

SENATE BILL REPORT

SHB 1736

AS REPORTED BY COMMITTEE ON COMMERCE & LABOR, FEBRUARY 28, 1992

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

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

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Matson, Chairman; Anderson, Vice Chairman; Bluechel, McDonald, McMullen, Moore, and Skratek.

Staff: Dave Cheal (786-7576)

Hearing Dates: April 2, 1991; April 5, 1991; February 25, 1992; February 28, 1992

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:

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 lawsuit 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.

Appropriation: none

Revenue: none

Fiscal Note: requested

SUMMARY OF PROPOSED SENATE AMENDMENT:

This application of the bill is limited to public works projects.

Interest on late payments in public works projects is changed from the current 1 percent per month on the amounts due to the amount provided by the usuary law.

Public owners must pay no later than 30 days after amounts are due and may no longer contract for a longer grace period.

Public bodies must notify prime contractors of disputes over performance or improper billing of the exact reasons why amounts are being withheld within eight days of receipt of the payment request. This notice must indicate how the problem can be solved. Failure to give this notice as required subjects the public body to the interest payment described above.

Once the remedial action is complete, the public body must pay the amount withheld within 30 days.

Notice of lien claims for supplies and labor must be made within 45 days of completion instead of the 30 days currently required.

Retainage must be at least 5 percent and is no longer subject to reduction by request of the contractor.

Retainage must be released within 60 days after completion instead of the current 30-days after final acceptance.

The contractor may require retainage to be placed in an interest bearing account or converted to securities, with interest or earnings payable to the contractor.

After the lien claim period, the public body may withhold amounts from the remaining retainage sufficient to cover any dispute it has with the contractor, but must release the balance, if any.

The term "final acceptance" is changed to "completion" to denote the time when various time periods are measured which establish the rights of contractors and the duties of public owners.

When contractors are paid, they must pass the money along to those subcontractors whose work allowed the contractor to get paid, within 10 days, or be subject to interest penalties.

It is against public policy for any party to require any other party to waive any provision of the act.

TESTIMONY FOR:

Contractors in public works projects have to wait an unreasonable length of time to receive full payment. They should either be paid as specified in the contract or told why.

When public works prime contractors get paid, they should promptly pay their subcontractors.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Duke Schaub, AGC; Jim Bush, Department of Transportation; Larry Stevens, United Subcontractors Association; Dick Ducharme, Building Industry Association; Gary Smith, Independent Business Association