

**SENATE BILL REPORT**

**ESB 6404**

**AS PASSED SENATE, FEBRUARY 18, 1992**

**Brief Description:** Ensuring payment for work of improvement on real property.

**SPONSORS:** Senators McMullen, Bluechel and McCaslin

**SENATE COMMITTEE ON COMMERCE & LABOR**

**Majority Report:** Do pass as amended.

Signed by Senators Matson, Chairman; Bluechel, McMullen, Moore, Murray, and Skratek.

**Staff:** Dave Cheal (786-7576)

**Hearing Dates:** February 4, 1992; February 7, 1992

**BACKGROUND:**

In public works contracts, a percentage of the contract price or of each progress payment is retained by the public owner or lender for a period of time after completion to cover lien claims or to ensure proper performance under the contract.

Some individuals and groups within the construction industry feel that current law provides inadequate incentives for prompt payment of progress payments or release of retainage in public works projects, and that payments from prime contractors to subcontractors and to lower tier subcontractors is frequently delayed unreasonably. If payment does not flow as provided in the contract, there is usually no effective remedy.

**SUMMARY:**

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 45 days after completion instead of the current 30-day requirement.

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.

Contract provisions that require payment from another as a condition precedent to payment under the terms of the contract are declared against public policy and unenforceable.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested February 3, 1992

**Effective Date:** September 1, 1992

**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: Larry Stevens, United Subcontractors Association; Peggy Boe, National Electrical Contractors Association; Loren Dorrah, electrical contractor; Jim Bush, DOT; Gary Smith, Independent Business Association; David Morgan, supplier; Larry Brewer, contractor; Doug Bohlke, subcontractor; Kathleen Garrity, Assn. Builders & Contractors; Duke Schawb, AGC of WA;

Larry Shannon, WA Mortgage Bankers Assn.; CON: Mark Triplett,  
Dick Rokes, BIAW; Dick Ducharme, Utility Contractors; Jim  
Halstrom, Master Builders Assn.