

FINAL BILL REPORT

ESHB 1538

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Synopsis as Enacted

Brief Description: Requiring prime contractors to bond the subcontractors portion of retainage upon request.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Stambaugh, Doglio, Vick, Hayes, Sells and Pike).

House Committee on Capital Budget
Senate Committee on Commerce, Labor & Sports

Background:

Public work means any work done for a public entity, including construction, alteration, repair or improvement other than ordinary maintenance. Projects that are public work are agreed by contract between the public body and the contractor. The contract defines the scope of work provided by the contractor and payment for that work by the public body. After the lowest responsible bidder is chosen, a performance and payment bond is required by the contractor to guarantee the work will be completed and all subcontractors and material suppliers will be paid. Most performance and payment bonds are for 100 percent of the contract amount.

Public entities are required to withhold up to 5 percent of the value of the contract, called retainage, for any payment required and not made, or penalties, and serves as a lien. The retainage is withheld over the course of payments made during the contract period. These retainage funds must be held in an interest-bearing fund. The contractor may withhold 5 percent of payments owed to subcontractors or material suppliers.

A contractor may submit a bond for the retainage amount. The public body is then required to release the 5 percent retainage to the contractor within 45 days. Any claims on the retainage must be made within the 45 days.

The full amount of the retainage is released when all subcontractors and material suppliers are paid and there are no claims on the lien.

Summary:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A subcontractor may request that the prime contractor provide a bond for the subcontractor's portion of the retainage. The bond must be provided within 30 days. The prime contractor may withhold the retainage bond premium from the subcontractor if the public body shows good cause for refusing to accept it, if the subcontractor refuses to pay the subcontractor's portion of the bond premium, and if the bond is not commercially available.

Votes on Final Passage:

House	82	15
Senate	34	15

Effective: July 23, 2017