

HB

284



Official Business

Alaska State Legislature

P.O. BOX V
State Capitol
Juneau, Alaska 99811

January 9, 1990

MEMORANDUM

TO: Senator Tim Kelly, Senate President

FROM: Senator Mike Szymanski *[Signature]*

RE: Request for Additional Referral to Senate C&RA

HB 284 is a House companion bill to SB 289. Both bills concern prompt payment for materials and services provided to public construction projects. SB 289 is currently in Senate C&RA while HB 284 is in Senate Labor and Commerce. I wish to request that HB 284 have an additional referral made to Senate C&RA so that both bills may be scheduled for hearing at the same time.

A M E N D M E N T

SEN SZYMANSKI

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: CSHB 284(L&C) am

Page 1, line 18, following "receives a":

Insert "valid"

Page 1, line 19, following "contract":

Insert "or within 30 calendar days after the warranty period expires,
whichever is later"

Page 1, line 22, following "receives a":

Insert "valid"

Page 1, line 23:

Delete "or"

Insert ", "

Page 1, line 24, following "money,":

Insert "or within 21 calendar days after the warranty period expires,"

Page 1, line 24:

Delete "later"

Insert "latest"

Page 1, line 27, following "receives a"

Insert "valid"

Page 1, line 28:

Delete "or"

Insert ", "

Page 1, line 29, following "money,":

Insert "or within 21 calendar days after the warranty period expires,"

Page 1, line 29:

Delete "later"

Insert "latest"

Page 2, line 8, following "section":

Insert "is not valid or"

Page 2, line 9:

Delete "calendar"

Insert "working"

Page 2, line 17:

Delete "calendar"

Insert "working"

Page 2, line 23, following "notice":

Insert "or within 21 calendar days after the warranty period expires,
whichever is later"

Page 2, line 27:

Delete "or"

Insert ", "

Page 2, line 28, following "money,":

Insert "or within 21 calendar days after the warranty period expires,"

Page 2, line 29:

Delete "later"

Insert "latest"

Page 3, line 3:

Delete "or"

Page 3, line 4, following "money,":

Insert "or within 21 calendar days after the warranty period expires,"

Page 3, line 4:

Delete "later"

Insert "latest"

Page 3, following line 8:

Insert a new subsection to read:

"(f) This section does not apply to public construction or public works contracts made by a political subdivision that has a population under 800."

Page 3, line 15:

Delete "calendar"

Insert "working"

Page 3, line 18:

Delete "calendar"

Insert "working"

Page 4, line 7:

Delete "calendar"

Insert "working"

Page 4, line 10:

Delete "calendar"

Insert "working"

Page 6, line 3:

Delete "calendar"

Insert "working"

Page 6, line 8:

Delete "calendar"

Insert "working"

Page 6, lines 18 - 19:

Delete "an interest rate that is equal to the amount set out in AS 45.45.010(a)"

Insert "the prevailing interest rate"

Page 6, line 20, following "request":

Insert "or from the end of the warranty period, whichever is later,"

Page 6, lines 22 - 24:

Delete all material.

Reletter the following subsection accordingly.

Page 6, line 27, following "PROVISIONS.":

Insert "(a)"

Page 7, lines 8 - 10:

Delete all material and insert:

*(b) A political subdivision that receives a state grant for a public construction or public works project may use money from the state grant to pay the interest under AS 36.90.200 - 36.90.290.

Sec. 36.90.265. MUNICIPALITIES. AS 36.90.200 - 36.90.290 do not apply to a public construction or public works contract of a municipality unless the municipality has entered into a written contract

with the state for the state to provide funds for the public construction or public work."

Page 7, line 22, following "project":

Insert ";

(3) "working day" does not include Saturday, Sunday, or a state holiday"

Page 8, line 10:

Delete "1989"

Insert "1990"

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284 (C&RA) (6-1026D, 3-29-90)

Page 2, line 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

NO
Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 3, lines 7 - 8:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 1 - 2:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 22 - 23:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the subcontractor and the person that establishes a lower rate of interest or

precludes the charging of interest"

Page 6, lines 4 - 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284(C&RA)

Page 7, following line 3:

Insert a new section to read:

"Sec. 36.90.265. APPLICABILITY TO ^{*political subdiv.*} ~~MUNICIPALITIES~~. AS 36.90.200 - 36.90.290 do ~~not~~ apply to a public construction or public works contract of a ^{*political subdiv. where*} ~~municipality~~ ~~unless~~ the municipality has entered into a written contract with the state for the state to provide funds for the public construction or public work."



