

HB

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# SENATE FINANCE COMMITTEE REPORT

DATE: 4/26/90

FURTHER:

DATE TURNED INTO OFFICE: 4/30/90

The Finance Committee considered

CSHB 284 (L&C) am

Terms/conditions under which prime contractors/subconstructors are paid for materials and services provided to a public construction project; efd.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt S CS CSHB 284 (L&C)
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

**ATTACHES NEW FISCAL NOTE(S):**

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

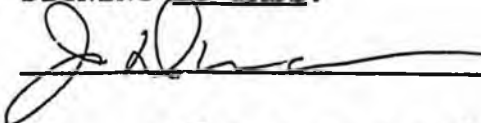
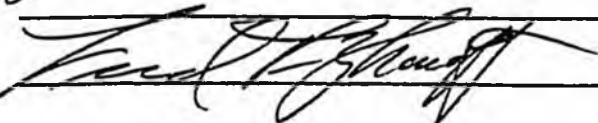
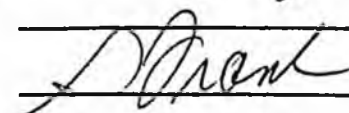
**APPROVES PREVIOUS:**

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DOT/PE 4/27/90

**SIGNING DO PASS:**

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

**OTHER RECOMMENDATIONS:**

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

1. \_\_\_\_\_

2. Roll/Reley NO PASS

Co-Chairs: Signatures and Recommendations

**STATE OF ALASKA  
1989 LEGISLATIVE SESSION**

**BILL VERSION: CSCSHB 284(C&RA)  
PUBLISH DATE: 4/02/90**

**FISCAL NOTE**

Revision Date:  
Title: Public Construction Contract Payments

Agency Affected: DOT&PF  
BRU: Finance

Sponsor: Boyer  
Requestor: Boyer

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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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)	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER*	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**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:**

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

Phone: 465-3911  
Date: 4/25/90

Approved by Commissioner: *[Signature]*  
Agency: Department of Transportation and Public Facilities

Date: 4/27/90

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

Adopted

**Senate CS for CS for HB 284 (C&RA)**

It is the intent of the legislature that the provision in Sec. 36.90.200 (lines 24 through 29), relating to federal money, does not apply to the Department of Transportation and Public Facilities for federal cost-reimbursement programs. Examples of this include the federal-aid highway and aviation programs. Federal funds are not received prior to payment of bills, therefore, state general funds are initially expended to pay contractors. Projects performed under these programs are subject to the 30 day provision.

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 complying with AS 36.-  
23 90.240 as soon as practicable after determining 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  
10 the subcontractor to receive payment of the amount withheld.

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

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

20 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-  
21 210 - 36.90.290,

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

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

26 (3) an invoice is considered to be received when it is  
27 date-stamped or otherwise marked as delivered; if the invoice is not  
28 date-stamped or otherwise marked as delivered, the date of the invoice  
29 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 - 36.90.290C.

4 Sec. 36.90.265. APPLICABILITY TO POLITICAL SUBDIVISIONS. AS 36.-  
5 90.200 - 36.90.290 apply to a public construction or public works con-  
6 tract of a political subdivision if the political subdivision has  
7 entered into a written contract with the state for the state to  
8 provide funds for the public construction or public work.

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

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

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

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

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

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

24 (d) This section does not apply

25 (1) if the cost of the goods or services purchased exceeds  
26 \$500,000;

27 (2) to payment for specific goods or services in dispute  
28 after a seller of goods or services receives notice from the state  
29 official responsible for authorizing payment for goods and services

1       that the amount of the invoice or quality of specific goods or ser-  
2       vices is in dispute and stating the reasons for the dispute; the state  
3       agency shall pay for the specific goods or services in dispute within  
4       30 days after resolution of the dispute; or

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

7       \* Sec. 3. AS 36.90.010 is repealed.

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

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

4/30/90

POSITION PAPER  
A.G.C. OF ALASKA  
TO THE  
SENATE FINANCE 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 HB 284.

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.

CSCSHB 284(C&RA)

CSCSHB 284(C&RA), "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".

CSCSHB 284(C&RA) represents the combined efforts of the Sponsor, the Alaska Municipal League, and the Association of General Contractors to shape a bill that encourages the State and its political subdivisions to pay contractors on public works projects in a prompt and timely manner.

This legislation is based on federal prompt pay statutes although the provisions are not as stringent. Whereas federal law mandates payment in seven days of the billing date, this bill requires that the state or its political subdivisions pay within 30 days after receiving progress payment application or they must pay interest. If the political subdivision is using federal money or grant money, they must pay within 21 days or pay interest.

Communities with a population of 800 or less are exempt from these provisions.

This bill extends these same obligations of prompt pay throughout the contracting structure in that there are required contractual terms between the prime contractor and the subcontractors and also between individual subcontractors. The payment schedule for subcontractors is 8 days after the prime contractor has received the money from which the subcontractor is to be paid.

There are further stipulations regarding the withholding

-SPONSOR'S BACKGROUND MATERIAL-

of money from contractors for unsatisfactory performance. Notification of this action must be prompt, in writing, state the specific causes for the withholding, the amount being withheld, and the remedial actions to be taken by the subcontractor to receive payment of the amount withheld. Payment in these cases must be within 21 days of completion of the corrective actions.

HB 284 passed the House unanimously. This legislation has been a top priority of the National Federation of Independent Businesses and is the number one legislative priority of the Association of General Contractors.

## PROMPT PAY

HB 234 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, Collins, Navarre and Leman. 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.

Provided by Associated General Contractors

Prompt Pay  
Page: 2

The following are the changes made by the Senate Community and Regional Affairs Committee.

