

HB 2870 B STAFF MEASURE SUMMARY**Carrier:** Sen. Patterson**Senate Committee On Labor and Business****Action Date:** 05/09/23**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 3-0-0-2**Yeas:** 3 - Jama, Patterson, Taylor**Abs:** 2 - Bonham, Hansell**Fiscal:** Fiscal impact issued**Revenue:** Has minimal revenue impact**Prepared By:** Whitney Perez, LPRO Analyst**Meeting Dates:** 4/25, 5/4, 5/9**WHAT THE MEASURE DOES:**

Permits contractors to submit surety bonds in lieu of retainage for public improvement contracts. Specifies requirements for submitting surety bonds. Requires contractor on large commercial structure or public improvement contract 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. Permits contractor, when contractor or subcontractor are performing work on a large commercial structure or under public improvement contract and have not deposited a surety bond in lieu of retainage, to elect to have project owner or contracting agency deposit accumulated retainage in an interest-bearing account with a bank or other financial institution or pay interest on the accumulated retainage at the rate of two percent plus the discount rate on 90-day commercial paper that is in effect at Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date the retainage is paid. Modifies surety bond form language. Operative January 1, 2024. Declares emergency, effective on passage.

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:

Specifies form to be used when contractor submits surety bond for retainage. Requires contractor on large commercial structure or public improvement contract 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. Permits contractor, when contractor or subcontractor are performing work on a large commercial structure or under public improvement contract and have not deposited a surety bond in lieu of retainage, to elect to have project owner or contracting agency deposit accumulated retainage in an interest-bearing account with a bank or other financial institution or pay interest on the accumulated retainage at the rate of two percent plus the discount rate on 90-day commercial paper that is in effect at Federal Reserve

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Bank in the Federal Reserve district that includes Oregon on the date the retainage is paid. 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 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 B 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 requires a contractor on a large commercial structure or public improvement contract to accept a 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. The measure permits a contractor on a large commercial structure or public improvement contract, upon request of subcontractor, to submit a surety bond for the portion of contractor's retainage that pertains to subcontractor.