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REQUIRE PROMPT PAYMENT ON CONSTRUCTION CONTRACTS

House Bill 4236

Sponsor: Rep. Mary Schroer

Committee: Regulatory Affairs

Complete to 3-19-97

A SUMMARY OF HOUSE BILL 4236 AS INTRODUCED 2-5-97

The bill would create the Government Construction Prompt Payment Act to require a state or local government entity that contracted to pay a contractor on a construction project the full amount owed, with certain exceptions, within 45 days after receiving a proper statement or invoice for either goods received or services performed as required by contractual agreement. The bill also would require prime contractors on governmental construction contracts who were paid for work or goods provided on a project to promptly pay those who performed subcontract work for them on the project. Failure to make prompt payment in either case would require interest to be paid--at two percent per month on the amount owed--that would accrue from the date an original amount was due.

Exceptions. A prime contractor would have to be paid on time unless one or more of the following circumstances existed: unsatisfactory job progress; defective construction not remedied; if third party claims had been filed or reasonable evidence existed to show they likely would be; damage to the governmental entity or a contractor other than the prime contractor; reasonable evidence the contract or subcontract could not be completed for its unpaid balance; or a "reasonable amount [was withheld] for retainage." ("Retainage" would mean amounts contractually withheld "to ensure satisfactory completion of the contracted work.")

Payment period, interest accrual. A governmental entity would have to pay a prime contractor, either by first-class mail or personal delivery, the undisputed amount of a proper statement or invoice for work completed or services provided within 45 days of receiving the statement or invoice. If a periodic or final payment was made after this period, the governmental entity would have to pay the contractor interest, beginning on the due date, of two percent per month of the balance owed, or a pro-rated amount calculated on a daily basis, on the unpaid balance.

Similarly, a prime contractor would have to pay his or her subcontractors within seven days after the contractor received each periodic or final payment from the governmental entity, or within 30 days after the date the governmental entity was granted occupancy, whichever was earlier. Upon receiving delayed payments with interest, a contractor would have to pay a subcontractor interest at a rate of two percent per month of the balance owed, pro-rated for amounts owed for partial months, and payment would begin on the date interest began to accrue for the prime contractor. However, the contractor could deduct a proportional amount incurred to secure the delayed payment, including court costs and reasonable attorney fees. Similar interest charges would apply to past-due periodic or final payments from contractors to subcontractors. The bill also would permit subcontractors who, through no fault of theirs, were not paid by a contractor to stop work until amounts owed them were paid, and this would not preclude them from using other available (legal) remedies to secure payment.

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The bill would prohibit governmental entities, contractors, and subcontractors from contracting or otherwise agreeing to rates of interest less than or payment periods greater than those specified, though they could contract for greater interest rates or shorter payment periods.

Withholding by government entities. The governmental entity would have to notify a contractor in writing of an amount to be withheld within seven days after the date the governmental entity received an invoice or statement. The notification would have to specify why an amount was being withheld and how much, and the amount could not exceed twice the value of the work or claim that was considered to be unsatisfactory. (This would also apply to amounts withheld by a contractor from a subcontractor.) The amount withheld 1) would have to be deposited in an interest-bearing escrow account, 2) would have to be released (including interest) to the prime contractor when the defect that led to withholding had been corrected, and 3) could not be withheld or retained for more than 30 days after acceptance of the statement or invoice by the governmental entity, or after the project was occupied by the governmental entity, whichever was earlier.

The bill would permit a governmental entity who had contracted for construction work to return a defective invoice or statement to the prime contractor within seven days after receiving it. Interest would continue to accrue from the date the invoice or statement was received by the governmental entity if it was returned within the seven-day period. If, however, it was not returned--or a notice of withholding was not presented--within seven days of its receipt, the invoice or statement would be considered to be accepted by the governmental entity and full payment would be due the contractor. (Similar provisions would apply to the contractor/subcontractor relationship.)

Contractor withholding. A prime contractor would have to pay a subcontractor in full without withholding for an invoice or statement that had been accepted, except for reasonable retainage amounts. A contractor could not withhold from a subcontractor a higher percentage for retainage than the governmental entity was withholding from the contractor, and would have to notify in writing both the governmental entity and subcontractor(s) of a withholding before submitting to the governmental entity a statement or invoice for payment. Also, the withheld amount would have to be included in the statement or invoice submitted by the contractor to the governmental entity.

Remedies. The bill would not limit the rights or remedies available to a person under any other state law, and would allow, in addition to other remedies, an action to be brought to recover damages caused by a violation of its provisions. A court would have to award a person the amount of actual damages caused by a violation, plus costs and reasonable attorney fees.

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.