
ENGROSSED SUBSTITUTE HOUSE BILL 1765

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Springer, Williams, Rodne and Moeller)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to claims under a construction contract; amending
2 RCW 4.24.370 and 4.24.380; and adding a new section to chapter 4.24
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
6 to read as follows:

7 (1) Subject to the other provisions of this section, any clause in
8 a construction contract that purports to waive, release, or extinguish
9 the claim rights of a contractor, subcontractor, or supplier to damages
10 or an equitable adjustment based on failure to submit claim notice or
11 claim-related documentation in a specified time frame or form is
12 enforceable if the clause includes the following provisions:

13 (a) Initial notice of an event giving rise to a claim is required
14 to be submitted:

15 (i) Within seven calendar days following the occurrence of the
16 event;

17 (ii) In writing; and

18 (iii) To the party, as specified in the contract, to whom the claim
19 is being made.

1 (b) Documentation of the claim, as specified in (c) of this
2 subsection, is required to be provided:

3 (i) Within thirty calendar days following the occurrence of the
4 event giving rise to the claim;

5 (ii) In writing; and

6 (iii) To the party, as specified in the contract, to whom the claim
7 is being made.

8 (c) Documentation of the claim is required to be submitted by the
9 claiming party that provides the following information, in sufficient
10 detail and in a format to allow the party to whom the claim is being
11 made to understand the claim and respond:

12 (i) A detailed factual description of the claim and the bases for
13 the claim, providing all necessary dates, locations, and items of work
14 affected by the claim;

15 (ii) A description of the specific provisions of the contract that
16 support the claim;

17 (iii) Identification and copies of any documents that support the
18 claim and a description of any oral communications that support the
19 claim;

20 (iv) An estimated dollar cost, if any, of the claim and how that
21 estimate was determined; and

22 (v) An analysis of the progress schedule showing the schedule
23 change or disruption if the party submitting the claim is asserting a
24 schedule change or disruption.

25 (d) If the claim is continuing, the party to whom the claim is
26 being made may request the information identified in (c) of this
27 subsection be supplemented.

28 (2) If a contractor, subcontractor, or supplier fails to meet the
29 notice and documentation requirements of subsection (1) of this
30 section, the contractor shall nonetheless be deemed to have complied
31 with those requirements if:

32 (a) The required initial notice and documentation are given and
33 provided within fifteen days and forty-five days, respectively,
34 following the occurrence of the event giving rise to the claim; and

35 (b) The party pursuing the claim proves by a preponderance of the
36 evidence that the party receiving the notice or documentation was not
37 prejudiced by the later receipt of the notice or documentation.

1 (3) Any clause in a construction contract that purports to waive,
2 release, or extinguish the claim rights of a contractor, subcontractor,
3 or supplier to damages or an equitable adjustment based on failure to
4 submit claim notice or claim-related documentation pursuant to
5 provisions that obligate the party pursuing the claim to provide more
6 information than described in subsection (1) of this section, or
7 provide such information earlier than the time specified in subsection
8 (1) of this section, is enforceable against a contractor,
9 subcontractor, or supplier only if the party to whom the claim is being
10 made is prejudiced as a result of the failure. The party failing to
11 provide such timely notice or documentation has the burden to prove, by
12 a preponderance of the evidence, that the party failing to receive such
13 timely notice or documentation was not prejudiced by such failure. For
14 the purpose of this subsection, "prejudiced" means being deprived of
15 the opportunity to mitigate cost, time, or both cost and time impacts
16 caused by the event or combination of events giving rise to the claim.

17 (4) Notwithstanding the provisions of subsections (1) through (3)
18 of this section, all claims for damages or an equitable adjustment must
19 be submitted within thirty calendar days of a project's substantial
20 completion, as defined in the construction contract.

21 (5) Subsections (3) and (4) of this section do not apply to any
22 contractual requirement that a formal claim be submitted within a
23 certain time frame or contain specified documentation following the
24 completion or termination of a contract as a condition precedent to
25 seeking mediation, arbitration, or judicial relief.

26 (6) For purposes of this section, "construction contract" has the
27 same meaning as the term is defined in RCW 4.24.370.

28 **Sec. 2.** RCW 4.24.370 and 1979 ex.s. c 264 s 2 are each amended to
29 read as follows:

30 "Construction contract" for purposes of RCW 4.24.360 and section 1
31 of this act means any contract or agreement for the construction,
32 alteration, repair, addition to, subtraction from, improvement to, or
33 maintenance of, any building, highway, road, railroad, excavation, or
34 other structure, project, development, or improvement attached to real
35 estate, including moving and demolition in connection therewith.

1 **Sec. 3.** RCW 4.24.380 and 1979 ex.s. c 264 s 3 are each amended to
2 read as follows:

3 (1) The provisions of RCW 4.24.360 shall apply to contracts or
4 agreements entered into after September 1, 1979.

5 (2) This act applies to contracts or agreements entered into on or
6 after January 1, 2008.

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