

HB 2870 A -A2, -A3 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

Prepared By: Whitney Perez, LPRO Analyst

Meeting Dates: 4/25, 5/4

WHAT THE MEASURE DOES:

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

FISCAL: Minimal fiscal impact

REVENUE: Minimal revenue impact

HOUSE VOTE: Ayes, 42; Nays, 0

ISSUES DISCUSSED:

- Need for prompt payment
- Purpose of retainage
- System of bond in lieu of retainage exists in Washington State
- Commercial impracticability of escrow accounts
- Retainage bond allows subcontractor to be paid immediately

EFFECT OF AMENDMENT:

-A2 Specifies form to be used when contractor submits surety bond for retainage. Requires contractor to accept surety bond from subcontractors or suppliers from which contractor has withheld retainage if contracting agency or owner has accepted a surety bond in lieu of retainage from contractor. Permits contractor on large commercial structure or public improvement contract, upon request of subcontractor, to submit surety bond for portion of contractor's retainage that pertains to subcontractor. Specifies relationship between contractor and subcontractor when contractor submits surety bond on subcontractor's behalf. Makes technical amendments.

-A3 Specifies form to be used when contractor submits surety bond for retainage. Requires contractor to accept surety bond from subcontractors or suppliers from which contractor has withheld retainage if contracting agency or owner has accepted a surety bond in lieu of retainage from contractor. Permits contractor on large commercial structure or public improvement contract, upon request of subcontractor, to submit surety bond for portion of contractor's retainage that pertains to subcontractor. Specifies relationship between contractor and subcontractor when contractor submits surety bond on subcontractor's behalf. Modifies surety bond form language. Makes technical amendments.

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

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