regarding HB 146. It appears that it should be directed to Representative Jack Fuller, who is currently the chair of the Rules Committee, so I have forwarded it to him.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sally Smith".

Sally Smith  
Alaska State Legislature

AMENDED TITLE: SS HB 146

AN ACT RELATING TO PAYMENT PROCEDURES ON CERTAIN PUBLIC CONTRACTS

PRIME SPONSOR: BROWN.

CO-SPONSORS:

CURRENT STATUS: 2/15/82 IN (H) FINANCE

HB 146 HOUSE ACTION

- LEGISLATIVE ACTION

DATE	SEQ	PAGE
03/11/81	01	0512
02/03/82	02	0236
02/15/82	03	0508

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 FIRST READING -- COMMITTEE REP RTS  
 L&C -- CS03, NR01  
 MOVED FROM RLS TO FIN BY UNAN CONSENT  
 FINANCE  
 RULES

# 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 Contractor's 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 "Initiate 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:

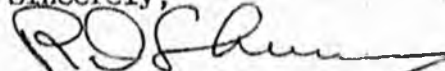
Interest on retainage accrues from the thirtieth day following the end of the pay period from which the retainage is withheld until the date of payment to the Contractor.

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)

# 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.

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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.

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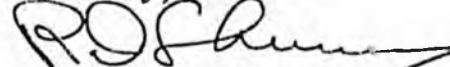
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The above comments are made in the interest of making the proposed legislation a more meaningful and concise document, as it would apply to the Department of Transportation and Public Facilities, which will hopefully accomplish its intended purpose 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(I&C)

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CS3SHB 146 (Finance)  
 Title Re payment procedures on certain public contracts.  
 Requested by House Finance Date 3/22/82

II. FISCAL DETAIL  
 Agency Affected DOT/PF  
 Program Category Affected \_\_\_\_\_  
 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		135.0	135.0			

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		135.0	135.0			
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)

Costs are those associated only with payment of interest on retainage. It is assumed that the retainage on future contracts will remain stable.

Projection of costs concerning interest on payments after 60 days and payment of penalty is not possible. There will be very few cases where this will occur; we are opposed to the principle of paying penalty. Interest payments are appropriate however.

IV. DATE 3/22/82 PREPARED BY Jon Scribner  
 AGENCY DOT/PF  
 Original: Legislative Finance PHONE 465-3900  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

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)

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)  $\left(\frac{73}{365}\right)$  = \$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/DF  
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 Contractor's 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 "Initiate 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:

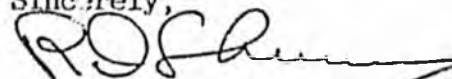
Interest on retainage accrues from the thirtieth day following the end of the pay period from which the retainage is withheld until the date of payment to the Contractor.

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)