

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 7, 1985

The forty-third meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 7, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 293: Representative Francis Bardanouve, sponsor of HB 293, stated this is a relatively simple bill introduced at the request of a northern Montana rancher/farmer who got involved in a situation where he was securing a loan and the agency found he had a lien on his property he had paid off before. He felt there should be a penalty in the law for failure to release a lien that had been paid. This makes a civil penalty of \$100 for failure to remove a lien after it has been satisfied.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Representative Bardanouve if all we have done is impose a 30-day time limit and the \$100 civil penalty. He replied yes. Senator Shaw asked who got the \$100. Representative Bardanouve responded the landowner would.

CLOSING STATEMENT: None.

Hearing on HB 293 was closed.

CONSIDERATION OF HB 329: Representative Tom Hannah, sponsor of the bill, testified this bill deals specifically with suppliers' liens. Under Montana lien laws, suppliers have a right to put a lien on a house for the materials for a home. The debt relationship is between the person that bought the materials and the person who owned them. People who own the home often have to pay twice, which is a position they should not be put in. This bill is to address a single problem. The heart and soul of it is the notice provision. If the contractor doesn't pay, the homeowner is on notice. This is taken essentially from an Oregon statute. The supplier needs to notify the homeowner only once. Page 3, lines 19-20, are important and were put in by the House Judiciary

Committee. The people affected by this said they will take care of this by the delayed effective date. This is to promote the interim work they said they will do. What it says to the suppliers is if you are unhappy with the notice provision in HB 329, you had better come up with a better alternative or this will be the law.

PROPOSERS: Larry Huss, attorney for Mountain Bell, testified Mountain Bell has full-time professionals who deal with contract administration and finds itself in the position of having liens put on its property by suppliers. This comes about when a contractor is in tough shape. You tell the contractor you will not pay him until he has paid his suppliers and subcontractors. He brings you a lien release, and you pay him; you then find out he did not pay everyone. This bill places the burden on the supplier to tell the homeowner. There needs to be an ability to identify the suppliers. You shift the burden and put it on the suppliers to notify the owner of the project. You can't use the contractor to identify the supplier to ensure that notices have been given or payments made because he may be in financial troubles. You have to put the notice provision close to the time of the first delivery, not at the end of the contract. You could run up a large bill during the time of the first supply and the end of the project. This is an excellent idea. Mountain Bell has discussed with the suppliers the need to work through a comprehensive bill, and they will work with them. Representative Gary Spaeth appeared on behalf of HB 329 as a proponent and co-sponsor. The contractors don't have much interest any more in helping resolve it because they have been paid, nor does the supplier because he has a lien on the home. Either way, the homeowner will have to pay some attorneys' fees. This places a little bit of a burden on the supplier. The homeowner is not a party to the contract between the contractor and the supplier. He thinks the two-year delay is a good provision. John Cadby, representing the Montana Bankers Association, testified they are aware of this perennial problem and the serious complex nature of the problem. He believes Senator Himsel's uniform code is the solution. He thinks the resolution calling for an interim study is good. In the event this study is not picked, this bill serves as a club which will force everyone to sit down in the interim and figure out a solution. This bill provides a vehicle to get that done.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Representative Hannah if this were a good bill. He replied yes. The debt relationship should be between the buyer and the seller, not a third party. Senator Blaylock asked why there was a two-year delay if it's a good bill. Representative Hannah replied there was considerable opposition from material people to the bill. They were concerned the bill would create

