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STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 17, 1990

SUBJECT: Sectional summary of SB 289

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 14 days of the state or political subdivision's receipt of a payment request from the contractor that complies with 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 15th day after receipt of the payment request.

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 14 days after the prime contractor satisfactorily completes the remedial actions identified in the notice. 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 page 4, line 8 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 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.

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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
WKPl/012