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Senator M. Szymanski
Chairman Community and Regional Affairs Committee

From: Representative Boyer *MR*

Date: February 12, 1990

Subject: Request for Committee hearing on HB 284

I am writing to formally request a hearing in the Senate Community and Regional Affairs Committee on HB 284 "Public construction contract payments". The board of directors of the Associated General Contractors of Alaska will be in town on February 27th and they would like the opportunity to testify at that time. If the scheduling of this bill doesn't conflict with your plans, I would appreciate your consideration.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB284 (C&RA)
PUBLISH DATE: 4/3/90

REQUEST: FISCAL NOTE

Revision Date:
Title: "An Act relating to Public Construction
Contract Payments"
Sponsor: Boyer
Requestor: House Labor and Commerce

Agency Affected: DOT&PF
BRU: Finance

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	110.0	110.0	110.0	110.0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	110.0	110.0	110.0	110.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	110.0	110.0	110.0	110.0

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 projects 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. Each administrative unit lost at least one position effective 10-01-89. The effect on contractor payments of this reduction will not be known until 1990 construction season.

Prepared by: Robert N. Bartholomew, Director
Division: Administrative Services

Phone: 465-3911
Date: April 2, 1990

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

Date: 4/2/90

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

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284 (C&RA) (6-1026D, 3-29-90)

Page 2, line 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 3, lines 7 - 8:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 1 - 2:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 22 - 23:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the subcontractor and the person that establishes a lower rate of interest or

precludes the charging of interest"

Page 6, lines 4 - 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284(C&RA)

Page 7, following line 3:

Insert a new section to read:

"Sec. 36.90.265. APPLICABILITY TO MUNICIPALITIES. AS 36.90.200 - 36.90.290 do not apply to a public construction or public works contract of a municipality unless the municipality has entered into a written contract with the state for the state to provide funds for the public construction or public work."

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
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(907) 456-6473

JUNEAU

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

MEMORANDUM

TO: Senator Dick Eliason
Chair, Senate Labor and Commerce Committee

FROM: Representative Mark Boyer 

DATE: May 7, 1989

SUBJECT: Scheduling CSHB 284 (L&C) am, "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," for a Labor and Commerce Committee hearing.

This is a formal request to ask that you schedule CSHB 284 (L&C) am for a committee hearing before the end of this session. This bill passed the House on reconsideration with a 37-0 vote. Two amendments were adopted on the House Floor:

- 1) changing the calendar days from 21 to 30 calendar days for the state or political subdivision to pay the prime contractor; and
- 2) AS 36.90.200, which is Section 1 of the bill, does not apply to public construction or public works contracts in communities that have a population under 800.

This House bill has the broad support of 20 co-sponsors and the Department of Transportation and Public Facilities. A companion bill, SB 289, sponsored by Senator Fahrenkamp with 7 co-sponsors, has been introduced in the Senate.

This legislation, which has the support of the Associated General Contractors of Alaska (AGC) and the American Subcontractors Association (ASA), will solve many of the problems regarding fair dealings in the construction industry. The 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.

FAIRBANKS 20B

Senator Dick Eliason
CSHB 284 (L&C) am
Page 2

Attached is the following back-up:

- 1) CSHB 284 (L&C) am
- 2) "0" Fiscal Note from DOT/PF
- 3) DOT/PF non-opposition position paper
- 4) Section-by-Section Analysis of CSHB 284 (L&C) am
- 5) Joint Statement of Support from AGC and ASA

If you have any questions, contact me or my staff, Nancy Groszek, at 465-3466.

Thank you in advance for your prompt consideration.

MB/NJG/bhn

Attachments

cc: Labor and Commerce Committee Members

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: CSHB 284 (L&C)

PUBLISH DATE: HOUSE 5/1/89

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. Hickay
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. (S) 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.

TITLE:

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

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.

(4)

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



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House of Representatives

SECTION BY SECTION ANALYSIS

CSHB 284 (L&C) am

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 30 days of receiving a pay request. This 30 calendar day time clock does not begin to run until the state or political subdivision actually receives "the grant or federal money. 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 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.

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 and exempts communities of less than 800 people from complying with the provisions of AS 36.90.200.

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.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

401 E STREET - 1 • ANCHORAGE ALASKA 99501
PO BOX 260001 • ANCHORAGE ALASKA 99524 0001
TELEPHONE (907) 561-5334 • FAX (907) 562-6218

JOINT STATEMENT OF SUPPORT

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.

wfr\promtpay.wp

6-1026D -
Bannister
3/29/90

Original sponsor(s): REP. BOYER, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Rieger, Sharp, Shultz, Taylor, Ulmer, Zawacki, Collins, Navarre, Leman

1 IN THE HOUSE

BY THE C&RA COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND 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 30 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 ac-
24 tually receives the grant money, whichever is later. If the state is
25 going to use federal money for the contract, the state shall pay the
26 prime contractor for satisfactory performance within 21 calendar days
27 of the date the state receives a payment request that complies with
28 the contract or within 21 calendar days of the date the state actually
29 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 working 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 contrac-
13 tor 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 working 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 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 (f) The obligation to pay interest under this section does not
 10 apply to retainage.