havoc with the business and shut down projects. They would have to go to a cash basis. The lien law has allowed them the freedom not to because they have a solid base of recovery; they sometimes send out materials they shouldn't. Senator Towe stated he had some trouble with page 3, lines 11-14, where the words "prior to transfer to a third party" bother him. It in effect means they have to file their lien notice before the property is transferred even if that is before the 90 days. Representative Hannah responded that is designed to provide the landowner should pay for the house only once. Senator Towe commented if the builder wants to avoid paying liens, he need only sell the house before the 90 days is up to avoid all of the liens. On the other hand, the buyer could protect himself by making a holdback for the 90 days. Representative Hannah stated he didn't think it is easy for the buyer because they don't know how much to hold back. Senator Mazurek asked about a builder who would transfer to some third party who would be cooperating in a scheme to sell to another. Mr. Huss replied in a scheme, you are attempting to defraud and none of these would be applicable. He is not sure how to address the inability of a person's coming in to identify liens on the property without a title search. You may have to require an accelerated filing from 30 days instead of 90. You may have to require the builder to file a notice of completion. Your concern addresses a situation that does occur, but it does not occur with the regularity the underlying problem does. Representative Spaeth stated he personally is not that committed to paragraph 3. The bill is designed to help address innocent third parties. This paragraph is designed to deal with another innocent third party. From a policy position, he is not as sure we should go that far to protect that buyer and jeopardize the whole bill because he has a valid remedy against the seller of the house. Senator Crippen pointed out sometimes bills are submitted to an architect or a lender. Shouldn't the notice also be given to the owner's agent--in that case the architect? If the owner isn't involved in the process, what good is the notice to the owner? Representative Hannah replied if the owner leaves it on his desk, that is tough. The other way you could deal with this is to say "owner or his agent." Mr. Huss suggested using owner "and" his agent, not "or," because the contractor could be the agent. What you want to do is make sure the person who will suffer the ultimate hardship is the one to get the notice. Senator Towe asked how he responded to some of these very large limited partnerships that are coming into existence and building apartment houses. Representative Hannah replied there is a lead person who takes responsibility with that partnership, and the Secretary of State would show who that is. Senator Towe questioned whether that would be sufficient. Representative Hannah believed it would. Senator Mazurek asked if they considered registered or certified mail with a return receipt so you don't have a proof problem. Representative Hannah commented it would be his assumption they would do that anyway. Senator

Mazurek asked how the material suppliers responded when they are dealing with a contractor who is working on many jobs and they don't know where the materials are going. Representative Hannah replied they know where to put the lien. The sales clerk can ask where they are taking the materials.

CLOSING STATEMENT: Representative Hannah stated he thinks it gets to the heart of the problem in this one area. In his view, what you need to decide is if you want to let the effective date remain as it is and a legitimate concern has been raised regarding subsection 3. This bill gives the homeowner protection against a hidden lien.

Hearing on HB 329 was closed.

CONSIDERATION OF HB 264: Representative Paul Pistoria, sponsor of the bill, testified what this bill does is require certain building contractors to pay the contractor and subcontractors, and if they fail to pay within 10 days, it provides a penalty. It was requested by several subcontractors across the state. In 1983, they passed a law that requires a contractor doing work for the state to pay his subcontractors within 30 days and imposed a penalty if he didn't. Representative Pistoria stated John Scully testified in the House on this bill and had hoped to be at the hearing but was unable to. Mr. Scully had prepared an amendment which was offered to the committee (Exhibit 1). Representative Pistoria testified Louisiana has passed this law, and he then introduced a copy of that law (Exhibit 2). In addition, he presented an article from "Stateline" which states prompt pay laws were enacted by eight states this year (Exhibit 3). Finally, Representative Pistoria submitted a page from "The Subcontractor" describing this situation (Exhibit 4). There are many cases where the subcontractor has to borrow money from banks and pay interest on that money. It is something that has been needed for quite awhile.

PROPOSERS: Dave Bishop, representing the Montana Homebuilders Association, testified in support of the bill (see witness sheet attached as Exhibit 5). He stated this is a prompt-pay bill and the association does support it, because they need good subcontractors in Montana, and to hold them here, we need to pay them promptly. Delayed payments to subcontractors are not conducive to keeping them in Montana. You are not opening up any new avenues because last session you passed the prompt state pay plan. He also stated Riley Johnson could not come but wanted to testify the National Federation for Independent Business also supports this bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Pistoria stated there really were no problems with the bill. He hopes the committee passes it with the amendment.

Hearing on HB 264 was closed.

CONSIDERATION OF HB 639: Representative Dennis Nathe, sponsor of HB 639, testified this is a polygraph licensing bill which he carried at the request of the Department of Commerce. It is a clean-up bill. The bottom of page 3 indicates a change in the time of year in which they must pay their licensing fees. Page 4, line 11, is a new section describing the internship licenses. Section 5 sets forth more criteria for the people who are being examined by polygraph and gives them the right to have the questions presented to them before they are asked by the examiner and gives them the right to terminate the examination at any time.

PROPOSERS: Mike Stotts, member of the Montana Association of Polygraph Examiners, testified they highly support the bill as amended. Mary Lou Garrett, of the Department of Commerce, urged support of the bill, especially the renewal section. They need it for administrative purposes.

QUESTIONS FROM THE COMMITTEE: Senator Towe questioned the reason for the fingerprint. Mr. Stotts replied we have people from out of state that are licensed to do polygraph examinations in Montana, and they are not necessarily in law enforcement, so they would like to be able to keep track of them and know who they are. Senator Towe asked how the fingerprints will help in this regard. Ms. Garrett replied there is a flyer that goes around the state. People are giving polygraphs for employment purposes, and these people are some fly-by-night group. They are not adequately trained or associated with any group. They are using the polygraph for blackmail. Senator Towe stated that is no different than any other occupational group of licenses. We don't want felons there either, but we don't require fingerprints. Ms. Garrett responded it is standard in other states for polygraph examiners.

