

HB 2415 -3, -4 STAFF MEASURE SUMMARY

House Committee On Business and Labor

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Meeting Dates: 2/20, 4/8

WHAT THE MEASURE DOES:

Prohibits withholding payment as retainage if contractor supplies bond or security equivalent to amount of retainage allowed.

Requires retainage be deposited in interest-bearing escrow account if contract price exceeds \$250,000.

Provides interest on amount retained accrues from date payment request is approved until date paid.

Requires contractor to eliminate retainage to first-tier subcontractor after 50 percent of work is completed and work is progressing satisfactorily.

Establishes deadlines for payment of retainage after acceptance of completed project or portion of project.

Provides maximum amount that may be withheld from final payment when work is incomplete or defective.

Provides that interest accrues on unpaid retainage at rate of 18 percent per annum if retainage not paid after completion and acceptance of work. Provides prevailing plaintiff with costs and attorney fees in civil action for refusal to timely pay retainage.

Makes offer of written contract form containing progress payment or retainage provisions that do not comply with statutory provisions a Class A violation (fine not to exceed \$2,000).

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Replaces original measure. Requires retainage to be held in interest-bearing escrow account if contract price exceeds \$500,000, with interest accruing from date payment request is approved, and with interest paid to the contractor or subcontractor to which it is due. Applies to public and private construction contracts entered into on or before effective date.

-4 Replaces original measure. Requires retainage to be held in interest-bearing account (not necessarily an escrow account) if contract price exceeds \$500,000, with interest accruing from date payment request is approved, and with interest paid to the contractor or subcontractor to which it is due. Applies to public and private construction contracts entered into on or before effective date.

BACKGROUND:

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 par of the final payment. Interest earned on money retained is due to the contractor.