11 (g) This section does not apply to public construction or public
 12 works contracts made by a political subdivision that has a population
 13 under 800.

14 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
 15 contractor and a subcontractor on a public construction or public
 16 works contract shall include in a subcontract between the prime con-
 17 tractor and subcontractor for the public construction or public works
 18 a clause that requires the prime contractor

19 (1) to pay the subcontractor for satisfactory performance
 20 under the subcontract within eight working days after receiving pay-
 21 ment from which the subcontractor is to be paid;

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

26 (3) to pay the subcontractor interest on an amount that is
 27 not paid in accordance with (1) of this subsection for the period
 28 beginning on the day after the required payment date and ending on the
 29 day on which payment of the amount due is made; the interest shall be

1 computed at an interest rate that is equal to the amount set out in
2 AS 45.45.010(a);

3 (4) to pay interest on retainage withheld from the subcon-
4 tractor at an interest rate that is equal to the amount set out in
5 AS 45.45.010(a).

6 (b) A subcontractor on a public construction or public works
7 contract shall include in each subcontract under which a person agrees
8 to provide the subcontractor with services, other than as an employee,
9 or supplies to be used in the public construction or public works
10 project a clause that requires the subcontractor

11 (1) to pay the person for satisfactory performance under
12 the subcontract within eight working days after receiving payment from
13 which the person is to be paid;

14 (2) to pay the person all retainage due under the subcon-
15 tract with the person within eight working days after the subcontrac-
16 tor receives its share of the state-held retainage from the prime
17 contractor or another subcontractor;

18 (3) to pay the person interest on an amount that is not
19 paid in accordance with (1) of this subsection for the period begin-
20 ning on the day after the required payment date and ending on the day
21 on which payment of the amount due is made; the interest shall be
22 computed at an interest rate that is equal to the amount set out in
23 AS 45.45.010(a);

24 (4) to pay interest on retainage withheld from the person
25 at an interest rate that is equal to the amount set out in AS 45.45.-
26 010(a).

27 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
28 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
29 may negotiate and include in a public construction or public works

1 subcontract a provision that

2 (1) permits the prime contractor or a subcontractor to
3 determine that part or all of a subcontractor's request for payment
4 may be withheld for unsatisfactory performance under the subcontract;
5 and

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

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

22 (1) give the subcontractor a notice complving with AS 36.-
23 90.240 as soon as practicable after determing the cause for the with-
24 holding but before the due date for the subcontractor payment;

25 (2) give the contracting officer of the state or political
26 subdivision a copy of the notice furnished to the subcontractor under
27 (1) of this subsection;

28 (3) pay the subcontractor within eight working days after
29 correction of the identified subcontractor performance deficiency.

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

6 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
7 90.220(2) or 36.90.230(a)(1) must be in writing and must state the
8 amount being withheld, the specific causes for the withholding under
9 the terms of the subcontract, and the remedial actions to be taken by
0 the subcontractor to receive payment of the amount withheld.

1 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
2 vision of the state shall pay to the prime contractor interest on
3 retainage, including warranty retainage, on a contract for public
4 construction or public works at an interest rate that is equal to the
5 amount set out in AS 45.45.010(a). Interest on retainage accrues from
6 the date of approval of a pay request until the date of payment to the
7 contractor.

8 (b) A political subdivision that has a population of 500 or less
9 is exempt from the payment of interest under (a) of this section.

0 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-
1 210 - 36.90.290,

2 (1) a payment is considered to be made when mailed or
3 personally delivered to the party being paid;

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

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

1 (b) A political subdivision that receives a state grant for a
2 public construction or public works project may use money from the
3 state grant to pay the interest under AS 36.90.200 - 36.90.290.

4 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
5 provision that waives a provision required by AS 36.90.200 - 36.90.290
6 is void.

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

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

12 (2) "subcontractor" means a person at any level, other than
13 a prime contractor, who provides materials or services, other than as
14 an employee, to be used in a public construction or public works
15 project;

16 (3) "working day" does not include a Saturday, Sunday, or a
17 state holiday.

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

19 (d) This section does not apply

20 (1) if the cost of the goods or services purchased exceeds
21 \$500,000;

22 (2) to payment for specific goods or services in dispute
23 after a seller of goods or services receives notice from the state
24 official responsible for authorizing payment for goods and services
25 that the amount of the invoice or quality of specific goods or ser-
26 vices is in dispute and stating the reasons for the dispute; the state
27 agency shall pay for the specific goods or services in dispute within
28 30 days after resolution of the dispute; or

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

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 15, 1990

SUBJECT: Correction of CSHB 284 (L&C) am
TO: Senator Mike Szymanski
Chair
Community and Regional Affairs Committee
FROM: Theresa L. Bannister *TB*
Legislative Counsel

The language added by amendment to the above-referenced bill needs correction. This memo is to explain just why the correction is needed.