CLOSING STATEMENT: None.

Hearing on HB 639 was closed.

CONSIDERATION OF HB 522: Representative Ray Peck, sponsor of HB 522, testified this bill was requested by the Hill County Attorney. It deals with property that is forfeited under the law and as to how they proceed on the forfeiture once they have the property in hand. It deals with

controlled substances and unlawful possession of livestock. The bill specifically excludes any vehicle that is stolen and used in transport. It outlines the procedures that should be followed, because the procedures are not in law, and, therefore, the forfeited property could be questioned on the basis of due process. This basically provides the due process procedure for dealing with property that is forfeited.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if the County Attorneys' Association supported this bill in the House. Representative Peck replied Ron Smith testified, but he was not sure if he represented the association. Senator Towe asked if there were any intent to expand or reduce the number of items that can be forfeited, but rather just deals with the procedure. Representative Peck replied yes. The law provided for the seizure but did not provide how to go about it. Senator Towe asked what happened to the proceeds from the sale. Representative Peck replied it is not specified in the bill. Senator Mazurek commented it goes to the county general fund. Senator Towe asked what forfeitures were covered by the scope of this bill. Representative Peck replied vehicles in terms of stolen livestock or drugs. There is a difference in the disposition of funds. Senator Towe stated he thinks it might also apply to seizure of controlled substances. Representative Peck stated the procedure would apply to both, but there would be a difference as to the disposition of funds.

CLOSING STATEMENT: None.

Hearing on HB 522 was closed.

ACTION ON HB 264: Senator Towe moved HB 264 be amended as follows:

Page 2, line 5.

Following: line 4

Insert: "(3) This section does not supersede any contractual payment procedure agreed to by the contractor and the supplier or subcontractor."

Senator Mazurek stated you want to be sure this is over and above an open account. The amendment does address whether this is in addition to or in lieu of that procedure. The motion carried unanimously. Senator Mazurek asked if this were in addition to any open account that may be there. Senator Towe replied yes. Senator Crippen asked if there were a dispute between the contractor and the subcontractor as to the amount

owing or the quality of the materials or the labor performed. Senator Mazurek responded "without reasonable cause" is the qualifying language. Senator Shaw moved HB 264 be recommended BE NOT CONCURRED IN AS AMENDED. Senator Towe stated the bill has some merit in that when the contractor gets paid and leaves the scene, it is unfair that he leaves bills that are not paid. The problem is it is the contractor's business what he does with the money--whether he pays first the taxes, the laborers, or the subcontractors. It is only fair that when a contractor gets paid, he ought to pay everyone else. He thinks it is inconsistent with the labor laws. He questioned whether you could take this into bankruptcy court and say the laborers are not first. The motion carried unanimously.

ACTION ON HB 293: Senator Galt moved HB 293 be recommended BE CONCURRED IN. Senator Towe questioned what was meant by "lien." Mr. Petesch explained it would apply to all liens in the title because of the codification instructions. Senator Towe moved as a substitute motion that HB 293 be amended as follows:

Page 1, line 20.

Following: "LIEN"

Insert: "authorized under Title 71, chapter 3"

The motion carried unanimously. Senator Towe stated a lien sometimes does not require notice, such as the agister's lien on title. He does not have to give notice to make that lien effective. If he is paid, does this mean he has to go to court to discharge the lien even if he did not have to do anything to get it? Senator Mazurek asked if this would be more appropriately restricted to a mechanic's lien. Senator Daniels pointed out the bill says discharge the lien "of record." Senator Pinsonault moved HB 293 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 329: Senator Towe moved to strike subsection (3) on page 3 in its entirety. Senator Mazurek stated the effect of that is you don't extinguish a lien by transferring it. Senator Towe stated the builder can't defeat the liens by transferring it to a third party. The motion carried unanimously. Senator Towe moved to strike section 3, the effective date. Senator Daniels stated the contractors were taking on faith this date would remain the same or they would have been here with some testimony. He believes this may erode the legislative process. Senator Daniels did not think that should be done without giving them an opportunity to show some opposition to it. Senator Mazurek stated he received a letter from Irv Dellinger who represents the building suppliers. Their first meeting of the interested groups will occur in May. Senator Blaylock thought we should take it out. If they sit down and do all of this and come up with a fair bill, they will come up with something

