

HOUSE BILL REPORT

SHB 1736

*As Passed House
February 11, 1992*

Title: An act relating to payment for work of improvement on real property.

Brief Description: Establishing a system for payment for works of improvement on real property.

Sponsor(s): By House Committee on Commerce & Labor (originally sponsored by Representatives O'Brien, Fuhrman and R. King).

Brief History:

Reported by House Committee on:
Commerce & Labor, March 5, 1991, DPS;
Passed House, March 18, 1991, 98-0;
Passed House, February 11, 1992, 93-2.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1736 be substituted therefor, and the substitute bill do pass.*
Signed by 11 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: There is no requirement in Washington that funds paid for a construction project to the person in charge of the project be used to pay for the materials or labor used in the project. One method to force payment to contractors, subcontractors, material suppliers, or persons providing labor or services for a project may be to place a lien against the property being improved.

Summary of Bill: Money released to or obtained by an owner, developer, prime contractor, subcontractor, or other person in charge of a public or private construction project is held in trust for the benefit of persons making the payment and persons who provided the labor or furnished materials, equipment, or professional services in connection with the project. Separate accounting of the funds is not required

and commingling the trust funds with other money is not a violation of the act.

The use of trust money for any purpose other than to pay the persons for whom it is held in trust is prima facie evidence in a civil law suit of a trust violation and an intent to defraud. The mishandling of these funds is a violation of the Consumer Protection Act.

Owners must pay prime contractors, and contractors must pay the amounts due to the other contractors and suppliers no later than 10 days after receipt of the money from which payment is to be made.

If there is a good faith dispute over any amount due, the person responsible for making payment may withhold up to 150 percent of the disputed amount.

The owner, contractor, or subcontractor may retain funds due to other contractors, suppliers, or professional services providers as security for completion of the work. Except with respect to retainage held for improvements made to single family residences, retainage is also held in trust and must be released no later than 60 days from the date of substantial completion of the project. If a good faith dispute arises over the release of the retainage, the retainer may withhold up to 150 percent of the estimated value of the issue in dispute.

In addition to other legal remedies, any person from whom funds have been withheld in violation of the act is entitled to 12 percent interest or the amount currently allowable under the state usury laws, whichever is greater, plus 1 1/2 percent per month. In a law suit to collect withheld funds, the prevailing party is entitled to costs and attorneys' fees.

It is against public policy for any party to require another party to waive the requirements of the act.

Fiscal Note: Not requested.

Effective Date: The act takes effect September 1, 1991, and applies to all construction contracts entered into on or after September 1, 1991.

Testimony For: A task force in the Senate has been working on this issue for several years. This proposal was reached after many hours of negotiation and compromise by the parties. The object of this proposal is preventive: to reduce the number of construction liens by requiring prompt pay on construction projects. With this legislation, the

parties would have incentives to use the money for a project as the payors intended. However, one provision deleted in the substitute bill is important to protect subcontractors and should be retained. This provision would prohibit clauses in construction contracts that make the subcontractors payment conditioned on whether the general contractor is paid.

Testimony Against: None.

Witnesses: David Morgan (in favor); Doug Bohlke, Sheet Metal Contractors (in favor); Duke Schaub, Associated General Contractors (in favor of substitute bill); Irv Dellinger, Western Building Materials (in favor of substitute bill); Larry Stevens, National Electrical Contractors Association (in favor of original bill, with concerns about substitute bill); and Bob Dilger, Washington Building and Construction Trades Council (in favor).