BACKGROUND. Sec 36.90.260(4) was added to the bill by floor amendment on May 7, 1989 and reads:

"(4) As 36.90.200 does not apply to public construction or public works contracts in communities that have a population under 800."

ANALYSIS AND SUGGESTION REGARDING PROBLEM. The placement of this paragraph is the problem. The introductory language of sec. 36.90.260 does not refer to sec. 36.90.200 and, therefore, raises a question about the amendment's application. The introductory language reads: "In AS 36.90.210 - 36.90.-290,".

This situation presents the possibility that your amendment would be applied only in connection with sec. 36.90.210 - 36.90.290. Since this does not appear to be the purpose of the new language, it is advisable that the placement of the amendment be changed.

Since your amendment deals only with sec. 36.90.200, the new language could be placed in that section as subsection (f).

OTHER CONSIDERATIONS. The term "communities" is not defined in sec. 36.90.200. The section imposes the requirements on the state and "political subdivisions of the state". The

Senator Mike Szymanski
Page 2
January 15, 1990

definition of "political subdivision of the state", found in AS 36.95.010(6), is very broad and covers villages in addition to cities and boroughs. I would suggest replacing "communities" with the term "political subdivisions" in the amendment.

Finally, since the criteria for coverage is that the contract be made by a political subdivision, not "in" the subdivision, I suggest replacing "in" with "made by" in the amendment.

CONCLUSION. Incorporating all of the above suggestions, the amendment would be placed in sec. 36.90.200 and read as follows:

"(f) This section does not apply to public construction or public works contracts made by a political subdivision that has a population under 800."

The above language has not been reviewed by the revisors yet, so if you would like an amendment or a committee substitute covering part or all of the above suggestions, please advise me so I can prepare it with the usual in-house review.

TB:pl
wkp1/001

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 15, 1990

SUBJECT: Sectional summary of CSHB 284 (L&C) am

TO: Senator Mike Szymanski
Chair
Senate Community and Regional Affairs
Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 contains the main provisions of the bill.

Sec. 36.90.200(a) requires the state and political subdivisions to pay a prime contractor for satisfactory performance on a public construction contract within 30 days of the state or political subdivision's receipt of a payment request from the contractor that complies with the contract. Establishes different payment deadlines when a political subdivision is using grant money for the contract or when the state is using federal money for the contract.

Sec. 36.90.200(b) requires the state or political subdivision to pay interest at a specified amount on the unpaid amount of a required payment. The interest starts from the 21st day after the required payment date established under (a).

Sec. 36.90.200(c) requires the state or political subdivision to notify the prime contractor within a certain time in writing if part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request does not comply with the contract. The subsection indicates what the notice should contain.

Sec. 36.90.200(d) requires the state or political subdivision to pay interest on the withheld amount from a certain date if the notification required under (c) does not comply with (c). The interest continues until notice that complies with (c) is given.

Sec. 36.90.200(e) requires the state or political subdivision to pay the amount withheld under (c) within 21 days after the prime contractor satisfactorily completes the remedial actions identified in the notice. Establishes different payment deadlines when a political subdivision is using grant money for the contract or when the state is using federal money for the contract. (Lines 3-4 on page 3 need a technical correction to replace "subdivision" with "state".) Requires the state or political subdivision to pay interest at a specified rate on the withheld amount from a certain date if the withheld amount is not paid by the date set in this subsection.

Sec. 36.90.210(a) identifies certain terms that prime contractors and subcontractors must include in all of the subcontracts between them for public construction projects. The terms include requiring the prime to pay the sub for satisfactory performance within 8 days after receiving payment from which the sub is to be paid, to pay the sub all retainage due under the subcontract by a certain date, to pay the sub interest on certain unpaid amounts at a specified rate for a given period, and to pass through to the sub certain retainage interest.

Sec. 36.90.210(b) identifies certain terms that a subcontractor on a public construction contract must include in each subcontract under which a person agrees to provide the sub with services, other than as an employee, or supplies for the project. The terms include requiring the sub to pay the person for satisfactory performance by a certain date, to pay the person certain retainage by a certain date, to pay the person interest on certain unpaid amounts at a specified rate for a given period, and to pass through to the person certain retainage interest.