close to this. But if you are going to protect them, you have to do something like this. So far they have fought everything and don't want to do this. Senator Brown pointed out if you pass the bill with an amended effective date, you might as well kill the interim study. Senator Crippen replied sometimes when you are making sausage, you add garlic at the end. Senator Towe pointed out there is a lot more to the lien study than just this. This is one area that is a concern, but there are a lot of other areas, too. The motion to amend the effective date failed with Senators Blaylock, Pinsoneault, Shaw, and Towe voting in favor. Senator Towe moved HB 329 be recommended BE CONCURRED IN AS AMENDED. Senator Towe asked if anyone had any problem with the ten days. Senator Paul Boylan stated the material suppliers are against it. The motion carried with Senators Daniels, Mazurek, and Yellowtail voting in opposition.

ACTION ON HB 639: Senator Towe stated the main reason the bill came in is the language on the bottom of page 1. He had no objection to section 5 and felt it was good, but he didn't care about the internship. Senator Towe moved HB 639 be amended by striking subsection 7 on page 3, lines 14-17, along with the necessary technical amendments to accomplish this. The motion carried with Senator Pinsoneault voting in opposition. Senator Towe moved HB 639 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Daniels and Shaw voting in opposition.

ACTION ON HB 522: Senator Towe asked what the repealer was. Mr. Petesch responded some procedural things in the stolen livestock laws. Senator Mazurek commented this provides some protection to a person whose property was seized because it was used in the commission of a felony act. This gives you notice. Mr. Petesch stated the repealer is repealing the notice provision. Senator Mazurek asked if there were any other precedent for only one publication. Mr. Petesch answered this is existing statute. Senator Towe stated "and" on page 5, lines 4-8, is critical. The only vehicle that can be forfeited is if it is stolen and the owner is not in collusion with the guilty party, then it may be subject to forfeiture. We have a conjunctive in a negative. Senator Towe moved HB 522 be amended as follows:

1. Page 5, line 5.
Following: "if"
Insert: "(a)"
2. Page 5, line 7.
Following: "transportation"
Strike: "and"
Insert: ", or (b)"

Senate Judiciary Committee
Minutes of the Meeting
March 7, 1985
Page 9

The motion carried unanimously. Senator Towe moved HB 522 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 11:57 a.m.


Committee Chairman

Amendment to HB 264

1. Page 2, line 5.

Following: line 4

Insert: "This act shall not supercede any contractual payment procedure agreed to by the contractor and the owner or subcontractor."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 030785
BILL NO. HB 264

Recd - sat - Nov. 24, 1984.

JAMES H. "JIM" BROWN
SECRETARY OF STATE



*Baton Rouge,
Louisiana
Paul S. Pistoria*

The attached refers to a subject
in which you are interested, and is
referred to you for your information.

Kindest regards,

Jim Brown

SS 100 (R 3/80)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 030785
BILL NO. HB 264

Rec'd - Ad. Nov. 24, 1984 - Sec. of State James H. Jim Brown
ACT 720 *Baton Rouge Louisiana (Capitol) Paul S. Pistorius*

Regular Session, 1984

HOUSE BILL NO. 1721

BY MR. DIMOS

INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 96.

AN ACT

To enact R.S. 9:2784, relative to improvements on immovables, to require the payment of penalties when the contractor without reasonable cause fails to make payment within the specified time to the subcontractors and suppliers, and otherwise to provide with respect thereto.

=====ORIGINATED=====

=====IN THE=====

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 030785

BILL NO. HB 264

House of Representatives

Received by Secretary of State
this 17th day of July, 1984

GOVERNOR'S OFFICE

JUL 03 1984

RECEIVED 1:30pm
J. R. Pistorius

Jim Brown
James H. "Jim" Brown
Secretary of State
John G. ...
Clerk of the House of Representatives

ACT 720

Regular Session, 1984

HOUSE BILL NO. 1721

BY MR. DIMOS

INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 96.

AN ACT

To enact R.S. 9:2784, relative to improvements on immovables, to require the payment of penalties when the contractor without reasonable cause fails to make payment within the specified time to the subcontractors and suppliers, and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2784 is hereby enacted to read as follows:

§2784. Late payment by contractors to subcontractors and suppliers; penalties

When a contractor receives any payment from the owner for improvements to an immovable, the contractor shall pay such monies received to each subcontractor and supplier in proportion to the percentage of work completed by each subcontractor and supplier at the time of receipt of the payment. If for any reason the contractor receives less than the full payment from the owner, then the contractor shall be obligated to disperse only the funds received on a prorated basis with the contractor, subcontractors, and suppliers each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make any payment to his subcontractors and suppliers within twenty-one consecutive days of the receipt of payment from

