

FORTY-FIFTH LEGISLATURE
FIRST SESSION, 2001

HB 320/a

March 10, 2001

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 320, as amended

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. Strike House Business and Industry Committee Amendments 1, 4, 5, 6 and 7.

2. On page 3, line 4, strike "for" and insert in lieu thereof "through a contract with".

3. On page 3, lines 5 and 6, strike Subsection C and insert in lieu thereof:

"C. "owner" means a person, local public body or state agency other than the state highway and transportation department;".

4. On page 3, between lines 6 and 7, insert the following new subsection:

"D. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or similar legal entity;".

5. Reletter the succeeding subsections accordingly.

6. On page 3, line 10, after the semicolon insert "and".

7. On page 3, line 13, strike "; and" and insert in lieu thereof a period.

8. On page 3, strike lines 14 through 23.

9. On page 3, line 25, strike "Retainage" and insert in lieu thereof:

FORTY-FIFTH LEGISLATURE
FIRST SESSION, 2001

SJC/HB 320

Page 2

"A. Except as otherwise provided in this section, retainage".

10. On page 4, line 1, after the period insert:

"Securities may be offered by a contractor or subcontractor in lieu of retention.

B. A local public body may provide in its bidding documents the manner in which retainage is to be held. Retainage by a local public body shall be in an interest-bearing account. A local public body may combine retainage from more than one project into a single account, and the interest shall be allocated to the contractors and subcontractors pro rata to each project's retainage.

C. A manufacturing plant engaged in at least ten construction projects at the same time may serve as its own escrow agent; provided that all other conditions pertaining to escrow accounts shall apply. "

11. On page 4, line 3, strike "All" and insert in lieu thereof "Except as provided in Subsection B of this section, all".

12. On page 4, line 7, after "mailing" insert ", electronic funds transfer".

13. On page 4, between lines 20 and 21, insert the following new subsection:

"B. A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if:

(1) the construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and

FORTY-FIFTH LEGISLATURE
FIRST SESSION, 2001

SJC/HB 320

Page 3

(2) the following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

"Notice of Extended Payment Provision
This contract allows the owner to make payment within _____ days after submission of an undisputed request for payment. ""

14. Reletter the succeeding subsections accordingly.

15. On page 5, strike lines 10 through 19 and insert in lieu thereof:

"C. A creditor shall not collect, enforce a security interest against, garnish or levy execution on those retainage, progress payments or other payments that are owed by an owner, contractor or subcontractor to a person, or his surety, who has furnished labor or material pursuant to a construction contract. ""

16. On page 5, line 23, strike "fifty percent" and insert in lieu thereof "substantially".

17. On page 5, line 24, after the period insert "A contractor shall retain no more than five percent retainage, regardless of whether retainage is withheld by the owner. ""

18. On page 6, line 25, after "contractor" strike the remainder of the line, strike page 7, line 1, up to the semicolon and insert in lieu thereof a period and "The contractor and his subcontractors shall pay interest as it is received pro rata to their subcontractors".

19. On page 9, line 2, strike "substantial".

20. On page 9, line 13, strike "substantial".

FORTY-FIFTH LEGISLATURE
FIRST SESSION, 2001

SJC/HB 320

Page 4

21. On page 10, between lines 6 and 7, insert the following new section:

"Section 11. ATTORNEY FEES.--In an action to enforce the provisions of the Retainage Act, the court may award court costs and reasonable attorney fees."

22. Renumber the succeeding section accordingly.

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Gorham, Ingle, Komadina, Lopez

Absent: None

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