Sec. 36.90.220 allows a prime subcontractor or a subcontractor to negotiate and include in a public construction subcontract certain provisions. These provisions include

(1) permitting the prime or a sub to retain without cause and under mutually agreeable terms a specified percentage of a progress payment otherwise due to the sub for satisfactory performance without incurring an obligation to pay interest on the retainage, except for certain specified retainage (line 28 needs a technical correction: replacement of "the" by "a"); the paragraph authorizes the parties to consider when making the provision the ability of the sub to furnish performance and payment bonds;

(2) permitting the prime or a sub to determine that part or all of a sub's payment request may be withheld for unsatisfactory performance under the subcontract;

(3) permitting the prime or a sub to withhold payment for unsatisfactory performance without incurring an obligation to pay interest for late payment, if a specified notice has previously been given to the sub and a copy furnished to the contracting officer of the state or political subdivision.

Sec. 36.90.230(a) authorizes a prime on a public construction contract to withhold payment from a sub for unsatisfactory performance under certain conditions. Directs the prime who is withholding to give the sub a specified notice within a certain time frame, to give the contracting officer of the state or political subdivision a copy of the notice, and to pay the sub within eight days after correction of the identified subcontractor performance deficiency.

Sec. 36.90.230(b) requires the prime to pay the sub interest at a specified rate after a certain point if the prime does not comply with the notice and payment requirements of (a) of this section.

Sec. 36.90.240 establishes the form and contents of certain required notices.

Sec. 36.90.250 requires the state or political subdivision to pay the prime contractor interest on retainage at a specified rate. Specifies when the interest begins accruing and when it stops. Allows a political subdivision to use state grant money received for the project to pay the retainage

Senator Mike Szymanski

Page 4

January 15, 1990

interest. Exempts political subdivisions of 500 or fewer persons from the interest payment requirement of this section.

Sec. 36.90.260 establishes some guidelines for determining in secs. 36.90.210 - 36.90.290 when payments are considered to be made and received and when an invoice is considered to be received. Paragraph (4) states that it exempts public construction contracts in communities with a population under 800 from sec. 36.90.200.

Sec. 36.90.270 voids a contract provision that waives a provision required by secs. 36.90.200 - 36.90.290.

Sec. 36.90.290 defines "prime contractor" and "subcontractor" for secs. 36.90.200 - 36.90.290.

Section 2 makes a technical change. Substitutes a citation of the new sections in bill section 1 for the citation of the present statutory section in this area.

Section 3 repeals the present public construction payment statute, AS 36.90.010.

Section 4 indicates which public construction projects are subject to this bill.

Section 5 makes the Act effective July 1, 1989.

If I can be of further assistance, please advise.

TB:pl
wkp1/002


Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

February 27, 1990

TO: Senator Mike Szymanski, Chairman, Senate Community and Regional
Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: HB 284 - Prompt pay of contractors and subcontractors

I understand there will be a work session on HB 284 today. The AML is opposed to HB 284 and CS for HB 284 (L&C). I have outlined our comments and objections below.

1. AML is not opposed to paying bills according to contracts for satisfactory performance and in a reasonable amount of time.
2. It may be appropriate for the legislature to set policy for the state administration.
3. It may also be appropriate for the State to require contractors to pay subcontractors on public construction projects.
4. HB 284 is an unnecessary and inappropriate intrusion into local government.
5. HB 284 is a potentially costly mandate on local government.
6. Local government operations are different from federal and state government because:
 - a. legislative bodies are directly involved with payment of bills, and
 - b. contractors have direct, daily, and year-round access to administrators and the governing bodies for remedies.
7. There has been no specific testimony as to significant problems at the local level.
8. HB 284 would allow an unaffected third party (state) to control a two-party (contractor-municipality) agreement.
9. The payment time line is too short to adequately review and process a request for payment; construction projects require professional and technical view to determine satisfactory performance in addition to the time necessary to approve and process the payment; the bill would add additional time and cost for notification and to calculate interest.

Senator Szymanski re HB 284
February 27, 1990
Page 2

10. AML is opposed to Section 36.90.250. RETAINAGE. (AS 36.90.010 (c) in existing law). AML Policy Statement, Part VII.A.7. states, "The League supports repeal of the application to municipalities of the Public Construction Contract Payments section of Title 36, Public Contracts Code (AS 36.90.010) relating to payment on retainage on construction contracts."

11. Section 36.90.250 RETAINAGE (b) dealing with the use of project funds to pay interest applies only to interest on retainage not the new interest provisions.

12. HB 284 would be a particular hardship on smaller municipalities; the exemption for populations of 500 or less applies only to interest on retainage.

13. The eight-day provision to notify contractor of unsatisfactory performance, specifically, is too short for adequate review and processing; see #9 above.

Thank you for your consideration.

sab3:hb284

MAY - FII

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
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217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

March 21, 1990

TO: Senator Mike Szymanski, Chair
Community and Regional Affairs Committee

FROM: Chrystal Smith, Programs Manager *Chrystal*

RE: Issues of Immediate Importance to AML Members

Since we have several issues to deal with today, I thought I would summarize them in writing for your reference.

1. **Prompt Pay - HB 284 and HB 139:** What is your intention re the Thursday committee hearing scheduled for this bill and HB 139? As you know, AML continues to oppose these bills, but if they are going to pass we would like to have some amendments that would make it easier for municipalities to handle the provisions of the bills. Scott Burgess sent you a memo last week outlining these proposed amendments, and I have enclosed an additional copy for your reference. You had asked Scott to meet with Resa Jarrel to reach some compromise position, but unfortunately he was quite sick last week and was unable to do so. He did provide her with a copy of the memo outlining our proposed amendments.

If you are intent on moving these bills out of committee, we have two questions: 1) Are you willing to have these amendments drafted and introduced for consideration by the committee? and 2) Will you support them?

2. **In-place Resources - HB 159:** You have pulled this bill, which was scheduled for a vote on the floor today, back into your committee. Since the bill has had several hearings in both houses and is not controversial, we request that you send it back to Rules and, thus, to the floor for action. As you know, the bill merely puts a two-year moratorium on the enforcement of the statute requiring that the value of in-place resources be included within a municipality's full and true value determination.

In-place resources are such things as minerals in the ground and trees growing in the forest, and determining the value of such resources is extremely difficult, as current negotiations on the Mental Health Trust lands point out. If the State Assessor is required to include a value for these resources within

Senator Mike Szymanski

March 21, 1990

page 2

the full and true value determination of municipalities, which is used as the basis for distribution of school foundation funding, municipal assistance, and revenue sharing, cities and boroughs across the state will be negatively affected. HB 159 calls for a study of the taxing policy that should be followed with respect to this issue and for a two-year extension of existing practice while this study is conducted. **Holding up passage of HB 159 will not benefit anyone or any group -- please send it back to Rules.**

3. **Taxation of certain state and federal property - SB 308:** We are requesting that you schedule this bill and move it out of your committee, as you indicated to Scott you would be willing to do. Quick action will be needed if this important piece of legislation is going to pass during this session.

4. **Revision of Senior Citizens/Disabled Veterans property tax exemption program:** As you will recall, both Scott and I have talked about this issue with you during the last couple of months. You had agreed to introduce a bill that would change the program from one mandated by the State but administered, and primarily funded, by municipalities to one that would provide a direct rebate from the State to seniors and disabled veterans. The House C&RA Committee CS for HB 243, which was crafted by AML, the Department of Community and Regional Affairs, and the Older Alaskans Commission, does just that. We are asking you to introduce a bill identical to CS HB 243 (C&RA) in the Senate to facilitate passage this year. I have attached a copy of CS HB 243 (C&RA) for your use.

Thanks for your assistance. Please let me know if you have any questions about these issues.

Enclosures

CSS:LEG szy.321

3/23/90

RECEIVED

MAR 27 1990

TO; Sen Mike Szymanski
FROM; Ray Zirger, Owner of Arctic Excavating Co.
SUBJECT; HB 284 Prompt pay on public construction.

After sitting through an afternoon of teleconference, listening to various city, borough and village representatives discuss the different ways to get out of paying interest on overdue money, never once did I hear anyone even mention prompt payment. I heard nothing that would cause me to believe that any one of them intends to make any changes in the time or methods of late payments. They all seemed more concerned with how to avoid paying interest or how to get someone else to pay it.

I would think that a good share of these public representatives dont have the foggiest idea of how the contractor system works. When the contractor bids these small jobs, we have to put our own money into materials and labor. The labor has to be paid weekly, and I know of very few suppliers that are willing to wait 60 to 90 days for thier money. But the owners seem to think that it is OK to tie up our money for an indefinate time. A lot of us are small and dont have the money to loan to the bureaucratic system,

I have long since quit bidding on public work on the local level for this very reason. We used to do work for the local service areas set up by the North Star Borough, but it got to the point where, once we entered into a contract with a service area, the two or three commissioners in that service area wanted to change the rules in the middle of the job, or one or more of them wanted something besides what had been contracted and therefore refused payment. After losing money on two or three in a row, we decided to not do any more bidding with them.

It is therefore my opinion, that the interest rates should be high enough to give the members of the municipal league an incinitave to pay promptly.
IT IS, AFTER ALL, OUR MONEY THEY ARE PLAYING GAMES WITH.

Thank you for your time.

Ray Zirger
Owner of Arctic Excavating Co.

