

HB

284

6-1026E'
Bannister
4/24/89

Original sponsors: Boyer, Donley,
Furnace, et al.

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 284 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

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

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13 ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 21 calendar days of the date the state or political
18 subdivision receives a payment request from the prime contractor that
19 complies with the contract. If a political subdivision is going to
20 use grant money for the contract, the subdivision shall pay the prime
21 contractor for satisfactory performance within 21 calendar days of the
22 date the subdivision receives a payment request that complies with the
23 contract or within 21 calendar days of the date the subdivision
24 actually receives the grant money, whichever is later. If the state
25 is going to use federal money for the contract, the state shall pay
26 the prime contractor for satisfactory performance within 21 calendar
27 days of the date the state receives a payment request that complies
28 with the contract or within 21 calendar days of the date the state
29 actually receives the federal money, whichever is later.

1 (b) If the prime contractor is not paid as required by (a) of
2 this section, the state or political subdivision shall pay interest on
3 the unpaid amount of the required payment from the 21st calendar day
4 after the date required for payment under (a) of this section at an
5 interest rate that is equal to the amount set out in AS 45.45.010(a).

6 (c) If part or all of a payment is going to be withheld for
7 unsatisfactory performance or if the payment request made under (a) of
8 this section does not comply with the requirements of the contract,
9 the state or political subdivision shall, before the payment date that
10 would otherwise apply under (a) of this section, notify the prime
11 contractor in writing stating specifically why part or all of the
12 payment is being withheld and what remedial actions may be taken by
13 the prime contractor to receive the full payment.

14 (d) If the notification by the state or political subdivision
15 required by (c) of this section does not comply with (c) of this
16 section, the state or political subdivision shall pay interest on the
17 withheld amount from the deadline established for notification under
18 (c) of this section until the state or political subdivision provides
19 notice that does comply with (c) of this section.

20 (e) If part or all of a payment is withheld under (c) of this
21 section, the state or political subdivision shall pay the withheld
22 amount within 21 calendar days after the prime contractor satisfac-
23 torily completes the remedial actions identified in the notice. If a
24 political subdivision is going to use grant money for the contract,
25 the subdivision shall pay the prime contractor within 21 calendar days
26 after the prime contractor satisfactorily completes the remedial
27 actions identified in the notice or within 21 calendar days after the
28 political subdivision actually receives the grant money, whichever is
29 later. If the state is going to use federal money for the contract,

1 the state shall pay the prime contractor within 21 calendar days after
2 the prime contractor satisfactorily completes the remedial actions
3 identified in the notice, or within 21 calendar days after the subdi-
4 vision actually receives the money, whichever is later. If the with-
5 held amount is not paid within the 21 calendar days, the state or
6 political subdivision shall pay interest on the withheld amount from
7 the 21st calendar day at an interest rate that is equal to the amount
8 set out in AS 45.45.010(a).

9 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
10 contractor and a subcontractor on a public construction or public
11 works contract shall include in a subcontract between the prime con-
12 tractor and subcontractor for the public construction or public works
13 a clause that requires the prime contractor

14 (1) to pay the subcontractor for satisfactory performance
15 under the subcontract within eight calendar days after receiving
16 payment from which the subcontractor is to be paid;

17 (2) to pay the subcontractor all retainage due under the
18 subcontract within eight calendar days after final payment is received
19 from the state or political subdivision or after the notice period
20 under AS 36.25.020(b) expires, whichever is later;

21 (3) to pay the subcontractor interest on an amount that is
22 not paid in accordance with (1) or (2) of this subsection for the
23 period beginning on the day after the required payment date and ending
24 on the day on which payment of the amount due is made; the interest
25 shall be computed at an interest rate that is equal to the amount set
26 out in AS 45.45.010(a);

27 (4) to pass through to the subcontractor the retainage
28 interest under AS 36.90.250(a) that is attributable to the retainage
29 withheld from the subcontractor.

1 (b) A subcontractor on a public construction or public works
2 contract shall include in each subcontract under which a person agrees
3 to provide the subcontractor with services, other than as an employee,
4 or supplies to be used in the public construction or public works
5 project a clause that requires the subcontractor

6 (1) to pay the person for satisfactory performance under
7 the subcontract within eight calendar days after receiving payment
8 from which the person is to be paid;

9 (2) to pay the person all retainage due under the subcon-
10 tract with the person within eight calendar days after the subcontrac-
11 tor receives its share of the state-held retainage from the prime
12 contractor or another subcontractor;

13 (3) to pay the person interest on an amount that is not
14 paid in accordance with (1) or (2) of this subsection for the period
15 beginning on the day after the required payment date and ending on the
16 day on which payment of the amount due is made; the interest shall be
17 computed at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a);

19 (4) to pass through to the person the retainage interest
20 under AS 36.90.250(a) that is attributable to retainage withheld from
21 the person.

22 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
23 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
24 may negotiate and include in a public construction or public works
25 subcontract a provision that

26 (1) permits the prime contractor or a subcontractor to
27 retain without cause and under mutually agreeable terms and conditions
28 a specified percentage of a progress payment otherwise due to the
29 subcontractor for satisfactory performance under the subcontract

1 without incurring an obligation to pay interest on the retainage,
2 except for interest under AS 36.90.250(a) that is attributable to
3 retainage, including warranty retainage, withheld from the subcontrac-
4 tor; when making the provision, the parties may consider the ability
5 of the subcontractor to furnish performance and payment bonds;

6 (2) permits the prime contractor or a subcontractor to
7 determine that part or all of a subcontractor's request for payment
8 may be withheld for unsatisfactory performance under the subcontract;
9 and

10 (3) permits the prime contractor or a subcontractor to
11 withhold payment for unsatisfactory performance without incurring an
12 obligation to pay interest for late payment, if a notice complying
13 with AS 36.90.240 has been previously furnished to the subcontractor
14 and a copy of the notice is furnished to the contracting officer of
15 the state or political subdivision.

16 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
17 MANCE. (a) If the prime contractor on a public construction or
18 public works contract, after making a request for payment to the state
19 or political subdivision but before paying a subcontractor for the
20 subcontractor's performance covered by the payment request, discovers
21 that part or all of the payment otherwise due to the subcontractor is
22 subject to withholding from the subcontractor under the subcontract
23 for unsatisfactory performance, the prime contractor may withhold the
24 amount as allowed under the subcontract. If the prime contractor
25 withholds an amount under this subsection, the prime contractor shall

26 (1) give the subcontractor a notice complying with AS 36.-
27 90.240 as soon as practicable after determining the cause for the with-
28 holding but before the due date for the subcontractor payment;

29 (2) give the contracting officer of the state or political

1 subdivision a copy of the notice furnished to the subcontractor under
2 (1) of this subsection;

3 (3) pay the subcontractor within eight calendar days after
4 correction of the identified subcontractor performance deficiency.

5 (b) If the prime contractor does not comply with the notice and
6 payment requirements of (a) of this section, the contractor shall pay
7 the subcontractor interest on the withheld amount from the eighth
8 calendar day at an interest rate that is equal to the amount set out
9 in AS 45.45.010(a).

10 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
11 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
12 amount being withheld, the specific causes for the withholding under
13 the terms of the subcontract, and the remedial actions to be taken by
14 the subcontractor to receive payment of the amount withheld.

15 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
16 vision of the state shall pay to the prime contractor interest on
17 retainage, including warranty retainage, on a contract for public
18 construction or public works at an interest rate that is equal to the
19 amount set out in AS 45.45.010(a). Interest on retainage accrues from
20 the date of approval of a pay request until the date of payment to the
21 contractor.

22 (b) A political subdivision that receives a state grant for a
23 public construction or public works project may use money from the
24 state grant to pay the interest under (a) of this section.

25 (c) A political subdivision that has a population of 500 or less
26 is exempt from the payment of interest under (a) of this section.

27 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
28 36.90.290,

29 (1) a payment is considered to be made when mailed or

1 personally delivered to the party being paid;

2 (2) a payment is considered to be received when it is
3 endorsed for payment, if it is a check;

4 (3) an invoice is considered to be received when it is
5 date-stamped or otherwise marked as delivered; if the invoice is not
6 date-stamped or otherwise marked as delivered, the date of the invoice
7 is considered to be the date when the invoice is received.

8 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
9 provision that waives a provision required by AS 36.90.200 - 36.90.290
10 is void.

11 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

12 (1) "prime contractor" means a person required to be regis-
13 tered under AS 08.18 who has a contract with the state or a political
14 subdivision of the state to provide materials or services, other than
15 as an employee, for a public construction or public works project;

16 (2) "subcontractor" means a person at any level, other than
17 a prime contractor, who provides materials or services, other than as
18 an employee, to be used in a public construction or public works
19 project.

