

HOUSE BILL NO. 404

1/23 Introduced
1/23 Referred to Business & Labor
Died in Committee

1 HOUSE BILL NO. 404
2 INTRODUCED BY HARP Hanna

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A RESERVE
5 FUND PROVISION IN ALL PUBLIC WORKS CONTRACTS; PROVIDING THAT
6 THE FUND BE USED TO SATISFY CLAIMS OF SUBCONTRACTORS WHO ARE
7 NOT PAID BY THE PRIME CONTRACTOR; AND PROVIDING AN
8 APPLICABILITY DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. As used in [this act], unless
12 the content requires otherwise, the following definitions
13 apply:

14 (1) "Contractor" means the person or entity awarded a
15 public works contract.

16 (2) "Public authority" means public authority as
17 defined in 18-1-201.

18 (3) "Public works contract" means a contract entered
19 by a public body for construction as defined in 18-2-101,
20 highway or road work, or any other public improvement. The
21 term does not include a consultant or service contract.

22 (4) "Reserve fund" means the amount of money retained
23 by the public authority pursuant to [section 2].

24 (5) "Subcontractor" means any person or entity
25 supplying material, labor, or services to a contractor.

1 (6) "Sub-subcontractor" means any person or entity
2 supplying material, labor, or services to a subcontractor.

3 Section 2. Reserve fund provision in public works
4 contracts. (1) Each public works contract must provide for
5 a reserve fund to be retained by the public authority for
6 the protection and payment of subcontractors and
7 sub-subcontractors.

8 (2) A public authority shall retain in trust, as a
9 reserve fund, an amount not to exceed 5% of the money earned
10 by a contractor based on estimates during the progress of a
11 public works contract.

12 (3) At any time after 50% of the public works contract
13 has been completed, if the public authority finds that
14 satisfactory progress is being made, it may make any of the
15 partial payments which would otherwise be due under the
16 contract, but in no event may the amount to be retained as
17 a reserve fund be reduced to less than 5% of the amount of
18 money earned by the contractor.

19 Section 3. Deposit of reserve fund. (1) The money
20 retained in the reserve fund, at the option of the
21 contractor, must be:

22 (a) retained in a suspense fund by the public
23 authority until after the time for filing claims has passed;

24 (b) deposited by the public authority in an
25 interest-bearing account in a financial institution, not to

1 be subject to withdrawal until after the time for filing
2 claims has passed, with interest on the account to be paid
3 to the contractor; or

4 (c) placed in escrow with a bank or trust company by
5 the public authority until after the time for filing claims
6 has passed.

7 (2) When the reserve fund is placed in escrow, the
8 public authority shall issue a check, payable to the bank or
9 trust company and the contractor jointly, representing the
10 amount of the money reserved. The check may be converted
11 into bonds or securities chosen by the contractor and
12 approved by the public authority. The bonds or securities
13 must be held in escrow. Interest on the bonds or securities
14 is payable to the contractor as it accrues.

15 Section 4. Bond in lieu of reserve fund. With the
16 consent of the public authority, the contractor may submit a
17 bond, in lieu of all or any portion of the reserve fund, in
18 a form acceptable to the public authority. The bond with
19 any proceeds thereof is subject to all claims and liens in
20 the same manner as the reserve fund. The public authority
21 shall release the bonded portion of the reserve fund to the
22 contractor within 30 days of accepting the bond.

23 Section 5. Lien on reserve fund. Every subcontractor
24 or sub-subcontractor on a public works contract has a lien
25 on the reserve fund. Notice of a claimant's lien must be

1 given in the manner and within the time required under Title
2 71, chapter 3, part 5, after the date of completion and
3 final acceptance of the work done under the public works
4 contract by the public authority. Upon filing a lien on the
5 reserve fund, the lien claimant must immediately notify the
6 public authority of the filing.

7 Section 6. Lien foreclosure. (1) Any person claiming
8 a lien against the reserve fund has 4 months after the time
9 for filing a claim has passed in which to bring an action to
10 foreclose the lien. The lien must be enforced by a civil
11 action in the district court of the county where the lien is
12 filed.

13 (2) The public authority must certify to the court the
14 following and no more:

- 15 (a) the name of the contractor;
16 (b) the work contracted to be done;
17 (c) the date of the contract;
18 (d) the date of completion and final acceptance of the
19 work;
20 (e) the amount retained in the reserve fund; and
21 (f) all claims filed with it, showing, respectively:
22 (i) the dates of filing;
23 (ii) the names of claimants; and
24 (iii) the amounts claimed.
25 (3) The certification operates to stop payment of so

1 much of the reserve fund as is required to discharge claims
2 filed in accordance with [this act].

3 (4) If a subcontractor or sub-subcontractor fails to
4 bring an action to foreclose his lien within the 4-month
5 period, the reserve fund is discharged from the lien of his
6 claim and the unencumbered amount of the fund must be paid
7 to the contractor. The 4-month limitation is not a
8 limitation on the right of a subcontractor to sue the
9 contractor or his surety if no right of foreclosure is
10 sought against the reserve fund.

11 (5) A claimant, if he prevails in enforcing his lien
12 claim, is entitled to costs and attorney fees as provided in
13 71-3-124.

14 Section 7. Excess over lien claims to contractor.

15 (1) After expiration of the period for filing claims
16 against the reserve fund, the public authority shall pay to
17 the contractor any amount in the reserve fund not subject to
18 a claim or shall release to the contractor the amount of
19 securities and bonds held in escrow not necessary to satisfy
20 claims.

21 (2) The amount of the reserve fund retained by the
22 public authority that is subject to lien claims must be paid
23 out as directed by the district court.

24 Section 8. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 9. Applicability. This act applies to all
6 public works contracts entered on or after October 1, 1985.

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