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

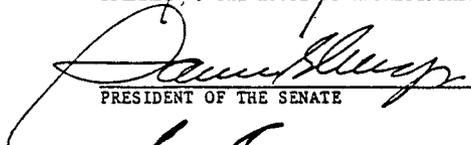
DATE 030785

BILL NO. HB 264

H.B. NO. 1721

the owner for improvements to an immovable, the contractor shall pay to the subcontractor and suppliers, in addition to the payment, a penalty in the amount of one-half of one percent of the amount due, per day, from the expiration of the period allowed herein for payment after the receipt of payment from the owner. The total penalty shall not exceed fifteen percent of the outstanding balance due. The provisions of this Section shall not be applicable to improvements to an immovable that is used for residential purposes.


SPEAKER OF THE HOUSE OF REPRESENTATIVES


PRESIDENT OF THE SENATE


GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: 7-12-84

Page 2 of 2

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 030785

BILL NO. HB 264

StateLine

Rec'd - Tues. June 26, 1984
Paula Astoria

NOTE

Prompt pay laws enacted by eight states this year

for

H.B. 264

Eight states have adopted prompt pay laws this year, bringing to 35 the total with laws requiring state agencies to pay interest penalties when late paying bills to vendors. According to the Coalition for State Prompt Pay, states enacting prompt pay laws during the first five months of 1984 were Connecticut, Kansas, Kentucky, Maine, Minnesota, New York, South Dakota, and Virginia. According to Kenton Pattie, director of the Virginia-based prompt pay coalition, "Slowly but surely, we are putting a stop to late pay by states. We're doing them a favor by improving their credit rating. And we are helping the cash flow of thousands of small businesses." A federal prompt payment act was passed in 1982 and the Office of Management and Budget reports that in fiscal year 1983 late payments by federal agencies were "all but eliminated."

Attorneys share of post based on session calendar

Two Colorado attorneys have what may be a unique job-sharing arrangement, based on the calendar of the state General Assembly. Ann Duckett of Gunnison, a small town 250 miles southwest of Denver, and Martha Ezzard of a Denver suburb, share a single position in a Denver law firm, each working about half a year. In January, Duckett makes the trip to Denver with her husband, state Senator Mike Callihan, and works in the firm until the session ends, when the couple returns home to Gunnison. State Senator Ezzard then goes back to work in the firm as a full-time attorney, after serving in the legislature. The women find the arrangement congenial, unhampered by the fact that for about six months every year Senator Callihan, a Democrat, and Senator Ezzard, Republican Majority Caucus Chairman, sit on opposite sides of the aisle.

Personal income hikes exceeded '83 inflation rate

Personal income increased 5.2 percent in the U.S. during 1983, according to the U.S. Department of Commerce, exceeding the inflation rate by more than a full percentage point. Led as usual by Alaska, with an average personal income of \$16,820, and Connecticut, \$14,826, next highest states were: New Jersey, \$14,057; California, \$13,329; and New York, \$13,146. Lowest on the list and the only states with average personal incomes below \$9,000 were South Carolina, \$8,954; West Virginia, \$8,937; and Mississippi, \$8,072. Data were compiled by the Commerce Department's Bureau of Economic Analysis.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 030785

BILL NO. HB 264

TOL
B264



The Voice of the Subcontracting Industry

Published by the American Subcontractors Association

The Subcontractor

Volume 6

August 1984

Number

CARY LEWIS CONSTRUCTION COMPANY
BOX 2067
GREAT FALLS MT 59403

Precedent Set For Pay Process

15 Days or 15 Percent

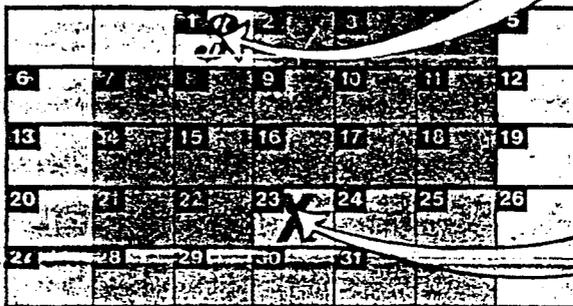
General Contractor Is Paid

Fifteen days or 15 percent. Those are the options facing prime contractors in Louisiana following passage of a bill that hits them with a stiff penalty if they don't pay their subs within about three weeks after they get their paycheck.

And what is even more significant is that the measure covers work in the private sector as well as contracts with government bodies.