20 * Sec. 2. AS 37.05.285(d) is amended to read:

21 (d) This section does not apply

22 (1) if the cost of the goods or services purchased exceeds
23 \$500,000;

24 (2) to payment for specific goods or services in dispute
25 after a seller of goods or services receives notice from the state
26 official responsible for authorizing payment for goods and services
27 that the amount of the invoice or quality of specific goods or ser-
28 vices is in dispute and stating the reasons for the dispute; the state
29 agency shall pay for the specific goods or services in dispute within

1 30 days after resolution of the dispute; or
2 (3) to a contract covered by AS 36.90.200 - 36.90.290
3 [AS 36.90.010].

4 * Sec. 3. AS 36.90.010 is repealed.

5 * Sec. 4. This Act applies to public construction and public works
6 contracts that are entered into on or after the effective date of this Act.

7 * Sec. 5. This Act takes effect July 1, 1989.
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Department of Transportation & Public Facilities



POSITION PAPER

BILL NO: HB No. 284
 An act relating to terms & conditions under which prime contractors & subcontractors are paid for materials & services provided to a public construction project.

APPROVED: *M. K. S. [Signature]*

DATE: April 18, 1989

The department is opposed to this bill. The proposed legislation would reduce from 30 calendar days to 15 calendar days the period within which the state must make payment on public construction contractor payment requests or incur late payment interest costs. Any payment not made within 14 days of receipt would result in the state paying interest at the rate of 1.5% per month. AS 36.90.010 currently requires the state to "initiate procedures" to pay a contractor's payment request within 15 days with interest charges are only incurred for payments made 30 days after receipt. The department feels that the current statute is appropriate and more in line with general private industry practice.

Currently DOT&PF's payment process and experience indicates that the vast majority of standard contractor payments can be made within the proposed 14 day time frame. The shorter payment period (which includes weekends) would not allow for any margin of error in the department's review, approval and payment process. Significant budget reductions are being considered for all administrative units which would result in increased workloads and a slowdown in processing payment transactions.

Current experience indicates that 15% of standard contractor payments could not be made within the shortened timeframe. This would result in an annual increased cost to the state's general fund capital budget of \$146,000 (fiscal note attached). Adverse effects of accounting staff budget cuts could increase the annual interest costs to \$300,000. Late payment fees are not eligible for federal participation.

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: HB 284
PUBLISH DATE: 4/17/89

FISCAL NOTE

Revision Date:
Title: Public Construction Contract Payments

Agency Affected: DOT&PF
BRU: Finance

Sponsor: Boyer
Requestor: House Labor and Commerce

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	146.0	146.0	146.0	146.0	146.0
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REVENUE	0	0	0	0	0	0
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FUNDING:(THOUSANDS OF DOLLARS)	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
GENERAL FUND	0	146.0	146.0	146.0	146.0	146.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

The annual costs are based on the fact that 15% of all contractor payments could not be paid within the proposed 14 day time frame and would require payment of increased interest costs. The costs reflected are calculated based on late payments incurring 15 days of interest charges. Significant budget reductions being considered for all administrative units would cause a delay in the processing of payments and could increase the annual costs to approximately \$300,000.

Prepared by: Robert N. Bartholomew, Director
Division: Management and Finance

Phone: 465-3911
Date: 4/17/89

Approved by Commissioner: Mark S. Hickoy
Agency: Department of Transportation and Public Facilities

Date: 4/18/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor

Department of Transportation & Public Facilities



POSITION PAPER

BILL NO. HB No. 284

APPROVED: *M. K. D. H.*

TITLE:

An act relating to terms & conditions under which prime contractors & subcontractors are paid for materials & services provided to a public construction project.

DATE:

April 19, 1989

The department is not opposed to this bill. The proposed legislation would reduce from 30 calendar days to 21 calendar days the period within which the state must make payment on public construction contractor payment requests or incur late payment interest costs. Any payment not made within 21 days of receipt would result in the state paying interest at the rate of 1.5% per month. AS 36.90.010 currently requires the state to "initiate procedures" to pay a contractor's payment request within 15 days with interest charges are only incurred for payments made 30 days after receipt.

Currently DOT&PF's payment process and experience indicates that the vast majority of standard contractor payments can be made within the proposed 21 day time frame. The shorter payment period (which includes weekends) would not allow for any margin of error in the department's review, approval and payment process. Significant budget reductions are being considered for all administrative units which would result in increased workloads and a slowdown in processing payment transactions. If those reductions are realized the department's ability to comply with the reduced timeframe would be impacted.

Current experience indicates that 8% of standard contractor payments could not be made within the shortened timeframe. This would result in an annual increased cost charged to the state's general fund capital budget of between \$80,000 and \$110,000 (fiscal note attached). Adverse effects of accounting staff budget cuts could increase the annual interest costs to between \$160,000 and \$200,000. Late payment fees are not eligible for federal participation.

POSITION PAPER
A.G.C. OF ALASKA
TO THE
HOUSE LABOR AND COMMERCE COMMITTEE
ON
HB 284

AN ACT RELATING TO THE TERMS AND CONDITIONS UNDER WHICH PRIME
CONTRACTORS AND SUBCONTRACTORS ARE PAID FOR MATERIALS AND
SERVICES PROVIDED TO A PUBLIC CONSTRUCTION PROJECT.



THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS RESA JERREL AND I AM THE DIRECTOR OF GOVERNMENTAL RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA (A.G.C.). ON BEHALF OF OUR OVER 600 MEMBER FIRMS WE APPRECIATE THE OPPORTUNITY TO TESTIFY IN FAVOR OF HR 284.

I HAVE BEEN ASKED BY SOME LEGISLATORS WHAT LEAD TO THE NEED FOR THIS LEGISLATION: QUITE SIMPLY GENERAL CONTRACTORS, SUBCONTRACTORS, SUBS OF SUBCONTRACTORS AND SUPPLIERS WERE NOT BEING PAID IN A TIMELY MANNER.

IN THE CONSTRUCTION INDUSTRY CASH FLOW IS IMPORTANT FOR THE SURVIVAL OF THE CONTRACTOR'S AND THE LOWER TIERED SUBCONTRACTOR'S BUSINESSES. THE FAILURE OF AN OWNER TO PROMPTLY PAY A GENERAL CONTRACTOR EFFECTS THE CASH FLOW OF NOT ONLY THE GENERAL CONTRACTOR BUT, THE CASH FLOW OF THE SUBCONTRACTOR, LOWER TIERED SUBCONTRACTOR AND SUPPLIER. LIKewise, THE FAILURE OF A GENERAL CONTRACTOR TO PROMPTLY PAY A SUBCONTRACTOR EFFECTS THE SUBS OF THE SUBCONTRACTOR AND SUPPLIER. A.G.C. OF ALASKA BELIEVES, IN ORDER TO PROMOTE FAIR DEALING AMONGST GOVERNMENT OWNERS, GENERAL CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IT IS ONLY REASONABLE TO EXPECT EACH SEGMENT TO PAY THEIR BILLS ON TIME.

IF YOU HAVE ANY QUESTIONS, I WOULD BE HAPPY TO TRY AND ANSWER THEM.



AMERICAN SUBCONTRACTORS ASSOCIATION OF ALASKA

2908 Commercial Drive
Anchorage, Alaska 99501
907 - 276 - 6893

PRESIDENT

Frank Thomas-Mears
Multiple Risk Mgrs.
345-7181

VICE PRESIDENT

Larry Phelps
Capitol Glass
272-4433

SECRETARY

Roxanne Horschel
ACME Fence Co.
522-1155

TREASURER

Earlene Carress
S & S Welding
276-5532

April 17, 1989

Rep. Mark Boyer
P.O. Box V
Juneau, Alaska 99519

Dear Representative Boyer,

On behalf of the Alaska Chapter of American Subcontractors Association, I want to thank you for your assistance in the prompt payment legislation.

Slow payment and retainage topped the list of concerns of subcontractors in 1988. A survey by A.S.A. in 1988 found that 81 percent of the subcontractors considered untimely final payments to be the most serious problem they have, with more than half that number rating it "a very major problem." This survey agrees with a 1982 survey on payment problems on federal construction. In that survey, A.S.A. learned that subcontractors wait an average of 120 days after they last perform labor or supply material to a federal construction job before receiving final payment. Subcontractors' problems typically begin long before the final payment. Seventy percent reported that untimely progress payments are a "serious problem" with half calling it a "very major problem." This reinforces a 1987 survey finding that subcontractors wait an average of 60 days after submitting a request to receive progress payments.

On October 17, 1988 President Reagan signed a prompt pay bill into law. The new law, which took effect April 1, 1989 makes clear for the first time that contractors and subcontractors of all types on federal construction projects must be paid promptly or receive interest. In Alaska, subcontractors received this victory news as a message that says subcontractors' cries have been heard.

In October of 1988 A.S.A. Alaska Chapter formed a task force to work on prompt pay legislation. The message this committee received was loud and clear. Untimely payments were now described as an overwhelming problem among 100% of the members and non-members contacted. The reason for the escalating problem was that most often given as a result in our declining economy where work starved general contractors are bidding jobs at prices barely covering their costs. By delaying payments to subs and material suppliers they in effect write themselves an interest free loan. The often times slow and inconsistent

payment policies among government agencies to general contractors was also listed as adding to the problem. Because subcontractors rely on receiving payments within a given amount of days after the prime contractor receives payment, it is often uncertain when effort to collect a sub's money should even begin.

Because the state of Alaska will be forced to comply with the Federal Prompt Payment Act Amendments of 1988 on all federally funded projects which address the immediate concerns of Alaskan subs, A.S.A. Alaska legislative task force felt it should follow this law as a guideline.

In January of 1989 it was decided to join forces with A.G.C. of Alaska to work on legislation fair to all contractors, subcontractors, material suppliers and government owners before presenting the principles in Juneau. In March a draft was presented to you with full support by A.S.A. and A.G.C. Alaska chapters.

We believe prompt pay as outlined in your bill HS284 is a positive step to assure fair dealings among the entire construction industry, and is asking for no more than what is now law on federal construction projects. As funds are available and set aside for public projects, passage of this bill will protect the interests of prime contractors, subcontractors, material suppliers, as well as government in the payment process.

Our sincere thanks to you and your staff for your hard work and support.

Sincerely,



Roxanna Horschel

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

MEMORANDUM

TO: All Member of the Alaska House of Representatives

FROM: Representative Mark Boyer *MB*

DATE: April 9, 1989

SUBJECT: Co-sponsoring "An Act relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project; and providing for an effective date."

I am soliciting co-sponsors for the attached legislation. This bill, patterned after the Federal Prompt Payment Act, will require owners to pay contractors; and contractors and subcontractors to pay suppliers and subcontractors within a specified time frame. All parties will be on notice because the bill requires these prompt payment provisions to be in all construction contracts and subcontracts.

This legislation, which has the support of the Associated General Contractors of Alaska (AGC) and the Alaska Chapter American Subcontractors Association (ASA), will solve the problems regarding fair dealings in the construction industry. I congratulate AGC and ASA for their hard work.

Attached is a joint letter of support from William Schneider, Executive Director of AGC and Roxanne Horschell, Executive Director of ASA and the proposed bill. If you have any questions, please do not hesitate to contact me or my staff, Nancy Groszek at 465-3466. I would like to have this bill read across the floor on Wednesday, April 12.

Thank you for your prompt consideration.

MB/NJG/bhn

Attachments

FAIRBANKS 20B



ASSOCIATED GENERAL CONTRACTORS of ALASKA

494 B STREET • ANCHORAGE, ALASKA 99501
PO BOX 24889 • ANCHORAGE, ALASKA 99524-0889
TELEPHONE (907) 561-1114 • FAX (907) 562-0218

April 14, 1989

Representative Mark Boyer
Pouch V
Juneau, Alaska 99811

Re: HB 284 - Prompt Pay

Dear Representative Boyer:

In response to your request for information on the problems leading to the need for HB 284 the answer is not complicated in fact it is real simple: general contractors, subcontractors, subs of subcontractors and suppliers were not being paid in a timely manner.

In the construction industry cash flow is important for the survival of the contractor's and the lower tiered subcontractor's businesses. The failure of an owner to promptly pay a contractor effects the cash flow of not only the general contractor but, the cash flow of the lower tiered subcontractor and supplier. Likewise, the failure of a general contractor to promptly pay a subcontractor effects the subs of the subcontractor and suppliers. We believe, in order to promote fair dealing amongst government owners, contractors, subcontractors and suppliers it is only reasonable to expect each segment to pay their bills on time.

Enclosed please find a copy of the principles and concepts endorsed by the General Contractor/Subcontractor Prompt Pay Task Force.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Resa Jerrel
Director
Governmental Relations

Enclosure

GENERAL CONTRACTOR/SUBCONTRACTOR PROMPT PAYMENT TASK FORCE
REPORT TO THE AGC OF ALASKA BOARD OF DIRECTORS
FEBRUARY 28, 1989

A. PRINCIPLES AND CONCEPTS ENDORSED.

We believe the following principles are important to assure a healthy construction industry and to promote fair dealing amongst government owners, contractors, subcontractors and suppliers.

1. Cash Flow is important to all tiers in the construction industry.
2. Payment should be promptly made to contractors, subcontractors, and suppliers for work properly performed.
3. The failure of an owner to promptly pay a contractor, or a contractor to promptly pay a lower tiered subcontractor or supplier should carry an interest assessment to recognize the time value of money.
4. Any "Time" and "Interest" provisions should be uniform and flow down to all construction team members.
5. Contractors, subcontractors and suppliers must be free to negotiate retainage giving due weight to security and bonding aspects of the parties.
6. Allow withholding for cause when performance deficiencies occur after payment requests are submitted and when potential bond claims arise.

ACCORDINGLY, we endorse the following concepts:

1. Government must pay prime contractor progress payments within 14 days after receiving progress payment application, and pay interest if late.
2. Contracting officers may not deviate from this 14-day prime contractor payment period.
3. All contract documents must require all contractors and subcontractors contracts to include provisions requiring lower tiered subcontractors and suppliers to be paid within 8 days of payment by the government or higher tiered contractor and to pay interest if late.
4. Primes and subcontractors are free to negotiate retainage (withholding without cause).
5. Allow withholding for cause after payment request as long as subcontractor is notified, government is notified, and payment is made within 8 days of correction of deficiency (examples include deficient work or bond claims).

4. The clauses required by paragraph 3 shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their subcontract provisions which:

a) Permit the contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty in accordance with the terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond.

b) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld for cause in accordance with the subcontract agreement; and

c) permit such withholding for cause without incurring any obligation to pay a late payment penalty if: 1) a notice conforming to the standards of paragraph 6 has been previously furnished to the subcontractor, and 2) a copy of any such notice is furnished to the public owner or agency.

5. If a contractor, after making a request for payment to the government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the contractor shall:

a) furnish to the subcontractor a notice conforming to the standards of paragraph 6 as soon as practicable upon ascertaining the cause giving rise to withholding, but prior to the due date for subcontractor payment;

b) Furnish the contracting officer a copy of this notice furnished to the subcontractor.

c) pay the subcontractor within 8 days after correction of the identified subcontractor performance deficiency or incur an obligation to pay a late payment interest penalty in accordance with the maximum rate specified in AS 45.45.010(a).

6. A written notice of any withholding shall be issued to a subcontractor (with a copy to the contracting officer) specifying: a) the amount to be withheld; b) the specific causes for the withholding under the terms of the subcontract; and c) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

7. A dispute between the contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to this act does not constitute a dispute to which the state of Alaska or any political subdivision is a party.

8. Definitions:

a) Contractor. Contractor means a contractor registered under AS 08.13 performing public construction or public work under a contract to the state, a political subdivision of the state or a school district.

b) Payment. Payment shall be considered as being made on the day a check is dated.

c) Received. A payment is "received" when endorsed for payment. An invoice is "received" when date stamped as delivered. If not date stamped the day of delivery then the date of the invoice is the date "received."

9. Any contract provision purporting to waive a provision required by this act is void as contrary to public policy.

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ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 H STREET • ANCHORAGE, ALASKA 99503
 PO BOX 24867 • ANCHORAGE, ALASKA 99524-0867
 TELEPHONE (907) 561-3334 • FAX (907) 562-6118

J O I N T S T A T E M E N T O F S U P P O R T

Attached you will find legislation requiring prompt payment which is jointly supported by the Associated General Contractors of Alaska (AGC) and the Alaska Chapter, American Subcontractors Association (ASA).

Support for the legislation was achieved by meetings with general and subcontractor representatives of AGC and subcontractor representatives of ASA. The legislation will encourage fair dealing amongst government owners, contractors, subcontractors and suppliers. In essence it will require owners to promptly pay contractors; and contractors and subcontractors to promptly pay their subcontractors and suppliers. The failure of any party to promptly pay will cause interest to accrue at the current rate of 10.5%. Most of this will be achieved by requiring certain provisions to be in all construction contracts and subcontracts. The parties retain maximum freedom to negotiate contract terms to meet their particular circumstances. The proposed legislation is similar to the recently enacted Federal Prompt Payment Act Amendments of 1988.

We urge you to cosponsor this joint general contractor-subcontractor effort. It is our desire to achieve quick passage of this legislation so that fair dealing in the construction industry is attainable for this season.

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA

ALASKA CHAPTER,
AMERICAN SUBCONTRACTORS ASSOC.

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ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 K STREET • ANCHORAGE ALASKA 99503
 PO BOX 28000 • ANCHORAGE, ALASKA 99501-0000
 TELEPHONE (907) 561-3334 • FAX (907) 562-6118

J O I N T S T A T E M E N T O F S U P P O R T

Attached you will find legislation requiring prompt payment which is jointly supported by the Associated General Contractors of Alaska (AGC) and the Alaska Chapter, American Subcontractors Association (ASA).

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ASSOCIATED GENERAL CONTRACTORS
OF ALASKA

ALASKA CHAPTER,
AMERICAN SUBCONTRACTORS ASSOC.

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284
HB ???

SECTION BY SECTION ANALYSIS

Section 1. This section amends AS 36.90 by adding a new article relating to Public Construction Contract Payments. Within the article are provisions which require public owners to timely pay construction contractors and provisions requiring contractors to timely pay subcontractors and suppliers. Further references in this section are to the proposed AS 36.90 section numbers contained in the bill.

Sec 200 requires the state or political subdivision to pay a prime contractor within 14 days of receiving a pay request. Previously there was not any requirement for timely payment by a political subdivision. Failure to timely pay will result in liability for interest in accordance with AS 45.45.010 (currently 10.5%). If the state or political subdivision believes the pay request does not comply with the contract or if all or part of a payment is going to be withheld for unsatisfactory performance then the state or political subdivision must notify the contractor in writing of the problem and the remedial action necessary. A failure to provide a timely notice results in liability for interest until the notice is provided or the contractor is paid. Once corrected the contractor is entitled to payment within 14 days or else interest accrues.

Sec 210 requires all contractors and subcontractors to include within their subcontracts a provision requiring them to pay their subcontractors and suppliers within 8 days of receiving a payment from which the subcontractor is to be paid. This "flow down" concept is common to construction and an accepted industry practice. All contractors and subcontractors are also required to contractually provide for interest in accordance with AS 45.45.010, if payment is not timely made. Finally, any interest received on state held retention must be passed through to the appropriate subcontractors.

Section 220 continues to provide maximum flexibility to the prime contractor and subcontractor to negotiate provisions relating to withholding without cause ("retention") and withholding for cause, i.e., unsatisfactory performance without interest liability if the article's notice provisions are complied with.

Section 230 allows a contractor to withhold payment to a lower tiered contractor for which the contractor has received payment without interest liability if the contractor notifies that lower tiered contractor of the reason the money is being withheld and the appropriate remedial action. A copy of this notice is required to be

sent to the state or political subdivision. The payment is due by the 8th day after the remedial action is taken.

Section 240 prescribes the form for notices required by this article.

Section 250 requires the state or a political subdivision to pay interest on retainage and warranty retainage. This section is similar to existing AS 36.90.010(c)-(e).

Section 260 establishes the beginning times for the time limits imposed throughout the article.

Section 290 defines "prime contractor" and "subcontractor"

Section 2. This section makes necessary editorial amendments in other Titles

Section 3. This section repeals AS 36.90.010 which is superceded by Section 1 of this bill.

Section 4. This section clarifies that this act does not take effect on public works contractors entered into before this Act's effective date.

Section 5. Establishes the effective date for this act as July 1, 1989.

wfr\secbysec.

GENERAL CONTRACTOR/SUBCONTRACTOR PROMPT PAYMENT TASK FORCE
REPORT TO THE AGC OF ALASKA BOARD OF DIRECTORS
FEBRUARY 28, 1989

A. PRINCIPLES AND CONCEPTS ENDORSED.

We believe the following principles are important to assure a healthy construction industry and to promote fair dealing amongst government owners, contractors, subcontractors and suppliers.

1. Cash Flow is important to all tiers in the construction industry.
2. Payment should be promptly made to contractors, subcontractors, and suppliers for work properly performed.
3. The failure of an owner to promptly pay a contractor, or a contractor to promptly pay a lower tiered subcontractor or supplier should carry an interest assessment to recognize the time value of money.
4. Any "Time" and "Interest" provisions should be uniform and flow down to all construction team members.
5. Contractors, subcontractors and suppliers must be free to negotiate retainage giving due weight to security and bonding aspects of the parties.
6. Allow withholding for cause when performance deficiencies occur after payment requests are submitted and when potential bond claims arise.

ACCORDINGLY, we endorse the following concepts:

1. Government must pay prime contractor progress payments within 14 days after receiving progress payment application, and pay interest if late.
2. Contracting officers may not deviate from this 14-day prime contractor payment period.
3. All contract documents must require all contractors and subcontractors contracts to include provisions requiring lower tiered subcontractors and suppliers to be paid within 8 days of payment by the government or higher tiered contractor and to pay interest if late.
4. Primes and subcontractors are free to negotiate retainage (withholding without cause).
5. Allow withholding for cause after payment request as long as subcontractor is notified, government is notified, and payment is made within 8 days of correction of deficiency (examples include deficient work or bond claims).

B. RECOMMENDED LEGISLATION

1. Contractors must be paid within 14 calendar days of the date the government first receives a payment request from the contractor or receive interest at the maximum rate specified in AS 45.45.010(a) from the 15th day after receipt until payment. If the payment request does not comply with the requirements of the contract then the Contractor must be notified in accordance with paragraph 2 within 7 days after receipt of the payment request or interest will accrue at the maximum rate specified in AS 45.45.010(a) on the amount requested from the 8th day after receipt until proper notice is made.
2. Any notice to the contractor that the payment request does not comply with the requirements of the contract must: a) be in writing, b) specify the reasons the request does not comply with the contract, and c) specify the remedial actions to be taken by the contractor.
3. All contractors must include in each subcontract for property or services (including material supplier) the following:
 - a) a payment clause which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 8 calendar days from receipt of payment out of such amounts as are paid to the contractor under the contract;
 - b) a retention payment clause requiring a contractor to pay the subcontractor all retention due under the subcontract within 8 days of receipt of final payment from the government or within the expiration of the notice provisions of AS 36.25.020 ("Little Miller Act") whichever occurs last;
 - c) an interest penalty clause which obligates the contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause or the retention payment clause for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due was made and computed at the maximum rate of interest in AS 45.45.010(a);
 - d) a clause requiring each subcontractor to include payment clauses and an interest penalty clause conforming to a), (b), and (c) in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

4. The clauses required by paragraph 3 shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their subcontract provisions which:

a) Permit the contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty in accordance with the terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond.

b) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld for cause in accordance with the subcontract agreement; and

c) permit such withholding for cause without incurring any obligation to pay a late payment penalty if: 1) a notice conforming to the standards of paragraph 6 has been previously furnished to the subcontractor, and 2) a copy of any such notice is furnished to the public owner or agency.

5. If a contractor, after making a request for payment to the government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the contractor shall:

a) furnish to the subcontractor a notice conforming to the standards of paragraph 6 as soon as practicable upon ascertaining the cause giving rise to withholding, but prior to the due date for subcontractor payment;

b) Furnish the contracting officer a copy of this notice furnished to the subcontractor.

c) pay the subcontractor within 8 days after correction of the identified subcontractor performance deficiency or incur an obligation to pay a late payment interest penalty in accordance with the maximum rate specified in AS 45.45.010(a).

9-89 WED 17:13 P. 04

6. A written notice of any withholding shall be issued to a subcontractor (with a copy to the contracting officer) specifying: a) the amount to be withheld; b) the specific causes for the withholding under the terms of the subcontract; and c) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

7. A dispute between the contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to this act does not constitute a dispute to which the State of Alaska or any political subdivision is a party.

8. Definitions:

a) Contractor. Contractor means a contractor registered under As 08.18 performing public construction or public work under a contract to the state, a political subdivision of the state or a school district.

b) Payment. Payment shall be considered as being made on the day a check is dated.

c) Received. A payment is "received" when endorsed for payment. An invoice is "received" when date stamped as delivered. If not date stamped the day of delivery then the date of the invoice is the date "received."

9. Any contract provision purporting to waive a provision required by this act is void as contrary to public policy.

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Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

SECTION BY SECTION ANALYSIS

HB 284

Section 1. This section amends AS 36.90 by adding a new article relating to Public Construction Contract Payments. Within the article are provisions which require public owners to timely pay construction contractors and provisions requiring contractors to timely pay subcontractors and suppliers. Further references in this section are to the proposed AS 36.90 section numbers contained in the bill.

Section 200 requires the state or political subdivision to pay a prime contractor within 14 days of receiving a pay request. Previously, there was no requirement for timely payment by a political subdivision. Failure to timely pay will result in liability for interest in accordance with AS 45.45.010 (currently 10.5%). If the state or political subdivision believes the pay request does not comply with the contract or if all or part of a payment is going to be withheld for unsatisfactory performance, then the state or political subdivision must notify the contractor in writing of the problem and the remedial action necessary. A failure to provide a timely notice results in liability for interest until the notice is provided or the contractor is paid. Once corrected the contractor is entitled to payment within 14 days or else interest accrues.

