

HB 2870 -1 STAFF MEASURE SUMMARY

House Committee On Business and Labor

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Meeting Dates: 2/27, 4/3

WHAT THE MEASURE DOES:

Permits contractors to submit bonds in lieu of retainage for construction projects and public improvement contracts. Specifies requirements for submitting bonds. Permits contractor, upon request of subcontractor, submit bond for construction project and public improvement contract for portion of contractor's retainage that pertains to subcontractor. Specifies relationship between contractor and subcontractor when contractor submits bond on subcontractor behalf. Becomes operative January 1, 2024. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Statutory change in 2019 to require retainage be held in interest bearing escrow account
- Implementation challenges because escrow accounts not available in market place
- Challenges that subcontractor experience being paid last 5 percent of contract
- Disruption to subcontractors business as result of lack of payment
- Requiring acceptance of surety bond by contracting agency or project owner
- Bonds allow subcontractors to keep funds, while providing general contractors protection of bond.
- Ability of subcontractor to request general contractor submit surety bond to contracting agency for their portion of retainage
- Washington's public contracting law

EFFECT OF AMENDMENT:

-1 Clarifies that contractor may submit surety bonds in lieu of retainage. Limits use of surety bonds in lieu of retainage to public improvement projects. Permits contractor to elect to deposit bonds, securities or other instrument with contracting agency or financial institution to old for contracting agency's benefit in lieu of retainage.

BACKGROUND:

Retainage is a portion of the agreed upon contract price deliberately withheld until the work is substantially complete to ensure a contractor will satisfy its obligations under a construction contract. With respect to public contracting, a contracting agency may reserve as retainage from a progress payment an amount no greater than five percent of the payment. Upon a written request by the contractor and approval by the contractor's surety, the contracting agency may choose to reduce the amount retained and, after 50 percent of the work is completed, the agency may choose to eliminate the retainage. Once 97.5 percent of the work is complete, the contracting agency may use its discretion to reduce the retained amount to 100 percent of the value of the work yet to be completed. Retainage held by the contracting agency must be paid to the contractor as part of the final payment and interest earned on money retained is due to the contractor. Five percent retainage is allowed on private projects. A public or private contracting party is required to place retainage in an interest-bearing escrow account when the contract price exceeds \$500,000.

House Bill 2870 allows for a contractor to submit bonds for all or a portion of the retainage required for construction projects and public improvement contracts. It requires that a surety bond be executed solely by a surety company that is authorized to transact surety business in Oregon and may not be a surety obligation of an individual. The measure permits contractor, upon request of subcontractor, submit a bond for construction project or public improvement contract for the portion of the contractor's retainage that pertains to the

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subcontractor. If a contractor obtains a bond at the request of a subcontractor, the contractor may withhold from payments to the subcontractor an amount equivalent to the portion of the bond premium for which the subcontractor is responsible. Within 30 days of a subcontractor's request, the contractor must provide, and contracting agency or project owner must accept bond unless: owner or contacting agency finds good cause in writing for not accepting the bond; the bond is not commercially available; or subcontractor refuses to pay the contractor the subcontractor's portion of the bond premium and refuses to provide the contractor with a bond that meets the requirements. Further, the measure removes requirement that a public or private contracting party is required to place retainage in an interest-bearing escrow account when the contract price exceeds \$500,000.