

HOUSE BILL REPORT

SHB 1736

As Passed Legislature

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;
Amended by Senate;
Passed Legislature.

**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: Public agencies are required to withhold up to 5 percent of the money earned by a contractor on a public works project as retainage. Retainage is held as a trust fund for the protection of persons, subcontractors, and material suppliers who perform labor or furnish materials for the public works. Persons with claims against the retainage must file a notice of a lien within 30 days of completion and acceptance of the work. The agency is permitted to release the retainage after the 30-day period has expired.

If a public agency fails to make timely payment under a written contract for public works, personal services, goods

and services, equipment, and travel, the agency must pay interest at 1 percent per month.

There are no statutory provisions regulating the timeliness of payments made between contractors on construction projects.

Summary of Bill:

Payment of retainage on public works

The language governing public works retainage is clarified and reorganized. Provisions are deleted that required at least 50 percent of the original contract work to be completed before any retainage could be released.

A public agency is prohibited from holding retainage from the moneys earned by a contractor by fulfilling his or her responsibilities under the contract, for any purpose except for the payment of labor, materials, and taxes.

The time for filing notice of a lien against the public work retainage for persons performing labor and furnishing materials is changed from 30 days to 45 days from completion of the work.

Provisions are deleted that permit a public agency to release retainage 30 days after completion and acceptance of the work. Instead, after completion of all contract work other than landscaping, the contractor may request release of the retainage, and after 60 days the agency must pay the full amount of the retainage, other than retainage for landscaping, subject to payment of taxes and prevailing wages. Sixty days after all contract work is completed, the public body must release the full amount of the retainage.

If an unreasonable delay results in termination of the project before completion, then retainage on the completed portion of the project must be held for 60 days, rather than 30 days, following the completion.

The requirements for retainage payments on the construction of ferry vessels are changed to require the release of retainage 60 days, rather than 30 days, after completion of the contract work, subject to payment of taxes and prevailing wages.

After the 45-day period has expired for filing a notice of a lien against the retainage, a public agency may withhold from retainage any amounts for claims that the agency may have against the contractor, with the balance to be paid to the contractor.

Requirements for timely payment - public agencies

For payment by a public agency to be timely on written contracts for public works, personal services, goods and services, equipment, and travel, the payment must be mailed or available on the date specified in the contract, but not later than 30 days of receipt of a properly completed invoice or receipt of the goods or services, whichever is later. However, if a contract is funded by grant or federal money, the public agency must make payment within 30 days of receiving the grant or federal money, if the money is received after the payment request.

The provisions are deleted governing when payment is timely if retainage is required under state or federal law. New provisions require that if payment on a written public works contract is withheld for unsatisfactory performance or because the request fails to comply with the contract, the public agency must give written notice to the prime contractor within eight working days. The notice must state why the payment is being withheld and what remedial actions must be taken. If the notice does not comply with these requirements, the agency must pay interest from the ninth working day until the contractor receives notice that complies. Within 30 days after the prime contractor satisfactorily completes these remedial actions, the withheld payment must be made, or interest accrues from the thirty-first day.

Requirements for timely payment - contractors

Contractors and subcontractors must pay the amounts due to other subcontractors no later than 10 days after money is received for work performed on a public work. If there is a good faith dispute over any amount due, the state or municipality or the contractor may withhold up to 150 percent of the disputed amount.

If the prime contractor discovers, after making a payment request to the public agency but before paying the subcontractor, that the subcontractor's performance is unsatisfactory, the prime contractor may withhold the amount and must give notice to the subcontractor and the public agency. The subcontractor must then be paid within eight days after satisfactorily completing the remedial work. If the subcontractor is not paid as required, the prime contractor must pay interest on the withheld amounts from the eighth working day.

Other provisions

In addition to other legal remedies, any person from whom funds have been withheld in violation of the act is entitled to interest at the highest rate allowable under the state usury laws. In a law suit to collect withheld funds, the prevailing party is entitled to costs and attorneys' fees.

The rights provided in the act may not be waived by the parties and a contract provision that provides for waiver is against public policy.

The act takes effect September 1, 1992, and applies to all public works contracts entered into on or after September 1, 1992.

Fiscal Note: Not requested.

Effective Date: The act takes effect September 1, 1992, and applies to all public works contracts entered into on or after September 1, 1992.

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).