

AMENDIT 1
3.23.05
286

Explanation for SB 286

Senate Bill 286 as it was approved by the Senate has 2 basic parts

Section 2 Amendment

Section 28-2-2104 is a section of law that allows a general contractor or a subcontractor to charge interest if their payment for work is delayed by more than 30 days from the date the payment is required to be paid. The language which is stricken said that interest could only be charged and collected if the contractor notified the payer that this section of law exists – the section that allows interest to be charged.

I am removing the language of notifying those that owe payment, because the Montana Construction Payment laws have existed for over 6 years and those that owe money should now be well aware of the payment laws and should not have to be notified of their existence.

Also, in other sections of the Montana Construction Payment Act there is a specific timetable and process for owners to pay for construction work and to not pay for work that they have not approved. Therefore, if an owner has approved work and hasn't paid for it, then a general contractor or a subcontractor should be able to collect interest on delayed payment.

Section 3 Amendment and new subsection

The amendment in the first subsection changes the amount of retainage that can be held on a construction project from 10% to 5%. About 6 years ago the legislature passed a legislation setting retainage on public works at 5%. The amendments in this subsection set the maximum retainage on private work and other public works that fall under this act at 5%. Only residential construction projects which are \$400,000 or less in value are excluded from this act

The new language in subsection 3, says when retainage should be paid. Basically, when the owner has accepted each portion of the work then the retainage must be paid. Currently, most owners wait until the entire project is completed and then pays retainage. For some subcontractors who completed their work months and some times years in advance of a construction project being completed, the wait for retainage payment can be a long and painful experience. It is long and painful because retained funds are the contractors profit on the job or they still need to pay off an operating or equipment loan.

Both the change to 5% and the subsection that requires that retainage be paid when a contractors work is done, are designed to help the cash flow of Montana contractors and keep them financially sound.

Section 1 of the bill was taken out by the Senate upon agreement of both the general contractors and the subcontractors.