Gov. Edwin Edwards on July 13 signed into law House Bill 1721, a "prompt pay" measure that for the first time in the country regulates payment practices between the subcontractor and general contractor on private construction projects.

"We're taking the subcontractors out of the banking business," said Steve Charton, president of the Subcontractors Legislative Action Council, a lobbying arm for 26 state subcontractor organizations.



"No longer will the GC's be able to play the float."

Charton, who with SLAC and ASA is credited with spearheading an intense grassroots lobbying effort, explained that the bill calls for subcontractors to be paid within 15

working days or 20 consecutive days after the owner pays the general contractor. If he misses the deadline the general contractor is then liable for a penalty of one half of one percent each day, rising to a level of 15 percent.

"It is an onerous penalty," Charton

said. "It means a penalty of \$5,000 per day on a \$1 million payment." The federal government and several other states have similar regulations (Continued on page 2)

Louisiana Victory Is Viewed as a "Bold Step"

WASHINGTON, D.C. — American Subcontractors Association President Eugene Grieve hailed passage in Louisiana of a precedent-setting measure that requires timely payment to subcontractors as a "bold step toward recognizing and resolving an indefensible and inequitable practice."

Grieve said the measure is significant because it tackles the problem of unjustified delays in payments to subcontractors and for the first time resolves this problem in the private sector.

The "prompt pay" legislation requires that prime contractors pay subcontractors within 15 working days after receipt of their payment or face a steep penalty of .5 percent each day past the deadline. The penalty can amount to a maximum of 15 percent.

Several states have approved or are working on similar measures for contracts with the state governments, but Louisiana's law sets the standard for timely payment in privately-owned and financed construction projects as well.

Prompt pay requirements have applied to federal projects for several years.

Grieve praised the Louisiana Subcontractors Legislative Action Council, which represents some 25 subcontractor organizations, and which played a key role in the hard-fought battle for passage of the bill. He said subcontractors in the state actively participated in a "grass roots network" that assured its success, and noted that some passed up opportunities to bid on work for their own firms so that they could assist.

He also expressed his appreciation to the legislature for its action on the measure and to Gov. Edwin Edwards for signing the bill.

"Passage of this bill sets a sensible standard for other states," Grieve said. "Although we must seek prompt pay by the public sector in some areas, ultimately our goal must be fairness in the private sector as well. Louisiana should be applauded for making this trend-setting move."

Gov. Edwards signed the bill July 13 after it was approved by the house.



ASA 19th Annual Convention "The Courage to Change"

March 13-17, 1985 • The Fairmont Hotel • Dallas, Texas

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 030785

BILL NO. HB 264

Atty General

Testimony FOR

H.B. 264

Paul G. Historia

342-7013

Employer Sanctions Criticized Reaction Varies to Proposed Immigration Law

The immigration reform measure recently approved by the Congress is drawing mixed reviews from subcontractors, many of whom are concerned about stiff employer penalties that they fear will create excessive bookwork and make them responsible for enforcing immigration laws.

A conference committee is scheduled to sit down soon to come up with

a compromise between House and Senate versions of the bill, which is designed to control the flow of illegal aliens to this country. The legislation is known as the Simpson-Mazzoli bill.

Both measures include provisions that require employers to check prospective employees for proof of citizenship and set strict penalties for those

who knowingly hire illegal aliens.

According to Linda Moser, executive director for ASA of Texas, Inc., subcontractors are concerned about being forced to "police the immigration laws of this country."

She said the verification process, which will require that employers keep records of the identification presented, will mean added bookkeeping and paperwork that may be a problem for employers with a big turnover in their work force.

She also said that some subcontractors are concerned about where their responsibility lies in the process of verifying the identification since, as one employer put it, "some of those guys are going to show up the next day with forgeries."

A spokesman for bill sponsor Rep. Romano D. Mazzoli (D-Ky.) said that employers will only need to have "seen some kind of acceptable proof," however, the final requirements will be worked out in the conference committee and in the formulation of regulations.

"It's going to give us fits," said Greg Saiyers of the ASA San Antonio Chapter, who also expressed concern about the verification process and said he does not believe the legislators have considered the breadth of the problem.

"I don't think it's enforceable. There will be a big push now, then things will go back to the way they were," he said.

And Mark T. Miles, association manager for the El Paso Subcontractors Association, says that the legislation is "a complete fiasco that will cause more problems than prohibition."

"Frankly, everything we do to regulate that border (with Mexico) turns

out bad," he said, claiming that the employer sanctions "fall in the general area of harassment."

John J. Kennedy, executive director of the Rio Grande Valley Chapter, however, says that although subs are wary of the regulations, they're taking a wait-and-see attitude, and that some are happy that something has been done.

