

**SHB 1765 - H AMD 394**  
By Representative Lantz

**ADOPTED 3/14/2007**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24  
4 RCW to read as follows:

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

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

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

16 (ii) In writing; and

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

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

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

23 (ii) In writing; and

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

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

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

4 (ii) A description of the specific provisions of the contract  
5 that support the claim;

6 (iii) Identification and copies of any documents that support  
7 the claim and a description of any oral communications that support  
8 the claim;

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

11 (v) An analysis of the progress schedule showing the schedule  
12 change or disruption if the party submitting the claim is asserting  
13 a schedule change or disruption.

14 (d) If the claim is continuing, the party to whom the claim is  
15 being made may request the information identified above be  
16 supplemented.

17 (2) If a contractor, subcontractor, or supplier fails to meet  
18 the notice and documentation requirements of subsection (1), the  
19 contractor shall nonetheless be deemed to have complied with those  
20 requirements if:

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

24 (b) The party pursuing the claim proves by a preponderance of  
25 the evidence that the party receiving the notice or documentation  
26 was not prejudiced by the later receipt of the notice or  
27 documentation.

28 (3) Any clause in a construction contract that purports to  
29 waive, release, or extinguish the claim rights of a contractor,  
30 subcontractor, or supplier to damages or an equitable adjustment  
31 based on failure to submit claim notice or claim-related  
32 documentation pursuant to provisions that obligate the party  
33 pursuing the claim to provide more information than described in  
34 subsection (1) above, or provide such information earlier than the  
35 time specified in subsection (1) of this section, is enforceable  
36 against a contractor, subcontractor, or supplier only if the party  
37 to whom the claim is being made is prejudiced as a result of the  
38 failure. The party failing to provide such timely notice or  
39 documentation has the burden to prove, by a preponderance of the

1 evidence, that the party failing to receive such timely notice or  
2 documentation was not prejudiced by such failure. For the purpose  
3 of this subsection, "prejudiced" means being deprived of the  
4 opportunity to mitigate cost, time, or both cost and time impacts  
5 caused by the event or combination of events giving rise to the  
6 claim.

7 (4) Notwithstanding the provisions of subsections (1), (2) and  
8 (3) of this section, all claims for damages or an equitable  
9 adjustment must be submitted within thirty calendar days of a  
10 project's substantial completion, as defined in the construction  
11 contract.

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

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

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

21 "Construction contract" for purposes of RCW 4.24.360 and  
22 section 1 of this act means any contract or agreement for the  
23 construction, alteration, repair, addition to, subtraction from,  
24 improvement to, or maintenance of, any building, highway, road,  
25 railroad, excavation, or other structure, project, development, or  
26 improvement attached to real estate, including moving and  
27 demolition in connection therewith.

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

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

32 (2) This act applies to contracts or agreements entered into on  
33 or after January 1, 2008."

**EFFECT:** Criteria are established for the enforceability of construction contract clauses that purport to waive a contractor's claim right for failure to meet claim notice requirements.

- A claim waiver provision is enforceable if it requires the contractor to submit notice to the project owner within seven days of an event giving rise to a claim, and requires specified documentation of the claim within 30 days.
- If a contractor fails to meet the initial notice and documentation requirements, the contractor may nonetheless be deemed to have complied if notice is given within 15 days and documentation is provided within 45 days, and the contractor proves by a preponderance that the project owner was not prejudiced by the later compliance.
- A claim waiver provision that has shorter time periods for notice and documentation, or that requires more than the specified documentation, is enforceable only if the project owner is prejudiced by the contractor's failure to meet those more stringent contract requirements. In such a case, the contractor has the burden of showing by a preponderance of the evidence that the owner was not prejudiced.
- In addition to any other requirements, all claims must be submitted within 30 days of substantial completion of the project.

The portion of the act relating to waiver provisions with shorter time periods, and the portion of the act requiring that all claims be filed within 30 days of substantial completion, do not apply to contract clauses that require a formal claim be submitted following completion or termination of a contract in order to seek mediation, arbitration, or judicial relief.

The act applies to contracts entered into on or after January 1, 2008.