Page 2 lines 9 and 17; Page 3, line 20 and 23; Page 4, lines 12 and 15; Page 5, line 28; Page 6, line 4 - changed calendar days to working days.

Page 3, lines 9-10 was added to clarify that the deadlines and interest would not apply during the warranty period in addition to the interest on retainage provision.

Page 3, lines 11-13 was moved from page 7, lines 8-10 of the House passed bill. The language on page 7 of the House passed bill was a floor amendment and was placed in an incorrect section of the bill.

Deleted the language on Page 4, lines 26-29 and page 5, lines 1-5 of the House passed bill. This section allowed the prime and subcontractor to negotiate provisions for retainage without cause and not have to pay interest except for pass through interest received on retainage from a community; when making these provisions they could take into consideration the ability of the subcontractor to furnish performance and payment bonds.

Page 7, lines 1-3 expanded language to allow communities to pay interest under the legislation from the state construction grant. Page 6, lines 22-24 of the House passed bill allowed communities to pay interest on retainage from the state construction grant.

Page 7, lines 4-8 was added to specify that the legislation would apply only when the community is using state funds.

Page 7, lines 21-22 added a new subsection to definitions - "working day".

Page 8, line 10 changed the effective date from July 1989 to July 1990.

## Department of Transportation &amp; 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)

For further information call Catherine A. McHugh at 485-3900



# AMERICAN SUB CONTRACTORS 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 Carra  
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

**Sec. 45.45.010. Legal rate of interest.** (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$25,000 is exempt from the limitation of this subsection.

(c) *[Repealed, § 3 ch 84 SLA 1973.]*

(d) *[Repealed, § 2 ch 94 SLA 1981.]*

(e) *[Repealed, § 4 ch 146 SLA 1974.]*

(f) A bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may not require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is \$1,000,000 or more and the term of the loan is five years or more.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980; am §§ 1, 2 ch 94 SLA 1981; am § 1 ch 56 SLA 1982)

**Cross references.** — For maximum rates of interest applicable to: bank credit cards, see AS 06.05.209; bank revolving credit plans, see AS 06.05.208; credit unions, see AS 06.45.060; judgments, see AS 09.30.070; life insurance policy loans, see AS 21.45.060; premium finance agreements, see AS 06.40.120; retail installment contracts, see AS 45.10.120; small loan companies, see AS 06.20.230.

**Effect of amendments.** — The 1982 amendment, in subsection (f), inserted "credit union" in the first sentence and added the present second sentence.

**Legislative history reports.** — For report on ch. 84, SLA 1973 (FCCS HCSSB 37), see 1973 Senate Journal Supplement 16, pp. 1 and 2, following p. 766 of the 1973 Senate Journal.

**Opinions of attorney general.** — It is unlawful for a bank to charge or collect "points" which, when in combination with the interest charged for a loan, would exceed the usury ceiling established by subsection (b). 1979 Ops. Atty Gen. No. 6.

## Chapter 90. Miscellaneous Provisions.

Section	Section
10. Public construction contract payments	100. Compliance of contracts with professional registration requirements
50. Maintenance of state marine vessels	

### *Sec. 36.90.001. (Renumbered as AS 36.90.010.)*

#### **Sec. 36.90.010. Public construction contract payments.**

(a) The state shall initiate procedures to pay the contractor under a public construction or public work contract within 15 days after the contractor submits to the state a bill for materials provided or services performed and a sworn statement that all employees employed on the project by the contractor and all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

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

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

(d) A political subdivision that has a population of 500 or less is exempt from the payment of interest provided in (c) of this section.

(e) 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 on retainage under contracts for the project as required by (c) of this section. (§ 1 ch 85 SLA 1982)

*Revisor's notes. — Formerly AS 36.90.001. Renumbered in 1986.*

*Editor's notes. — Section 3, ch. 85, SLA 1982, provides that the provisions of the act apply to contracts entered into after July 1, 1982.*

**Sec. 36.90.050. Maintenance of state marine vessels.** (a) A marine vessel owned by the state may not be transported outside of the state for the purpose of maintenance or repair unless the commissioner of transportation and public facilities determines that there is no facility in the state able to perform the maintenance at a price that is in the state's best interests. In making this determination, the commissioner shall consider, and document through written findings

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, 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.

# 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: Senator Dick Eliason  
Chairman, Labor and Commerce Committee

From: Representative Mark Boyer *MB*

Date: April 2, 1990

Re: HB 284, Public Construction  
Contract Payments

SCSCSHB 284 (C&RA) has recently been referred to the Senate Labor and Commerce Committee. This bill had great support in the House last year, having been passed to the Senate in less than a month. Last week, in the Community and Regional Affairs Committee, the representatives from Associated General Contractors and the Alaska Municipal League came together on a compromise package that has all their major problems worked out.

The bill mandates that the state and its political subdivisions pay their public construction work project bills in a timely fashion and sets the interest and penalty percentages for noncompliance. It further authorizes the payment of interest on retainage and the withholding of payments for unsatisfactory performance. It is based on Federal prompt pay legislation.

I formally request a hearing on this bill and I can reasonably assure you that the Senate L&C CS has the support of all affected parties.

Thank you for your early consideration.

FAIRBANKS 208



STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB284 (C&RA)  
PUBLISH DATE: 4/2/90

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)

**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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>146.0</b>	<b>146.0</b>	<b>146.0</b>	<b>146.0</b>	<b>146.0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUNDING: (THOUSANDS OF DOLLARS)**

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**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. Hickey  
Agency: Department of Transportation and Public Facilities

Date: 4/19/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor