

SENATE BILL REPORT

SB 5657

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, MARCH 3, 1993

Brief Description: Providing prompt pay for works of improvement.

SPONSORS: Senators Vognild, Amondson, Sutherland, Pelz, Erwin and Winsley

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5657 be substituted therefor, and the substitute bill do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Barr, Cantu, Fraser, McAuliffe, Newhouse, Pelz, Prince, Sutherland, Vognild, and Wojahn.

Staff: David Cheal (786-7576)

Hearing Dates: February 24, 1993; March 3, 1993

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. Subcontractors, suppliers or others who have contributed to the project have contract remedies and lien rights which may be very time consuming and costly to use.

SUMMARY:

Owners must promptly pay their prime contractor, who must promptly pay its subcontractors and suppliers who then have the same obligation, within ten days of receiving loan disbursements, draws, progress payments, final payment, or retainage for the project. In the event of a good faith dispute over performance, an amount equal to 150 percent of the amount in dispute may be withheld by the party making the claim.

Various rules are established for the use of retainage. Retainage is that portion of the contract price which is withheld by an owner, contractor or subcontractor as security for proper completion, and as a source of funds to meet lien claims.

Retainage accrues interest for the benefit of the retainee at the lower of the certificate of deposit rate at the bank of the retainer or the statutory usury rate.

Retainage must be released no later than 90 days from completion of the project. The prime contractor and each

subcontractor shall pay to their subcontractors or suppliers the proportionate share due of the retainage and interest within ten days from the time they received their respective payments. In the event of a good faith dispute, 150 percent of the estimated value may be withheld. Owners may withhold amounts required to meet lien claims, including amounts sufficient to cover the cost of foreclosing the claims. (This provision probably means defending the claims.)

In addition to other remedies, funds wrongfully withheld accrue interest at the statutory usury rate plus an additional 1 1/2 percent per month.

To require another party to waive provisions of the act is declared to be against public policy. It is also against public policy to enforce contract provisions which require the receipt of funds before a party has any financial obligation to pay those who provided labor or material for the project.

Residential construction of fewer than four units and two stories in height is excluded from coverage.

EFFECT OF PROPOSED SUBSTITUTE:

The prohibition against contracts that condition payment on receiving payment from others is removed. The definition of completion is expanded.

Appropriation: none

Revenue: none

Fiscal Note: none requested

Effective Date: September 1, 1993

TESTIMONY FOR:

Subcontractors and suppliers often wait for their share of payment in a construction project for periods much longer than the contract specifies or than is reasonable. Current remedies are expensive and ineffective.

TESTIMONY AGAINST:

Definitions need clarity. Contracts prohibited by the bill should be left up to the parties. Remedies, such as liens, already exist for promoting prompt payment.

TESTIFIED: Larry Stevens (pro); Jordy Andrews (pro); Richard Zenk (pro); Duke Schaub (con); Jim Halstrom (con)