He said the law may help "stabilize wages" and end the practice among some disreputable subs of hiring illegal aliens and "paying them any kind of wage."

Neil Murphy, an ASA member who is vice president of Coastal Engineering, Inc., in San Benito, Tex., agrees. He says the law will "give the jobs back to American citizens where they belong."

He said that the verification process and the filing of some record of it is a small price to pay for limiting the use of illegal aliens.

Jesse M. Pickett Jr., ASA Legislative Committee Chairman, noted that the association opposes the sanctions.

"The association is disappointed in the bill. Although we deplore the hiring of illegal aliens, ASA believes that employer sanctions represent a political response that will be unworkable and not effectively deal with the immigration problem. Thus, we oppose the sanctions as a method of controlling immigration," he said.

Both bills penalize employers who "knowingly" hire illegal aliens, however, criminal penalties are called for in the Senate version for repeat violators and the House bill only allows for civil fines.

Support for the bill has eroded since neither President Reagan nor his challenger, Walter Mondale, is supporting it.

The Sanctions' Effect:

These are the key points of the employer sanctions in the immigration reform bill approved by the House:

- Prohibits employment of illegal aliens by any employer of four or more persons and provides for a fine of \$1,000 per alien for each violation. A second violation means a fine of \$2,000.
- Allows for the attorney general to seek an injunction or restraining order against any person or business showing a "pattern practice" of employing or recruiting illegal aliens.
- Requires employers of four or more to sign a form attesting, under penalty of perjury, that he has verified that each new worker is eligible for employment in the U.S. The forms must be kept on file for three years after hiring or one year after the worker's termination.
- Sets a fine of \$500 per alien against employers who fail to keep records concerning the verification of employees work eligibility.
- Specifies that to determine eligibility an employer must examine any of the following: U.S. Passport, Social Security Card, birth certificate, alien documentation, or registration or registration card, driver's license with photograph, or any other identification permitted by the regulations.
- Requires that federal officials set up a method of validating Social Security account numbers of job applicants and that employers submit the numbers for validation.
- Provides that compliance with validation procedure will constitute complete defense against charges of hiring an illegal alien.

Precedent-setting Bill Is Passed

Continued from page 1

for work in the public sector, but Louisiana is the first in the nation to pass a law covering private sector construction projects.

Several other states have passed or are studying prompt pay measures as part of a growing trend by state governments to deal with unfair payment practices by general contractors.

The act was authored by state Rep. Jimmy Dimos of Monroe, who noted that introduction of the measure came the last day allowed, and that prospects for passage grew gloomy at several points.

The house bill, which was combined from two measures when one died, moved through several floor and committee votes by tight tallies.

Dimos attributed the success of the bill to "the efforts of subcontractors

to make direct contact with their legislators."

John Bolton, an ASA board member and recent appointee to the association's executive committee, was actively involved in the lobbying effort, and he agrees with Dimos.

"It took persistence, I guess. It was a good grassroots organization, and it took a lot of work."

Passage of the bill came despite "strong opposition with a lot of money," according to Dexter Folse, chairman of SLAC.

"It sort of came as a surprise to me. I guess we're stronger than we realized," he said.

The legislation was introduced the last day allowable for the session and was signed on the last permissible day. Initially separate bills covered

private and public work, but when one died in a House committee, the two were tacked together and sent to the Senate where a close vote, 20-17, sent them back to the House.

And when they came back, one item had been dropped: payment of legal fees by the general contractor. But the House approved the measure to get it on the books.

"If it's not enough penalty, we'll come back to put sharper teeth in the law," Charton said.

Supporters of the bill praised Dimos and state Sen. Ben Bagert, who helped guide it through the senate.

There had been some speculation that Edwards would "pocket veto" the measure by not signing it, but Folse said Edwards had made a commitment to support the measure.

The Subcontractor

(ISSN 0195-1495)

Published by the American Subcontractors Association as a service to all its members. Annual subscription is available to non-members at the rate of \$24. Single copies may be purchased for \$2.

Postmaster send address changes to American Subcontractors Association, 1004 Duke St., Alexandria, VA 22314.

Second-class postage paid at Landover MD and additional mailing offices.



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 030785
BILL NO. HB 264

(This sheet to be used by those testifying on a bill.)

NAME: David M. Bishop DATE: 7/7/85

ADDRESS: 36 S. LAST CHANCE GULCH HELENA MT 59601

PHONE: 449-4797

REPRESENTING WHOM? MONTANA HOMEBUILDERS ASSOC.

