

**HB**

**284**

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

and recommended:

[ ] replace with \_\_\_\_\_ CS  
[x] or adopt SCS CS HB 284 (C+RA)  
[ ] attached amendment(s)  
[ ] \_\_\_\_\_ letter of intent adopted

[x] same title  
[ ] new title  
[ ] technical title change (HB only)

[x] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] further referral to \_\_\_\_\_

*Add Finance Referral*

ATTACHES NEW FISCAL NOTE(S):  
Dept/Date:

[ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:  
[x] fiscal note(s) DOT/PF 4/2/90  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

*[Handwritten signatures]*

OTHER RECOMMENDATIONS:

*[Handwritten: Kuffler Do Pass]*

*[Handwritten Signature]*  
Chair: Signature and Recommendation

prime contractor for satisfactory performance within 21 calendar days of the date the state receives a payment request that complies with the contract or within 21 calendar days of the date the state actually receives the federal money, whichever is later.

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**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 |
|---------|---|-------|-------|-------|-------|-------|

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| 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. Hickey  
Agency: Department of Transportation and Public Facilities

Date: 4/19/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor

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)

## Department of Transportation & Public Facilities



# POSITION PAPER

**BILL NO:** HB No. 284

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

**TITLE:**

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

**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 465-3900

# 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



FAIRBANKS

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

JUNEAU

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

## 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 is paid. Once corrected, the contractor is entitled to payment within 14 days or else interest accrues.

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

FAIRBANKS 20B

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

6041 BIRCHST • ANCHORAGE ALASKA 99503  
 PO BOX 24000 • ANCHORAGE, ALASKA 99524 (MAY)  
 TELEPHONE (907) 561-5334 • FAX (907) 562-6118

### 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.

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# Alaska State Legislature

REPRESENTATIVE  
MARK BOYER

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

MEMBER, HOUSE LABOR AND  
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



FAIRBANKS

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

JUNEAU

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

## House of Representatives

### 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 20B

PROMPT PAY

HB 284 was introduced April 12, 1989, by Representatives Boyer, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Merard, 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.

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

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



THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS RESA JERREL AND I AM THE DIRECTOR OF GOVERNMENTAL RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA (A.G.C.). ON BEHALF OF OUR OVER 600 MEMBER FIRMS WE APPRECIATE THE OPPORTUNITY TO TESTIFY IN FAVOR OF HB 264.

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.