- | | |
|----------------------|-------------------|
| cc; Sen; Steve Frank | Reps; Mark Boyer |
| Sen Al Adams | Rep Dave Donley |
| Sen Drue Pearce | Rep Walt Furnace |
| Sen Pat Pourchot | Rep Bert Sharp |
| A.G.C. Marie Wilson | Rep Niilo Koponen |

POSITION PAPER
A.G.C. OF ALASKA
TO THE
HOUSE LABOR AND COMMERCE COMMITTEE
OF
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 HB 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, INORDER 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
Rozanne Horschel
ACME Fence Co.
522-1155

TREASURER
Earlene Careus
S & S Welding
276-5532

April 17, 1989

→ Have there been problems
w/ fed prompt pay
law

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

Prompt Pay

HB 284 was introduced April 12, 1989, by Representatives Boyer, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Reiger, Sharp, Shultz, Taylor, Ulmer, Zawacki and Collins. It passed the House May 7, 1989.

SB 289 was introduced April 18, 1989, by Senators Fahrenkamp, Rodey, Pourchot, Sturgulewski, Pearce, Frank and Coghill. Senator Szymanski added his name as a co-sponsor April 21, 1989.

The following are some highlights of CSHB 284(L&C) am:

- Government agencies are to pay prime contractors within 30 days after receiving progress payment application or pay interest. Communities with a population of 800 or less are exempt. The original bill contained 14 days and the Federal law is 7 days.
- Government agencies would pay interest on retainage. Communities with a population of 500 or less are exempt.
- Contract documents between prime contractor and subcontractors and between subcontractors and their subcontractors and supplies would require payment for satisfactory performance within 8 days after receiving payment or pay interest.
- If payment is withheld for unsatisfactory performance, by an agency, they are to notify the prime contractor and the remedial actions needed. The agency is to pay within 21 days after completion of the remedial action or within 21 days after a community actually receives its grant funds.
- The prime and subcontractor can negotiate provisions for retainage without cause and for cause and not have to pay interest.

6-1026J
Bannister
3/22/90

Original sponsor(s): REP. BOYER, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Rieger, Sharp, Shultz, Taylor, Ulmer, Zawacki, Collins, Navarre, Leman

1 IN THE HOUSE

BY THE C&RA COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND 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 30 calendar days of the date the state or political
18 subdivision receives a valid payment request from the prime contractor
19 that complies with the contract or within 30 calendar days after the
20 warranty period expires, whichever is later. If a political subdivi-
21 sion is going to use grant money for the contract, the subdivision
22 shall pay the prime contractor for satisfactory performance within 21
23 calendar days of the date the subdivision receives a valid payment
24 request that complies with the contract, within 21 calendar days of
25 the date the subdivision actually receives the grant money, or within
26 21 calendar days after the warranty period expires, whichever is
27 latest. If the state is going to use federal money for the contract,
28 the state shall pay the prime contractor for satisfactory performance
29 within 21 calendar days of the date the state receives a valid payment

1 request that complies with the contract, within 21 calendar days of
2 the date the state actually receives the federal money, or within 21
3 calendar days after the warranty period expires, whichever is latest.

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

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

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

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

1 calendar days after the prime contractor satisfactorily completes the
2 remedial actions identified in the notice, within 21 calendar days
3 after the political subdivision actually receives the grant money, or
4 within 21 calendar days after the warranty period expires, whichever
5 is latest. If the state is going to use federal money for the con-
6 tract, the state shall pay the prime contractor within 21 calendar
7 days after the prime contractor satisfactorily completes the remedial
8 actions identified in the notice, within 21 calendar days after the
9 subdivision actually receives the money, or within 21 days after the
10 warranty period expires, whichever is latest. If the withheld amount
11 is not paid within the 21 calendar days, the state or political subdi-
12 vision shall pay interest on the withheld amount from the 21st calen-
13 dar day at an interest rate that is equal to the amount set out in
14 AS 45.45.010(a).

15 (f) This section does not apply to public construction or public
16 works contracts made by a political subdivision that has a population
17 under 800.

18 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
19 contractor and a subcontractor on a public construction or public
20 works contract shall include in a subcontract between the prime con-
21 tractor and subcontractor for the public construction or public works
22 a clause that requires the prime contractor

23 (1) to pay the subcontractor for satisfactory performance
24 under the subcontract within eight working days after receiving pay-
25 ment from which the subcontractor is to be paid;

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

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

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

10 (b) A subcontractor on a public construction or public works
11 contract shall include in each subcontract under which a person agrees
12 to provide the subcontractor with services, other than as an employee,
13 or supplies to be used in the public construction or public works
14 project a clause that requires the subcontractor

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

18 (2) to pay the person all retainage due under the subcon-
19 tract with the person within eight working days after the subcontrac-
20 tor receives its share of the state-held retainage from the prime
21 contractor or another subcontractor;

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

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

1 the person.