APPEARING ON WHICH PROPOSAL: H.B. 264

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 030785
BILL NO. HB 264

STANDING COMMITTEE REPORT

March 7 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 264

third reading copy (blue)
color

(Senator Mazurek)

REQUIRING CONTRACTORS TO PROMPTLY PAY SUBCONTRACTORS, SUPPLIERS

Respectfully report as follows: That HOUSE BILL No. 264

be amended as follows:

Page 2, line 5.

Following: line 4

Insert: "(3) This section does not supersede any contractual payment procedure agreed to by the contractor and the supplier or subcontractor."

AND AS AMENDED

BE NOT CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 7 1985

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **HOUSE BILL** No. **293**

third reading copy (blue)
color

(Senator Pinosoneault)

CIVIL PENALTY FOR FAILURE TO ACKNOWLEDGE LIEN SATISFACTION

Respectfully report as follows: That **HOUSE BILL** No. **293**

be amended as follows:

Page 1, line 20.

Following: "LIEN"

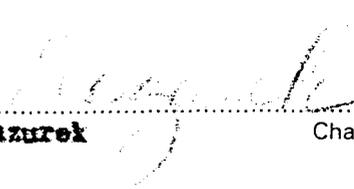
Insert: "authorized under Title 71, chapter 3"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~


Senator Joe Mazurek

Chairman.

CLERICAL

Date: March 9

House Bill 293

Time: 1:50 pm

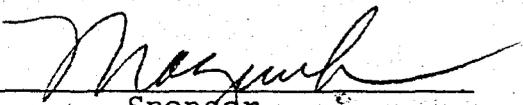
In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Judiciary Committee 3/7

Amend. # 1

insert: "authorized under Title 71, chapter 3,"

insert comma



Sponsor

Secretary of Senate
or
Chief Clerk

Legislative Council

STANDING COMMITTEE REPORT

March 7 19 55

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 329

third reading copy (blue)
color

(Senator Towe)

REVISION OF MECHANICS' LIEN LAW RELATING TO SUPPLIERS AND SUBCONTRACTORS

Respectfully report as follows: That HOUSE BILL No. 329

be amended as follows:

1. Title, lines 3 through 10.

Following: "OWNER," on line 8

Strike: remainder of line 3 through line 10 in their entirety

2. Page 3, lines 11 through 14.

Strike: subsection (3) in its entirety

AND AS AMENDED

BE CONCURRED IN

~~DO NOT PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 7

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 522

third reading copy (blue)
color

(Senator Tows)

PROVIDING NOTICE TO CLAIMANTS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE

Respectfully report as follows: That HOUSE BILL No. 522

be amended as follows:

1. Page 5, line 5.

Following: "if"

Insert: ": (a)"

2. Page 5, line 7.

Following: "transportation"

Strike: "and"

Insert: ", or (b)"

AND AS AMENDED

BE CONCURRED IN

~~IRROGS~~

~~ISBNOIALLS~~

.....
Senator Joe Mazurek

Chairman.

CLERICAL

Date: March

House Bill 522

Time: 12:45 pm

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Judiciary Committee 3/7

Amendment # 2

*insert: " ; or (b) "
^
instead of ") "*

3/11/85

[Signature]

Sponsor

MER

Secretary of Senate
or
Chief Clerk

Legislative Council

STANDING COMMITTEE REPORT

March 7

1935

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 639

third reading copy (blue)
color

(Senator Daniels)

REVISION OF POLYGRAPH LICENSURE LAW

Respectfully report as follows: That HOUSE BILL No. 639

be amended as follows:

1. Title, lines 6 and 7.
Following: "TRAINING;" on line 6
Strike: remainder of line 6 through "APPLICANTS;" on line 7
2. Page 3, line 7.
Following: "and"
Insert: "and"
3. Page 3, lines 13 through 17.
Following: "license" on line 13
Strike: remainder of line 13 through "department" on line 17

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

CLERICAL

Date: 3/9

House Bill 639

Time: 12:35pm

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Judiciary Committee 3/7

Title, line 12

following: " 37-62-101"
strike: ", 37-62-202,"

Page 2, line 20

Strike ~~sub~~ section 2 in its entirety
renumber subsequent sections

Page 6, line 24

Page 7, line 1

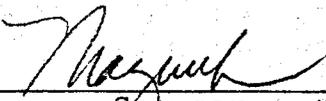
strike: " 4"

insert: " 3"

strike: " 5"

insert: " 4"

Reason - 37-62-202 is
restored to unamended
version - must be
stricken fr. bill.



Sponsor

MER

Secretary of Senate
or
Chief Clerk

Legislative Council