

COMMITTEE REPORT
SENATE

4/2/82

FURTHER: None

Date: 4/30/82

Mr. President:

The Committee on FINANCE has had CSSSNB 146(Fin)
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 CS SS NB 146(Fin) same title
 new title
- and recommends CS SS NB 146(Fin)
- 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:

[Signature]
CHAIRMAN

final corrected/reprinted version

Original sponsor: Brown by request

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR 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
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) The
12 state shall initiate procedures to pay the contractor under a public
13 construction or public work contract within 15 days after the contractor
14 submits to the state a bill for materials or services and a sworn state-
15 ment that all employees employed on the project by the contractor and
16 all subcontractors have been paid not less than the established prevail-
17 ing rate of pay as determined and published by the Department of Labor.

18 (b) If the state fails to make a payment due the contractor under
19 this section within 30 days after receiving a contractor's billing, the
20 state shall pay interest to the contractor under AS 45.45.010(a) on the
21 amount due.

22 (c) The state or a political subdivision of the state is liable to
23 a contractor registered under AS 08.18 for interest at the rate provided
24 in AS 45.45.010(a) on retainage on a contract for public works or public
25 construction. Interest on retainage accrues from the date of approval
26 of a pay estimate until the date of payment to the contractor. A con-
27 tract provision purporting to waive the interest provisions of this
28 subsection is void as contrary to public policy.

29 (d) A political subdivision that has a population of 500 or less

1 is exempt from the payment of interest provided in (c) of this section.

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

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

5 (1) "contractor" means the contractor including subcontrac-
6 tors performing work necessary to facilitate public construction;

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

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

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

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

29 (6) "state or a political subdivision of the state" means any

1 state department, state agency, state university, borough, city, village,
2 school district or other state subdivision;

3 (7) "wages" includes fringe benefits;

4 (8) "retainage" means money withheld from a contractor until
5 completion of a contract or satisfaction of other contingency as evi-
6 denced by approval of the applicable pay estimate.

Sofa
4/23/82

Original sponsor: Brown by request

1 IN THE HOUSE BY THE FINANCE COMMITTEE
 2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146 (Finance)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 TWELFTH LEGISLATURE - SECOND SESSION
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11 Sec. 36.90.001. PUBLIC CONSTRUCTION CONTRACT PAYMENTS. (a) The
 12 state shall initiate procedures to pay the contractor under a public
 13 construction or public work contract within 15 days after the contractor
 14 submits to the state a bill for materials⁴⁻ or services⁵⁻ and a sworn state-
 15 ment that all employees employed on the project by the contractor and
 16 all subcontractors have been paid not less than the established prevail-
 17 ing rate of pay as determined and published by the Department of Labor.

18 (b) If the state fails to make a payment due the contractor under
 19 this section within 30 days after receiving a contractor's billing, the
 20 state shall pay interest to the contractor under AS 45.45.010(a) on the
 21 amount due.

22 (c) The state or a political subdivision of the state is liable to
 23 a contractor registered under AS 08.18 for interest at the rate provided
 24 in AS 45.45:010(a) on retainage on a contract for public works or public
 25 construction. Interest on retainage accrues from the date of approval
 26 of a pay estimate until the date of payment to the contractor. A con-

27 tract provision purporting to waive the interest provisions of this
 28 subsection is void as contrary to public policy. *(c) void by B & C A
 political subdivision
 of population < 500 or less.*

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

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

3 (1) "contractor" means the contractor including subcontrac-
4 tors performing work necessary to facilitate public construction;

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

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

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

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24 the state: domicile is the true and permanent home of a person from
25 which he has no present intention of removing and to which he intends to
26 return whenever he is away;

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28 state department, state agency, state university, borough, city, village,
29 school district or other state subdivision;

1 (7) "wages" includes fringe benefits;

2 (8) "retainage" means money withheld from a contractor until
3 completion of a contract or satisfaction of other contingency as evi-
4 denced by approval of the applicable pay estimate.
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From The
SENATE
FINANCE COMMITTEE

APRIL 2, 1982

HOUSE SUBCOMMITTEE CHAIRMAN REP. BOB
BETTISWORTH, FROM THE FLOOR OF THE
HOUSE, RECOMMENDED ADOPTION OF A
0 FISCAL NOTE,

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSSHB 146 (Finance) No. 1
 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 465-3400
 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 No. 2
 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
 AGENCY DOT/PF
 PHONE 465-3900
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SCSSCS HB 146 (fin)
~~CS55HB 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 _____
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Costs are those associated only with payment of interest on retainage. It is assumed that the retainage on future contracts will remain stable.