2 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
3 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
4 may negotiate and include in a public construction or public works
5 subcontract a provision that

6 (1) permits the prime contractor or a subcontractor to
7 retain without cause and under mutually agreeable terms and conditions
8 a specified percentage of a progress payment otherwise due to the
9 subcontractor for satisfactory performance under the subcontract
10 without incurring an obligation to pay interest on the retainage,
11 except for interest under AS 36.90.250(a) that is attributable to
12 retainage, including warranty retainage, withheld from the subcontrac-
13 tor; when making the provision, the parties may consider the ability
14 of the subcontractor to furnish performance and payment bonds;

15 (2) permits the prime contractor or a subcontractor to
16 determine that part or all of a subcontractor's request for payment
17 may be withheld for unsatisfactory performance under the subcontract;
18 and

19 (3) permits the prime contractor or a subcontractor to
20 withhold payment for unsatisfactory performance without incurring an
21 obligation to pay interest for late payment, if a notice complying
22 with AS 36.90.240 has been previously furnished to the subcontractor
23 and a copy of the notice is furnished to the contracting officer of
24 the state or political subdivision.

25 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
26 MANCE. (a) If the prime contractor on a public construction or
27 public works contract, after making a request for payment to the state
28 or political subdivision but before paying a subcontractor for the
29 subcontractor's performance covered by the payment request, discovers

1 that part or all of the payment otherwise due to the subcontractor is
2 subject to withholding from the subcontractor under the subcontract
3 for unsatisfactory performance, the prime contractor may withhold the
4 amount as allowed under the subcontract. If the prime contractor
5 withholds an amount under this subsection, the prime contractor shall

6 (1) give the subcontractor a notice complying with AS 36.-
7 90.240 as soon as practicable after determining the cause for the with-
8 holding but before the due date for the subcontractor payment;

9 (2) give the contracting officer of the state or political
10 subdivision a copy of the notice furnished to the subcontractor under
11 (1) of this subsection;

12 (3) pay the subcontractor within eight working days after
13 correction of the identified subcontractor performance deficiency.

14 (b) If the prime contractor does not comply with the notice and
15 payment requirements of (a) of this section, the contractor shall pay
16 the subcontractor interest on the withheld amount from the eighth
17 working day at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a).

19 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
20 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
21 amount being withheld, the specific causes for the withholding under
22 the terms of the subcontract, and the remedial actions to be taken by
23 the subcontractor to receive payment of the amount withheld.

24 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
25 vision of the state shall pay to the prime contractor interest on
26 retainage, including warranty retainage, on a contract for public
27 construction or public works at the prevailing interest rate. Inter-
28 est on retainage accrues from the date of approval of a pay request or
29 from the end of the warranty period, whichever is later, until the

1 date of payment to the contractor.

2 (b) A political subdivision that has a population of 500 or less
3 is exempt from the payment of interest under (a) of this section.

4 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-
5 210 - 36.90.290,

6 (1) a payment is considered to be made when mailed or
7 personally delivered to the party being paid;

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

10 (3) an invoice is considered to be received when it is
11 date-stamped or otherwise marked as delivered; if the invoice is not
12 date-stamped or otherwise marked as delivered, the date of the invoice
13 is considered to be the date when the invoice is received.

14 (b) A political subdivision that receives a state grant for a
15 public construction or public works project may use money from the
16 state grant to pay the interest under AS 36.90.200 - 36.90.290.

17 Sec. 36.90.265. MUNICIPALITIES. AS 36.90.200 - 36.90.290 do not
18 apply to a public construction or public works contract of a munic-
19 ipality unless the municipality has entered into a written contract
20 with the state for the state to provide funds for the public con-
21 struction or public work.

22 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
23 provision that waives a provision required by AS 36.90.200 - 36.90.290
24 is void.

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

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

1 (2) "subcontractor" means a person at any level, other than
2 a prime contractor, who provides materials or services, other than as
3 an employee, to be used in a public construction or public works
4 project;

5 (3) "working day" does not include Saturday, Sunday, or a
6 state holiday.

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

8 (d) This section does not apply

9 (1) if the cost of the goods or services purchased exceeds
10 \$500,000;

11 (2) to payment for specific goods or services in dispute
12 after a seller of goods or services receives notice from the state
13 official responsible for authorizing payment for goods and services
14 that the amount of the invoice or quality of specific goods or ser-
15 vices is in dispute and stating the reasons for the dispute; the state
16 agency shall pay for the specific goods or services in dispute within
17 30 days after resolution of the dispute; or

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

20 * Sec. 3. AS 36.90.010 is repealed.

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

23 * Sec. 5. This Act takes effect July 1, 1990.
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