

HB 2870 A STAFF MEASURE SUMMARY**Carrier:** Rep. Evans**House Committee On Business and Labor****Action Date:** 04/04/23**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 11-0-0-0**Yeas:** 11 - Boshart Davis, Elmer, Grayber, Holvey, Hudson, Nelson, Nosse, Osborne, Owens, Scharf, Sosa**Fiscal:** Has minimal fiscal impact**Revenue:** Has minimal revenue impact**Prepared By:** Erin Seiler, LPRO Analyst**Meeting Dates:** 2/27, 4/4**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, 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 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 subcontractors experience being paid last five 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:

Clarifies that contractor may submit surety bond 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 hold 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. 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.

HB 2870 A STAFF MEASURE SUMMARY

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, submit a surety bond for 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 contracting agency must accept surety bond unless: contracting agency finds good cause in writing for not accepting the surety bond; the surety bond is not commercially available; or 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 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.