Section 210 requires all contractors and subcontractors to include within their subcontracts a provision requiring them to pay their subcontractors and suppliers within eight (8) days of receiving a payment from which the subcontractor is to be paid. This "flow down" concept is common to construction and an accepted industry practice. All contractors and subcontractors are also required to contractually provide for interest in accordance with AS 45.45.010, if payment is not timely made. Finally, any interest received on state held retention must be passed through to the appropriate subcontractors.

FAIRBANKS 20B

Sectional Analysis

HB 284

Page 2

Section 220 continues to provide maximum flexibility to the prime contractor and subcontractor to negotiate provisions relating to withholding without cause ("retention") and withholding for cause, i.e., unsatisfactory performance without interest liability if the article's notice provisions are complied with.

Section 230 allows a contractor to withhold payment to a lower tiered contractor for which the contractor has received payment without interest liability if the contractor notifies that lower tiered contractor of the reason the money is being withheld and the appropriate remedial action. A copy of this notice is required to be sent to the state or political subdivision. The payment is due by the eighth day after the remedial action is taken.

Section 240 prescribes the form for notices required by this article.

Section 250 requires the state or a political subdivision to pay interest on retainage and warranty retainage. This section is similar to existing AS 36.90.010(c)-(e).

Section 260 establishes the beginning times for the time limits imposed throughout the article.

Section 290 defines "prime contractor" and "subcontractor."

Section 2. This section makes necessary editorial amendments in other Titles.

Section 3. This section repeals AS 36.90.010 which is superseded by Section 1 of this bill.

Section 4. This section clarifies that this act does not take effect on public works contractors entered into before this Act's effective date.

Section 5. Establishes the effective date for this act as July 1, 1989.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 284
PUBLISH DATE: 4/18/1989

FISCAL NOTE

Revision Date:
Title: Public Construction Contract Payments

Agency Affected: DOT&PF
BRU: Finance

Sponsor: Boyer
Requestor: House Labor and Commerce

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	*0	*0	*0	*0	*0	*0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)						
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER*	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

*The annual increased costs can only be estimated. Based on prior experience, 8% of all contractor payments could not be paid within the proposed 21 day time frame and would require payment of interest costs. The estimated increased costs are between \$80,000 and \$110,000. These costs would be funded out of General Fund capital appropriations allocated for "state match" or project costs ineligible for federal participation. The costs reflected are calculated based on late payments incurring 15 days of interest charges. Significant budget reductions being considered for all administrative units would cause a delay in the processing of payments and could increase the annual costs to approximately \$200,000

Prepared by: Robert N. Bartholomew, Director
Division: Management and Finance

Phone: 465-3911
Date: 4/18/89

Approved by Commissioner: Mark S. Hickey *M&H*
Agency: Department of Transportation and Public Facilities

Date: 4/19/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 284
PUBLISH DATE: 4/18/1989

DRAFT**FISCAL NOTE**

Revision Date:
Title: Public Construction Contract Payments

Agency Affected: DOT&PF
BRU: Finance

Sponsor: Boyer
Requestor: House Labor and Commerce

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)						
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER*	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

*The annual increased costs can only be estimated. Based on prior experience, 8% of all contractor payments could not be paid within the proposed 21 day time frame and would require payment of interest costs. The estimated increased costs are between \$80,000 and \$110,000. These costs would be funded out of General Fund capital appropriations allocated for "state match" or project costs ineligible for federal participation. The costs reflected are calculated based on late payments incurring 15 days of interest charges. Significant budget reductions being considered for all administrative units would cause a delay in the processing of payments and could increase the annual costs to approximately \$200,000

Prepared by: Robert N. Bartholomew, Director
Division: Management and Finance

Phone: 465-3911
Date: 4/18/89

Approved by Commissioner: Mark S. Hickey
Agency: Department of Transportation and Public Facilities

Date: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 284
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to the terms and
conditions under which prime contractors..." BRU: Labor Standards & Safety
Sponsor: Boyer, et al. Components: Wage & Hour
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 4/17/89
Approved by Commissioner: Jim Sampson Date: 4/17/89
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Administration
Title: * See below BRU: Finance

Sponsor: Boyer, Donley, Furnace, et al. Components: _____
Requestor: _____

* An Act relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project; and providing for an effective date.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER 1034 PERS/TRS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No cost to the Division of Finance. The cost to set up central accounting for this can be absorbed in the existing budget.

Prepared By: Keith Busch, Director *Keith Busch* Phone: 465-2240
Division: Finance Date: 4/17/89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: _____
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

6-1026E-
Bannister
4/20/89

c memo

Rep. Donley

Original sponsors: Boyer, Donley,
Furnace, et al.

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 284 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project; and providing for an effective date."

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

* Section 1. AS 36.90 is amended by adding new sections to read:

ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state or a political subdivision of the state shall pay the prime contractor for satisfactory performance on a public construction or public works contract within 21 calendar days of the date the state or political subdivision receives a payment request from the prime contractor that complies with the contract. If a political subdivision is going to use grant money for the contract, the subdivision shall pay the prime contractor for satisfactory performance within 21 calendar days of the date the subdivision receives a payment request that complies with the contract or within 21 calendar days of the date the subdivision actually receives the grant money, whichever is later. If the state is going to use federal money for the contract, the state shall pay the prime contractor for satisfactory performance within 21 calendar days of the date the state receives a payment request that complies with the contract or within 21 calendar days of the date the state actually receives the federal money, whichever is later.

(b) If the prime contractor is not paid as required by (a) of this section, the state or political subdivision shall pay interest on the unpaid amount of the required payment from the 21st calendar day after the date required for payment under (a) of this section at an interest rate that is equal to the amount set out in AS 45.45.010(a).

(c) If part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made under (a) of this section does not comply with the requirements of the contract, within eight calendar days after receipt of the payment request the state or political subdivision shall notify the prime contractor in writing stating specifically why part or all of the payment is being withheld and what remedial actions may be taken by the prime contractor to receive the full payment.

(d) If the notification by the state or political subdivision required by (c) of this section does not comply with (c) of this section, the state or political subdivision shall pay interest on the withheld amount from the eighth calendar day after receipt of the initial payment request until the state or political subdivision provides notice that does comply with (c) of this section.

(e) If part or all of a payment is withheld under (c) of this section, the state or political subdivision shall pay the withheld amount within 21 calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice. If a political subdivision is going to use grant money for the contract, the subdivision shall pay the prime contractor within 21 calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice or within 21 calendar days after the political subdivision actually receives the grant money, whichever is later. If the state is going to use federal money for the contract,

the state shall pay the prime contractor within 21 calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice, or within 21 calendar days after the subdivision actually receives the money, whichever is later. If the withheld amount is not paid within the 21 calendar days, the state or political subdivision shall pay interest on the withheld amount from the 21st calendar day at an interest rate that is equal to the amount set out in AS 45.45.010(a).

Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime contractor and a subcontractor on a public construction or public works contract shall include in a subcontract between the prime contractor and subcontractor for the public construction or public works a clause that requires the prime contractor

(1) to pay the subcontractor for satisfactory performance under the subcontract within eight calendar days after receiving payment from which the subcontractor is to be paid;

(2) to pay the subcontractor all retainage due under the subcontract within eight calendar days after final payment is received from the state or political subdivision or after the notice period under AS 36.25.020(b) expires, whichever is later;

(3) to pay the subcontractor interest on an amount that is not paid in accordance with (1) or (2) of this subsection for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due is made; the interest shall be computed at an interest rate that is equal to the amount set out in AS 45.45.010(a);

(4) to pass through to the subcontractor the retainage interest under AS 36.90.250(a) that is attributable to the retainage withheld from the subcontractor.

1 (b) A subcontractor on a public construction or public works
2 contract shall include in each subcontract under which a person agrees
3 to provide the subcontractor with services, other than as an employee,
4 or supplies to be used in the public construction or public works
5 project a clause that requires the subcontractor

6 (1) to pay the person for satisfactory performance under
7 the subcontract within eight calendar days after receiving payment
8 from which the person is to be paid;

9 (2) to pay the person all retainage due under the subcon-
10 tract with the person within eight calendar days after the subcontrac-
11 tor receives its share of the state-held retainage from the prime
12 contractor or another subcontractor;

13 (3) to pay the person interest on an amount that is not
14 paid in accordance with (1) or (2) of this subsection for the period
15 beginning on the day after the required payment date and ending on the
16 day on which payment of the amount due is made; the interest shall be
17 computed at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a);

19 (4) to pass through to the person the retainage interest
20 under AS 36.90.250(a) that is attributable to retainage withheld from
21 the person.