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

Original sponsor: Brown by request

Offered: 3/12/82
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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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:

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2 state department, state agency, state university, borough, city, village,
3 school district or other state subdivision;

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7 earned as evidenced by approval of the applicable pay estimate.
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Rec'd 5/6/82
Bill in 5 Rules

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SCS CSSSHR 146
 Title Payment procedures on certain public contracts
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Transportation and Public Facilities
 Program Category Affected All
 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		235.0	235.0	235.0	235.0	235.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		235.0	235.0	235.0	235.0	235.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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FULL TIME						
PART TIME						
TEMPORARY						

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

- Costs associated with AS 36.90.001(b) are estimated as follows: \$350 mil in contracts, 10% delayed 10 days past the 30 day limit = \$100.0.
- Costs associated with AS 39.90.001(c) are estimated at \$135.0.

Future costs are assumed to remain stable as our processes improve to assure timely payment.

IV. DATE May 5, 1982 PREPARED BY *R. L. ...*
 AGENCY DOT/PF
 Original: Legislative Finance PHONE 465-3900
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-3300

April 20, 1982

Senate Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

File: Legislature - HB 146

Subject: Interest on Retainage on Public
Construction Contract Payments

Ladies and Gentlemen:

The proposed interest on retainage provision of the subject bill (beginning at line 24, page 1 of CSSS HB 146(Fin.)) appears to defeat the very purpose of retainage. We request that you take this section out of the bill or, as a minimum, that you delete reference to political subdivisions of the state in that section.

Retainage is a mechanism for guaranteeing the performance of the contractor at the end of the contract period. It insures that the state or municipality has an effective means of getting contractor compliance with the numerous miscellaneous work items which contractors seldom seem interested in performing. These include such things as site cleanup, providing operating manuals and training on equipment and systems installed, adjusting doors, windows, fire alarm and detection systems, heating, cooling and ventilating systems, replacing soiled or damaged floor coverings and other parts of the project which are broken or damaged during construction, etc.

When bidding on a contract, the contractor will compute, as one of his contract costs, the interest he will have to pay on the money he must borrow to meet his expenses during construction. He will assume a cash flow from progress payments which will take into account the deferred payment due to the retainage. This interest cost will be included either as overhead or otherwise included in the bid price. Thus, the contractor is recovering what amounts to interest on the retainage as a part of his bid price. If interest is also paid on the retainage by the State or municipality, the contractor is getting double compensation for that particular cost of the contract.

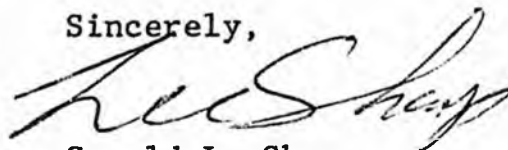
Just as serious as the double compensation is the effect of requiring interest on retainage. If the contractor knows that interest is being paid on the retainage, it removes much of the incentive

Senate Finance Committee
April 20, 1983
Page Two

which the contractor would otherwise have to expeditiously complete punchlist items and the other miscellaneous work which tends to remain undone at the end of the contract. Retainage is effective to get contract compliance because interest is not paid on the retainage. If interest is paid the contractor will be losing little, if anything, in not performing as the retainage will be working for him earning interest just as though the money were his and in the bank.

Incidentally, performance bonds do not adequately serve the function of getting contractor compliance at the end of a contract. If the state or the municipality files a claim with the bonding company, the bonding company merely tenders the defense of the claim to the contractor unless it is clear to the bonding company that the contractor has gone broke or abandoned the project. The present system of non-interest bearing retainage is probably the only reasonably effective means of getting the attention of a foot dragging contractor. Again, we ask that you either delete this section or remove the reference to political subdivisions.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS: jr

cc: Senator Don Bennett
Senator Ed Dankworth
Senator Richard Eliason
Senator Frank Ferguson
Senator John Sackett
Senator Terry Stimson
Senator Arliss Sturgulewski