

SCS SB 529 -- MISSOURI PUBLIC PROMPT PAYMENT ACT

SPONSOR: Wallingford (Korman)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Workforce Development and Workplace Safety by a vote of 9 to 0.

This bill modifies the Missouri Public Prompt Payment Act and the laws relating to public works projects.

The bill requires prompt payment to professional engineers, architects, landscape architects, and land surveyors under any public works contracts made by a political subdivision for a public works project, and requires progress payments on a monthly or lump sum basis, according to the terms of the contract. Current law provides these requirements only for contractors.

Currently, a public owner may retain 5% of the value of a public works contract or up to 10% if it is determined by the public owner and the architect or engineer that a higher rate is required to ensure performance. This bill provides that a public owner may retain up to 10% if the contractor is not required to obtain a bond because the contract is not estimated to exceed \$50,000.

Under current law, retainage may be adjusted prior to completion when work is proceeding satisfactorily and retainage is paid after substantial completion of the contract or per contract terms. In such cases, 200% of the value of the remaining work is withheld until completion. This bill provides that 150% of the value is withheld until completion.

Under current law, the public owner must pay the retainage after substantial completion of the work or as provided per contract to the contractor for state highway road or bridge projects administered by the State Highways and Transportation Commission. This bill requires the owner to pay at least 98% of the retainage to the contractor and for the contractor to pay subcontractors and suppliers after substantial completion or as provided per contract.

This bill also provides that, if the owner determines the work is not substantially completed, the owner must provide a written explanation within 14 calendar days to the contractor. The contractor is then required to provide the notice to any subcontractor or suppliers responsible. If the explanation is not given by the public body, the public body must pay at least 98% of the retainage within 30 calendar days.

Currently, contractors must pay subcontractors and suppliers when they receive payment less any retention not to exceed 10%. This

bill lowers the retention to 5%.

Current law provides that when the public owner does not release full payment due because there are specific areas of work or materials the owner is rejecting, the subcontractors or suppliers involved are not paid for the rejected work. This bill specifies that the subcontractors or suppliers are not paid provided the owner gives a written explanation as to why the work or supplies were rejected.

This bill requires the public owner to include any withheld retainage with final payment of moneys owed to the contractor within 30 days of the due date. In addition, this bill requires the public owner to pay any professional engineer, architect, landscape architect, or land surveyor the amount due within 30 days after receiving an invoice. If full payment is not made, the contracting agency must pay 1.5% interest per month it remains unpaid.

Currently, contractors on public works projects are obligated to require contractors to furnish a bond when the estimated cost of the project exceeds \$25,000. This bill changes that amount to \$50,000.

PROPOSERS: Supporters say that this bill eases the public works retainage requirements. In some cases retainage is being held up to two years and often it represents the contractor's profit. The Department of Transportation has eliminated retainage and no issues have arisen.

Testifying for the bill were Senator Wallingford; L. Joe Hoette, Hoette Concrete Construction; Richard J. Barry, R. Barry Consulting, LLC; Missouri Society of Professional Surveyors; SITE Improvement Association; Construction Employers Coalition; Associated General Contractors of Missouri; American Subcontractors Association - Midwest Council; and Timothy Green, St. Louis Electrical Connection.

OPPOSERS: There was no opposition voiced to the committee.