22 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
23 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
24 may negotiate and include in a public construction or public works
25 subcontract a provision that

26 (1) permits the prime contractor or a subcontractor to
27 retain without cause and under mutually agreeable terms and conditions
28 a specified percentage of a progress payment otherwise due to the
29 subcontractor for satisfactory performance under the subcontract

1 without incurring an obligation to pay interest on the retainage,
2 except for interest under AS 36.90.250(a) that is attributable to
3 retainage, including warranty retainage, withheld from the subcontrac-
4 tor; when making the provision, the parties may consider the ability
5 of the subcontractor to furnish performance and payment bonds;

6 (2) permits the prime contractor or a subcontractor to
7 determine that part or all of a subcontractor's request for payment
8 may be withheld for unsatisfactory performance under the subcontract.
9 and

10 (3) permits the prime contractor or a subcontractor to
11 withhold payment for unsatisfactory performance without incurring an
12 obligation to pay interest for late payment, if a notice complying
13 with AS 36.90.240 has been previously furnished to the subcontractor
14 and a copy of the notice is furnished to the contracting officer of
15 the state or political subdivision.

16 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
17 MANCE. (a) If the prime contractor on a public construction or
18 public works contract, after making a request for payment to the state
19 or political subdivision but before paying a subcontractor for the
20 subcontractor's performance covered by the payment request, discovers
21 that part or all of the payment otherwise due to the subcontractor is
22 subject to withholding from the subcontractor under the subcontract
23 for unsatisfactory performance, the prime contractor may withhold the
24 amount as allowed under the subcontract. If the prime contractor
25 withholds an amount under this subsection, the prime contractor shall

26 (1) give the subcontractor a notice complying with AS 36.-
27 90.240 as soon as practicable after determining the cause for the with-
28 holding but before the due date for the subcontractor payment;

29 (2) give the contracting officer of the state or political

1 subdivision a copy of the notice furnished to the subcontractor under
2 (i) of this subsection;

3 (3) pay the subcontractor within eight calendar days after
4 correction of the identified subcontractor performance deficiency.

5 (b) If the prime contractor does not comply with the notice and
6 payment requirements of (a) of this section, the contractor shall pay
7 the subcontractor interest on the withheld amount from the eighth
8 calendar day at an interest rate that is equal to the amount set out
9 in AS 45.45.010(a).

10 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
11 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
12 amount being withheld, the specific causes for the withholding under
13 the terms of the subcontract, and the remedial actions to be taken by
14 the subcontractor to receive payment of the amount withheld.

15 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
16 vision of the state shall pay to the prime contractor interest on
17 retainage, including warranty retainage, on a contract for public
18 construction or public works at an interest rate that is equal to the
19 amount set out in AS 45.45.010(a). Interest on retainage accrues from
20 the date of approval of a pay request until the date of payment to the
21 contractor.

22 (b) A political subdivision that receives a state grant for a
23 public construction or public works project may use money from the
24 state grant to pay the interest under (a) of this section.

25 (c) A political subdivision that has a population of 500 or less
26 is exempt from the payment of interest under (a) of this section.

27 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
36.90.290,

(1) a payment is considered to be made when mailed or

1 personally delivered to the party being paid;

2 (2) a payment is considered to be received when it is
3 endorsed for payment, if it is a check;

4 (3) an invoice is considered to be received when it is
5 date-stamped or otherwise marked as delivered; if the invoice is not
6 date-stamped or otherwise marked as delivered, the date of the invoice
7 is considered to be the date when the invoice is received.

8 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
9 provision that waives a provision required by AS 36.90.200 - 36.90.290
10 is void.

11 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

12 (1) "prime contractor" means a person required to be regis-
13 tered under AS 08.18 who has a contract with the state or a political
14 subdivision of the state to provide materials or services, other than
15 as an employee, for a public construction or public works project;

16 (2) "subcontractor" means a person at any level, other than
17 a prime contractor, who provides materials or services, other than as
18 an employee, to be used in a public construction or public works
19 project.

20 * Sec. 2. AS 37.05.285(d) is amended to read:

21 (d) This section does not apply

22 (1) if the cost of the goods or services purchased exceeds
23 \$500,000;

24 (2) to payment for specific goods or services in dispute
25 after a seller of goods or services receives notice from the state
26 official responsible for authorizing payment for goods and services
27 that the amount of the invoice or quality of specific goods or ser-
28 vices is in dispute and stating the reasons for the dispute; the state
29 agency shall pay for the specific goods or services in dispute within

1 30 days after resolution of the dispute; or

2 (3) to a contract covered by AS 36.90.200 - 36.90.290

3 [AS 36.90.010].

4 * Sec. 3. AS 36.90.010 is repealed.

5 * Sec. 4. This Act applies to public construction and public works
6 contracts that are entered into on or after the effective date of this Act.

7 * Sec. 5. This Act takes effect July 1, 1989.
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6-1026E -
Bannister
4/20/89

c memo

Rep. Donley

Original sponsors: Boyer, Donley,
Furnace, et al.

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 284 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

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

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13 ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 or a political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 21 calendar days of the date the state or political
18 subdivision receives a payment request from the prime contractor that
19 complies with the contract. If a political subdivision is going to
20 use grant money for the contract, the subdivision shall pay the prime
21 contractor for satisfactory performance within 21 calendar days of the
22 date the subdivision receives a payment request that complies with the
23 contract or within 21 calendar days of the date the subdivision
24 actually receives the grant money, whichever is later. If the state
25 is going to use federal money for the contract, the state shall pay
26 the prime contractor for satisfactory performance within 21 calendar
27 days of the date the state receives a payment request that complies
28 with the contract or within 21 calendar days of the date the state
29 actually receives the federal money, whichever is later.

1 (b) If the prime contractor is not paid as required by (a) of
2 this section, the state or political subdivision shall pay interest on
3 the unpaid amount of the required payment from the 21st calendar day
4 after the date required for payment under (a) of this section at an
5 interest rate that is equal to the amount set out in AS 45.45.010(a).

6 (c) If part or all of a payment is going to be withheld for
7 unsatisfactory performance or if the payment request made under (a) of
8 this section does not comply with the requirements of the contract,
9 within eight calendar days after receipt of the payment request the
10 state or political subdivision shall notify the prime contractor in
11 writing stating specifically why part or all of the payment is being
12 withheld and what remedial actions may be taken by the prime
13 contractor to receive the full payment.

14 (d) If the notification by the state or political subdivision
15 required by (c) of this section does not comply with (c) of this
16 section, the state or political subdivision shall pay interest on the
17 withheld amount from the eighth calendar day after receipt of the
18 initial payment request until the state or political subdivision
19 provides notice that does comply with (c) of this section.

20 (e) If part or all of a payment is withheld under (c) of this
21 section, the state or political subdivision shall pay the withheld
22 amount within 21 calendar days after the prime contractor satisfac-
23 torily completes the remedial actions identified in the notice. If a
24 political subdivision is going to use grant money for the contract,
25 the subdivision shall pay the prime contractor within 21 calendar days
26 after the prime contractor satisfactorily completes the remedial
27 actions identified in the notice or within 21 calendar days after the
28 political subdivision actually receives the grant money, whichever is
29 later. If the state is going to use federal money for the contract,

1 the state shall pay the prime contractor within 21 calendar days after
2 the prime contractor satisfactorily completes the remedial actions
3 identified in the notice, or within 21 calendar days after the
4 subdivision actually receives the money, whichever is later. If the
5 withheld amount is not paid within the 21 calendar days, the state or
6 political subdivision shall pay interest on the withheld amount from
7 the 21st calendar day at an interest rate that is equal to the amount
8 set out in AS 45.45.010(a).

9 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
10 contractor and a subcontractor on a public construction or public
11 works contract shall include in a subcontract between the prime con-
12 tractor and subcontractor for the public construction or public works
13 a clause that requires the prime contractor

14 (1) to pay the subcontractor for satisfactory performance
15 under the subcontract within eight calendar days after receiving
16 payment from which the subcontractor is to be paid;

17 (2) to pay the subcontractor all retainage due under the
18 subcontract within eight calendar days after final payment is received
19 from the state or political subdivision or after the notice period
20 under AS 36.25.020(b) expires, whichever is later;

21 (3) to pay the subcontractor interest on an amount that is
22 not paid in accordance with (1) or (2) of this subsection for the
23 period beginning on the day after the required payment date and ending
24 on the day on which payment of the amount due is made; the interest
25 shall be computed at an interest rate that is equal to the amount set
26 out in AS 45.45.010(a);

27 (4) to pass through to the subcontractor the retainage
28 interest under AS 36.90.250(a) that is attributable to the retainage
29 withheld from the subcontractor.

