

SENATE BILL REPORT

SB 5430

AS OF FEBRUARY 13, 1991

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

SPONSORS: Senators Murray, McCaslin, Vognild, Bluechel, Matson, Rasmussen, Moore, Snyder, Sellar, Stratton and Wojahn.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Dave Cheal (786-7576)

Hearing Dates: February 14, 1991

BACKGROUND:

Construction projects of any consequence involve several independent entities: the prime contractor, one or more layers of subcontractors, material and equipment suppliers, laborers, professionals, one or more lenders, bonding companies, and of course the owner. Cash from the owner or lender passes through several different hands during the life of the project. In order for the industry to function efficiently, funds must flow promptly when earned as provided in the contract.

The failure of the owner or prime contractor or subcontractor to make payments promptly can exert considerable hardship on those to whom payment is due. Failure to make payment when due can result in lien claims against the property and hardship or insolvency on the part of participants.

SUMMARY:

Money held by an owner, developer, prime contractor, subcontractor, or other person in charge of a construction project is regarded by law as being held in trust for the benefit of persons making the payment and those 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 with other money is not a violation of the act.

The use of trust money for any purpose other than to pay the persons who have earned it is prime facie evidence of a trust violation and an intent to defraud. The mishandling of these funds is a violation of the Consumer Protection Act, Chapter 19.86 RCW.

Owners, prime contractors, and subcontractors must pay the amounts due to the other entities 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.

"Retainage" is that amount withheld by an owner or contractor to cover disputes over the work or lien claims. Retainage is given trust status and must be released no later than 90 days from the date of substantial completion of the project. In the event of a good faith dispute over entitlement to the retainage, the retainor may withhold up to 50 percent of the estimated value of the issue in dispute.

In addition to other legal remedies, any person from whom funds have been improperly withheld 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. If a lawsuit is necessary to collect, the prevailing party is entitled to costs and attorneys' fees.

Construction project contracts which contain provisions which say "you get paid if I get paid" are declared against public policy and unenforceable.

Appropriation: none

Revenue: none

Fiscal Note: none requested