

A06587 Summary:

BILL NO A06587
SAME AS Same as S 3607
SPONSOR Abbate
COSPNSR Schroeder
MLTSPNSR Latimer

Authorizes the amending of state construction and commodity contracts to provide equitable relief to contractors who have sustained unanticipated expenses by reason of copper price escalations.

A06587 Actions:

BILL NO A06587

03/14/2007 referred to governmental operations
06/14/2007 reported referred to ways and means
01/09/2008 referred to governmental operations

A06587 Votes:

A06587 Memo:

BILL NUMBER: A6587

TITLE OF BILL : An act in relation to amending state construction and commodity contracts to provide equitable relief to contractors who have sustained unanticipated expenses by reason of copper price escalations; and providing for the repeal of such provisions upon expiration thereof

PURPOSE OR GENERAL IDEA OF BILL :
This bill would allow adjustments to the prices of cooper products included in contract let for bid by the State, State Authorities and Public Benefit Corporations prior to May 15, 2006, for which contracts the cooper products were purchased on or after December 1, 2005, if the cost of purchasing these products increases more than five percent of the same prices at the time of the bid. The bill also permits local governments to enact substantially equivalent legislation, subject to a determination by the State Comptroller that the provisions and procedures of the local legislation are substantially equivalent to those in this bill. The price of cooper products has skyrocketed without precedent since December 1, 2005, and the unanticipated

increases pose an inequity to contractors and jeopardize the fulfillment of public contracts.

SUMMARY OF SPECIFIC PROVISIONS :

S1 - declares the bills purpose - to allow for adjustment of contracts to account for unprecedented increases in cooper prices.

S2 - grants State agencies and public benefit corporations authority to adjust prices based on bids submitted before May 15, 2006, but only for those contracts for which cooper materials were acquired after December 1, 2005, and only to the extent that the cooper prices have increased by more than five percent of the cost of those materials at the time of the award of the contract.

S3 - gives authority to the Commissioner of General Services to terminate or suspend contracts, or to modify prices in those contracts, which are for purchases of commodities containing cooper materials where:

- 1 - the contract covers materials that were purchased or invoices after December 1, 2005,
- 2 - market conditions have caused increase in the cost of cooper contained in the commodities or component parts of the commodities which are more than five percent of the contractor's aggregate acquisition costs determined at the time of the award of the contract, and
- 3 - the Commissioner has determined that, as a result of the increases in the cost of cooper, the contractor will incur an actual net loss on the contract.

JUSTIFICATION :

There has been an unprecedented increase in cooper prices in recent months. At the end of November 2005, the price of cooper was two dollars (\$2.00) per pound. By May 15, 2006, the price of cooper had nearly doubled, rising to three dollars and ninety cents (\$3.90) per pound, as recorded on the government's Producer Price Index. The causes include the rapidly expanding world demand for cooper, particularly from China, increased fuel costs and weakness of the US dollar.

As a result, all contractor performing public works or selling commodities to public entities in this State have been adversely affected, particularly those with multi-year contracts. Contractors who were awarded contracts only last year have found that the economic ground on which they submitted their bids has shifted dramatically.

Many are in danger of suffering fatal losses in the performance of these contracts as a result of the increases in cooper prices.

If no adjustment is provided, contractor will be harmed and, of greater concern to the State, contracts will likely go uncompleted. Price volatility may cause contractor and their suppliers to go bankrupt or leave the marketplace. A reduction of the number of contractor and suppliers is not in the interest of the people of the State, as it adversely affects competition.

This bill would permit the State, public benefit corporations and local governments to make adjustments in these contracts to endure equity and a continued competitive marketplace. The Legislature has enacted similar legislation in the past when prices of steel and iron

products shot up dramatically. See Laws 1974, c.944 and c.045.

PRIOR LEGISLATIVE HISTORY :
New Legislation

FISCAL IMPLICATIONS :
To be determined.

EFFECTIVE DATE :
This act shall take effect immediately and shall expire and be deemed repealed on June 30, 2009.