1 (b) A subcontractor on a public construction or public works
2 contract shall include in each subcontract under which a person agrees
3 to provide the subcontractor with services, other than as an employee,
4 or supplies to be used in the public construction or public works
5 project a clause that requires the subcontractor

6 (1) to pay the person for satisfactory performance under
7 the subcontract within eight calendar days after receiving payment
8 from which the person is to be paid;

9 (2) to pay the person all retainage due under the subcon-
10 tract with the person within eight calendar days after the subcontrac-
11 tor receives its share of the state-held retainage from the prime
12 contractor or another subcontractor;

13 (3) to pay the person interest on an amount that is not
14 paid in accordance with (1) or (2) of this subsection for the period
15 beginning on the day after the required payment date and ending on the
16 day on which payment of the amount due is made; the interest shall be
17 computed at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a);

19 (4) to pass through to the person the retainage interest
20 under AS 36.90.250(a) that is attributable to retainage withheld from
21 the person.

22 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
23 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
24 may negotiate and include in a public construction or public works
25 subcontract a provision that

26 (1) permits the prime contractor or a subcontractor to
27 retain without cause and under mutually agreeable terms and conditions
28 a specified percentage of a progress payment otherwise due to the
29 subcontractor for satisfactory performance under the subcontract

1 without incurring an obligation to pay interest on the retainage,
2 except for interest under AS 36.90.250(a) that is attributable to
3 retainage, including warranty retainage, withheld from the subcontrac-
4 tor; when making the provision, the parties may consider the ability
5 of the subcontractor to furnish performance and payment bonds;

6 (2) permits the prime contractor or a subcontractor to
7 determine that part or all of a subcontractor's request for payment
8 may be withheld for unsatisfactory performance under the subcontract;
9 and

10 (3) permits the prime contractor or a subcontractor to
11 withhold payment for unsatisfactory performance without incurring an
12 obligation to pay interest for late payment, if a notice complying
13 with AS 36.90.240 has been previously furnished to the subcontractor
14 and a copy of the notice is furnished to the contracting officer of
15 the state or political subdivision.

16 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
17 MANCE. (a) If the prime contractor on a public construction or
18 public works contract, after making a request for payment to the state
19 or political subdivision but before paying a subcontractor for the
20 subcontractor's performance covered by the payment request, discovers
21 that part or all of the payment otherwise due to the subcontractor is
22 subject to withholding from the subcontractor under the subcontract
23 for unsatisfactory performance, the prime contractor may withhold the
24 amount as allowed under the subcontract. If the prime contractor
25 withholds an amount under this subsection, the prime contractor shall

26 (1) give the subcontractor a notice complying with AS 36.-
27 90.240 as soon as practicable after determining the cause for the with-
28 holding but before the due date for the subcontractor payment;

29 (2) give the contracting officer of the state or political

1 subdivision a copy of the notice furnished to the subcontractor under
2 (1) of this subsection;

3 (3) pay the subcontractor within eight calendar days after
4 correction of the identified subcontractor performance deficiency.

5 (b) If the prime contractor does not comply with the notice and
6 payment requirements of (a) of this section, the contractor shall pay
7 the subcontractor interest on the withheld amount from the eighth
8 calendar day at an interest rate that is equal to the amount set out
9 in AS 45.45.010(a).

10 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
11 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
12 amount being withheld, the specific causes for the withholding under
13 the terms of the subcontract, and the remedial actions to be taken by
14 the subcontractor to receive payment of the amount withheld.

15 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
16 vision of the state shall pay to the prime contractor interest on
17 retainage, including warranty retainage, on a contract for public
18 construction or public works at an interest rate that is equal to the
19 amount set out in AS 45.45.010(a). Interest on retainage accrues from
20 the date of approval of a pay request until the date of payment to the
21 contractor.

22 (b) A political subdivision that receives a state grant for a
23 public construction or public works project may use money from the
24 state grant to pay the interest under (a) of this section.

25 (c) A political subdivision that has a population of 500 or less
26 is exempt from the payment of interest under (a) of this section.

27 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
28 36.90.290,

29 (1) a payment is considered to be made when mailed or

1 personally delivered to the party being paid;

2 (2) a payment is considered to be received when it is
3 endorsed for payment, if it is a check;

4 (3) an invoice is considered to be received when it is
5 date-stamped or otherwise marked as delivered; if the invoice is not
6 date-stamped or otherwise marked as delivered, the date of the invoice
7 is considered to be the date when the invoice is received.

8 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
9 provision that waives a provision required by AS 36.90.200 - 36.90.290
10 is void.

11 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

12 (1) "prime contractor" means a person required to be regis-
13 tered under AS 08.18 who has a contract with the state or a political
14 subdivision of the state to provide materials or services, other than
15 as an employee, for a public construction or public works project;

16 (2) "subcontractor" means a person at any level, other than
17 a prime contractor, who provides materials or services, other than as
18 an employee, to be used in a public construction or public works
19 project.

20 * Sec. 2. AS 37.05.285(d) is amended to read:

21 (d) This section does not apply

22 (1) if the cost of the goods or services purchased exceeds
23 \$500,000;

24 (2) to payment for specific goods or services in dispute
25 after a seller of goods or services receives notice from the state
26 official responsible for authorizing payment for goods and services
27 that the amount of the invoice or quality of specific goods or ser-
28 vices is in dispute and stating the reasons for the dispute; the state
29 agency shall pay for the specific goods or services in dispute within

1 30 days after resolution of the dispute; or

2 (3) to a contract covered by AS 36.90.200 - 36.90.290
3 [AS 36.90.010].

4 * Sec. 3. AS 36.90.010 is repealed.

5 * Sec. 4. This Act applies to public construction and public works
6 contracts that are entered into on or after the effective date of this Act.

7 * Sec. 5. This Act takes effect July 1, 1989.
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6-1026E'
Bannister
4/24/89

Original sponsors: Boyer, Donley,
Furnace, et al.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 284 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

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

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13 ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 or a political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 21 calendar days of the date the state or political
18 subdivision receives a payment request from the prime contractor that
19 complies with the contract. If a political subdivision is going to
20 use grant money for the contract, the subdivision shall pay the prime
21 contractor for satisfactory performance within 21 calendar days of the
22 date the subdivision receives a payment request that complies with the
23 contract or within 21 calendar days of the date the subdivision
24 actually receives the grant money, whichever is later. If the state
25 is going to use federal money for the contract, the state shall pay
26 the prime contractor for satisfactory performance within 21 calendar
27 days of the date the state receives a payment request that complies
28 with the contract or within 21 calendar days of the date the state
29 actually receives the federal money, whichever is later.

1 (b) If the prime contractor is not paid as required by (a) of
2 this section, the state or political subdivision shall pay interest on
3 the unpaid amount of the required payment from the 21st calendar day
4 after the date required for payment under (a) of this section at an
5 interest rate that is equal to the amount set out in AS 45.45.010(a).

6 (c) If part or all of a payment is going to be withheld for
7 unsatisfactory performance or if the payment request made under (a) of
8 this section does not comply with the requirements of the contract,
9 the state or political subdivision shall, before the payment date that
10 would otherwise apply under (a) of this section, notify the prime
11 contractor in writing stating specifically why part or all of the
12 payment is being withheld and what remedial actions may be taken by
13 the prime contractor to receive the full payment.

14 (d) If the notification by the state or political subdivision
15 required by (c) of this section does not comply with (c) of this
16 section, the state or political subdivision shall pay interest on the
17 withheld amount from the deadline established for notification under
18 (c) of this section until the state or political subdivision provides
19 notice that does comply with (c) of this section.

20 (e) If part or all of a payment is withheld under (c) of this
21 section, the state or political subdivision shall pay the withheld
22 amount within 21 calendar days after the prime contractor satisfac-
23 torily completes the remedial actions identified in the notice. If a
24 political subdivision is going to use grant money for the contract,
25 the subdivision shall pay the prime contractor within 21 calendar days
26 after the prime contractor satisfactorily completes the remedial
27 actions identified in the notice or within 21 calendar days after the
28 political subdivision actually receives the grant money, whichever is
29 later. If the state is going to use federal money for the contract,

1 the state shall pay the prime contractor within 21 calendar days after
2 the prime contractor satisfactorily completes the remedial actions
3 identified in the notice, or within 21 calendar days after the subdivi-
4 sion actually receives the money, whichever is later. If the with-
5 held amount is not paid within the 21 calendar days, the state or
6 political subdivision shall pay interest on the withheld amount from
7 the 21st calendar day at an interest rate that is equal to the amount
8 set out in AS 45.45.010(a).

9 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
10 contractor and a subcontractor on a public construction or public
11 works contract shall include in a subcontract between the prime con-
12 tractor and subcontractor for the public construction or public works
13 a clause that requires the prime contractor

14 (1) to pay the subcontractor for satisfactory performance
15 under the subcontract within eight calendar days after receiving
16 payment from which the subcontractor is to be paid;

17 (2) to pay the subcontractor all retainage due under the
18 subcontract within eight calendar days after final payment is received
19 from the state or political subdivision or after the notice period
20 under AS 36.25.020(b) expires, whichever is later;

21 (3) to pay the subcontractor interest on an amount that is
22 not paid in accordance with (1) or (2) of this subsection for the
23 period beginning on the day after the required payment date and ending
24 on the day on which payment of the amount due is made; the interest
25 shall be computed at an interest rate that is equal to the amount set
26 out in AS 45.45.010(a);

27 (4) to pass through to the subcontractor the retainage
28 interest under AS 36.90.250(a) that is attributable to the retainage
29 withheld from the subcontractor.

