

Explanation for SB 286

There are 3 sections in SB 286 and the following explains each of the sections.

Section 1 Amendments

Under current law there are two timetables for first-tier subcontractors, second-tier and below subcontractors and suppliers to file a "notice" on any security furnished by a general contractor doing a public works job. A first-tier subcontractor (a subcontractor with a contract with a general contractor) has up to 90 days after completion of the contract to file a notice. The provision for this 90 day time frame is found in 18-2-204 MCA.

A second tier subcontractor (and lower tier subcontractors) and suppliers currently have "not later than 30 days after the date of first delivery" to file a notice. The problem with this timetable is that most second tier and below subcontractors are not aware that on every public works job they do, they should file this notice at the beginning of the job to insure that they will get paid. Most suppliers have enough experience that they routinely file these notices at the beginning of every job. But most subcontractors don't file these notices, and then when they learn 60 to 90 days (after they haven't been paid) that they should have filed the notice to have a right against the general contractor's security, it is too late and they are out payment.

The amendments in Section 1 change the time frame that second tier subcontractors (and lesser tier subs) have to file the notice to the same time frame that a first tier subcontractor has which is 90 days after completion of the contract. Suppliers would still have to file up to 30 days from date of first delivery.

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 a subcontractor has completed all their work and it has been approved, then they should have their retainage 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.

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18-2-204. Right of action on security -- notice. (1) All persons mentioned in [18-2-201](#) have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of dollars (here insert the amount) against the security taken from (here insert the name of the principal and name of the person providing the security) for the work of (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed)"

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 4, Ch. 130, L. 1995.

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