

HOUSE BILL NO. 494

INTRODUCED BY GLIMM, G. BENNETT, FITZPATRICK, HALVORSON, HOLLENBAUGH, REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO INSPECT CONSTRUCTION, REPAIR, OR PUBLIC WORKS CONTRACTS PERFORM AN INSPECTION WITHIN 30 DAYS OF COMPLETION A CONTRACTOR'S REQUEST FOR AN INSPECTION; REQUIRING THE DEPARTMENT TO NOTIFY CONTRACTORS OF DEFICIENCIES; ~~AND~~ REQUIRING FINAL PAYMENT FOR CONTRACTS TO BE MADE WITHIN 90 DAYS AFTER THE DEPARTMENT'S FINAL ACCEPTANCE; ~~AFTER DEFICIENCIES ARE CURED, OR AFTER WARRANTIES FOR DEFICIENCIES LAPSE;~~ AND AMENDING SECTION 60-2-115, MCA."

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

~~NEW SECTION. Section 1. Final acceptance of department contracts -- final payment.~~ (1) Except as provided by 18-2-306 and unless otherwise provided by law or the contract, if the department enters into a contract for construction, repair, or public works, the department shall:

~~(a) within 30 days after a request by the contractor for final acceptance, perform an inspection of the project, decide whether or not to make final acceptance, notify the contractor of the department's decision, and provide the contractor with a list of deficiencies if the department decides not to make final acceptance; and~~

~~(b) except as provided by 60-2-115, make the final payment of the contract price specified in the contract to the other party to the contract within 90 days:~~

~~(i) after final acceptance by the department;~~

~~(ii) after the contractor has notified the department that any deficiencies have been cured and the department has not provided a new notification of remaining deficiencies to the contractor; or~~

~~(iii) if the warranty periods for any remaining deficiencies have expired according to the terms of the contract.~~

~~(2) For the purposes of this section, the following definitions apply:~~

~~(a) "Final acceptance" means the department's acceptance of the construction, maintenance, or public works project upon certification by the architect, project engineer, or other representative of the department of final completion of the project.~~



1 ~~_____ (b) "Final completion" means that the project has been completed in accordance with the terms and~~
 2 ~~conditions of the contract documents:~~

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 4 ~~_____ NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an~~
 5 ~~integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].~~

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 7 **SECTION 1. SECTION 60-2-115, MCA, IS AMENDED TO READ:**

8 **"60-2-115. Contract let by commission -- time for final payment of contract price -- interest. (1)**
 9 ~~The commission~~ Subject to subsections (2) through (4), the department shall comply with the 30-day time period
 10 for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this
 11 part.

12 (2) For the final payment on a contract, the department shall, within 30 days after a request by the
 13 contractor for final acceptance, perform an inspection of the project and notify the contractor of whether the
 14 department has granted or refused final acceptance.

15 (3) If the department notifies the contractor that the department has granted final acceptance, the
 16 department shall make the final payment of the contract price specified in the contract to the other party to the
 17 contract within 90 days after the notice.

18 (4) (a) If the department notifies the contractor that the department has refused final acceptance, the
 19 department shall include with the notice a list of all deficiencies that must be cured before the department will
 20 grant final acceptance.

21 (b) After the contractor has cured all of the deficiencies, the contractor shall request final acceptance
 22 by the department. Within 30 days after the contractor's request, the department shall perform an inspection of
 23 all of the cured deficiencies.

24 (c) If the department notifies the contractor of its final acceptance, the department shall make the final
 25 payment as provided in subsection (3).

26 (d) If the department notifies the contractor that the department has refused final acceptance, the
 27 department shall:

28 (i) notify the contractor of any remaining deficiencies; and
 29 (ii) grant final acceptance, subject to any remedy provided under the provisions of Title 28, chapter 2.

30 (5) When the department grants final acceptance, the department shall immediately consider the contract

1 complete and close the contract.

2 (6) For the purposes of this section, the following definitions apply:

3 (a) "Final acceptance" means the department's acceptance of the construction, maintenance, or public
4 works project upon certification by the architect, project engineer, or other representative of the department of
5 final completion of the project.

6 (b) "Final completion" means that the project has been completed in accordance with the terms and
7 conditions of the contract documents and all warranties have expired."

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9 NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured,
10 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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