1 (b) A subcontractor on a public construction or public works
2 contract shall include in each subcontract under which a person agrees
3 to provide the subcontractor with services, other than as an employee,
4 or supplies to be used in the public construction or public works
5 project a clause that requires the subcontractor

6 (1) to pay the person for satisfactory performance under
7 the subcontract within eight calendar days after receiving payment
8 from which the person is to be paid;

9 (2) to pay the person all retainage due under the subcon-
10 tract with the person within eight calendar days after the subcontrac-
11 tor receives its share of the state-held retainage from the prime
12 contractor or another subcontractor;

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14 paid in accordance with (1) or (2) of this subsection for the period
15 beginning on the day after the required payment date and ending on the
16 day on which payment of the amount due is made; the interest shall be
17 computed at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a);

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21 the person.

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23 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
24 may negotiate and include in a public construction or public works
25 subcontract a provision that

26 (1) permits the prime contractor or a subcontractor to
27 retain without cause and under mutually agreeable terms and conditions
28 a specified percentage of a progress payment otherwise due to the
29 subcontractor for satisfactory performance under the subcontract

1 without incurring an obligation to pay interest on the retainage,
2 except for interest under AS 36.90.250(a) that is attributable to
3 retainage, including warranty retainage, withheld from the subcontrac-
4 tor; when making the provision, the parties may consider the ability
5 of the subcontractor to furnish performance and payment bonds;

6 (2) permits the prime contractor or a subcontractor to
7 determine that part or all of a subcontractor's request for payment
8 may be withheld for unsatisfactory performance under the subcontract;
9 and

10 (3) permits the prime contractor or a subcontractor to
11 withhold payment for unsatisfactory performance without incurring an
12 obligation to pay interest for late payment, if a notice complying
13 with AS 36.90.240 has been previously furnished to the subcontractor
14 and a copy of the notice is furnished to the contracting officer of
15 the state or political subdivision.

16 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
17 MANCE. (a) If the prime contractor on a public construction or
18 public works contract, after making a request for payment to the state
19 or political subdivision but before paying a subcontractor for the
20 subcontractor's performance covered by the payment request, discovers
21 that part or all of the payment otherwise due to the subcontractor is
22 subject to withholding from the subcontractor under the subcontract
23 for unsatisfactory performance, the prime contractor may withhold the
24 amount as allowed under the subcontract. If the prime contractor
25 withholds an amount under this subsection, the prime contractor shall

26 (1) give the subcontractor a notice complying with AS 36.-
27 90.240 as soon as practicable after determining the cause for the with-
28 holding but before the due date for the subcontractor payment;

29 (2) give the contracting officer of the state or political

1 subdivision a copy of the notice furnished to the subcontractor under
2 (1) of this subsection;

3 (3) pay the subcontractor within eight calendar days after
4 correction of the identified subcontractor performance deficiency.

5 (b) If the prime contractor does not comply with the notice and
6 payment requirements of (a) of this section, the contractor shall pay
7 the subcontractor interest on the withheld amount from the eighth
8 calendar day at an interest rate that is equal to the amount set out
9 in AS 45.45.010(a).

10 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
11 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
12 amount being withheld, the specific causes for the withholding under
13 the terms of the subcontract, and the remedial actions to be taken by
14 the subcontractor to receive payment of the amount withheld.

15 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
16 vision of the state shall pay to the prime contractor interest on
17 retainage, including warranty retainage, on a contract for public
18 construction or public works at an interest rate that is equal to the
19 amount set out in AS 45.45.010(a). Interest on retainage accrues from
20 the date of approval of a pay request until the date of payment to the
21 contractor.

22 (b) A political subdivision that receives a state grant for a
23 public construction or public works project may use money from the
24 state grant to pay the interest under (a) of this section.

25 (c) A political subdivision that has a population of 500 or less
26 is exempt from the payment of interest under (a) of this section.

27 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
28 36.90.290,

29 (1) a payment is considered to be made when mailed or

1 personally delivered to the party being paid;

2 (2) a payment is considered to be received when it is
3 endorsed for payment, if it is a check;

4 (3) an invoice is considered to be received when it is
5 date-stamped or otherwise marked as delivered; if the invoice is not
6 date-stamped or otherwise marked as delivered, the date of the invoice
7 is considered to be the date when the invoice is received.

8 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
9 provision that waives a provision required by AS 36.90.200 - 36.90.290
10 is void.

11 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

12 (1) "prime contractor" means a person required to be regis-
13 tered under AS 08.18 who has a contract with the state or a political
14 subdivision of the state to provide materials or services, other than
15 as an employee, for a public construction or public works project;

16 (2) "subcontractor" means a person at any level, other than
17 a prime contractor, who provides materials or services, other than as
18 an employee, to be used in a public construction or public works
19 project.

20 * Sec. 2. AS 37.05.285(d) is amended to read:

21 (d) This section does not apply

22 (1) if the cost of the goods or services purchased exceeds
23 \$500,000;

24 (2) to payment for specific goods or services in dispute
25 after a seller of goods or services receives notice from the state
26 official responsible for authorizing payment for goods and services
27 that the amount of the invoice or quality of specific goods or ser-
28 vices is in dispute and stating the reasons for the dispute; the state
29 agency shall pay for the specific goods or services in dispute within

1 30 days after resolution of the dispute; or

2 (3) to a contract covered by AS 36.90.200 - 36.90.290
3 [AS 36.90.010].

4 * Sec. 3. AS 36.90.010 is repealed.

5 * Sec. 4. This Act applies to public construction and public works
6 contracts that are entered into on or after the effective date of this Act.

7 * Sec. 5. This Act takes effect July 1, 1989.
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Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-18-89

PLACE: C#17

SUBJECT OF MEETING:
 HB 96 HB 168
 HB 284 HB 13 AB 166
 SCR 21
 SB 82 SSR 41

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
✓ ED CRANG	CFAB	5260 LUPIN PL. ANC	99507	522-7552	276-2007	(Y) N	SB 82
✓ Bob Bartholomew	DOTMPF	P.O. Box 2 Juneau		463-3237	465-3911	(Y) N	HB 284
✓ Tom Lawson	DCED	PO Box D Juneau	99811		465-2017	Y (N)	SCR 21 Available for Q
✓ Paul Roller	D.O.F	Pouch D " "	99811		465-7515	(Y) N	SCR 41
✓ MARTHA FISCHBACH	SELF	Box 34496, JNU	99803	364-2675	465-8828	(Y) N	HB 96 - Vet
✓ ROSAUNA HORSCHER	Assoc Fensee A.S.A	10360 Nigh Rd	99515	522-1155	522-5289	(Y) N	HB 284
✓ Karl OHL	Sen. Zharoff	P.O. Box V, Juneau	99811		465-3473	(Y) N	SB 82
✓ Resa Terrell	A.G.C. of AK	234 No. Franklin	99801	586-1742		(Y) N	HB 284
✓ Randall Burns	Dept. of Commerce	P.O. Box D-212 Juneau, AK 99811			465-2535	(Y) N	HB 96
✓ Dean Paddock	Self	Box 20312 Juneau 99802		788-4231	463-4970	(Y) N	SB 82
✓ Scott Burgess	AMC	217 Incl St Suite 200 Juneau 99801			6-1325	(Y) N	HB 284



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-20-89

PLACE: CH17

SUBJECT OF MEETING:

SB 82 SB101
 SJR 30 HB 284 HB 166
 HB 278

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
PAULA TERRELL	SENATOR KERITOLA					(Y) N	
ROSIE PETERSON	G/COVE	211 FOURTH ST. #101	99801		6-1736	(N) (Y)	SJR 30
Doree Gray	Sen. Kelly			3822		Y N	SB 101
Guy Warren	JAW DOUGLAS OFFICIAL ASSO	4362 TAKUBLUD JONDAV	99801		9-3852	(Y) N	SB 107
166 KATE GRAHAM	UNITED FISHERMEN OF ALASKA	211 4TH ST. SUITE 106 JAW	99801		6-2820	IF NEEDED Y N	SB 82 HB 166
(166) Dennis Mastas	Alaska Academy of Trial Lawyers	880 (N) St. Suite 202	99501	277-4	277-4551	(Y) N	HB 166
166 Beth Kerstula	SENATOR Atty Gen	Juneau				Y (N)	HB 166
						Y N	
						Y N	
						Y N	
						Y N	