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**Labor & Workplace Standards  
Committee**

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**HB 1524**

**Brief Description:** Concerning the retainage percentage withheld by prime contractors.

**Sponsors:** Representatives Bronoske, Berry and Pollet.

**Brief Summary of Bill**

- Establishes retainage requirements for contractors and subcontractors in nonpublic works projects.

**Hearing Date:** 2/7/23

**Staff:** Kelly Leonard (786-7147).

**Background:**

Retainage refers to money earned by a contractor or subcontractor for satisfactory work, but held until the contract, or a certain portion of the contract, is complete. Retainage is typically held as an assurance for the timely completion and quality of a contractor or subcontractor's work. It is calculated as a percentage of the total contract price or a progress payment.

State law requires retainage in public works and other types of public improvement projects, with some exceptions. State and local agencies must typically withhold up to five percent of the value of a contract, not including sales tax, as retainage until the project is completed and the contract is accepted. The agency must release the retainage to the contractor after the project is completed, minus any claim amounts. Instead of having retainage withheld from the contract payments, a contractor may opt to submit a retainage bond covering any or all of the amount. A subcontractor may also request the contractor to submit a retainage bond for the portion of the

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subcontractor's retainage. All workers, subcontractors, and suppliers have lien rights against the retainage or retainage bond and can claim all or part of the money if the contractor does not pay them.

State law does not currently dictate retainage for private construction projects.

### **Summary of Bill:**

*Retainage.* An owner, contractor, or subcontractor may withhold as retainage an amount equal to not more than five percent of the contract price of the work completed for nonpublic works projects, excluding single-family residential construction.

*Interest on payments.* The owner, contractor, or subcontractor must pay interest at the rate of one percent per month on the final payment due to the contractor or subcontractor. The interest commences 30 days after the contractor or subcontractor has completed and the owner has accepted the work under the contract. The interest runs until final payment is tendered to the contractor or subcontractor. Partial payment does not constitute acceptance or approval of some of the work or a waiver of defects in the work.

When the contractor or subcontractor considers the work that the contractor or subcontractor is contracted to perform to be complete, the contractor or subcontractor must notify the party to whom the contractor or subcontractor is responsible for performing the construction work under the contract. The party must, within 15 days after receiving the notice, either accept the work or notify the contractor or subcontractor of work yet to be performed under the contract. If the party does not accept the work or does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required commences 30 days after the end of the 15-day period.

*Payment to subcontractors.* When a contractor pays a subcontractor in full, including the amount the contractor withheld as retainage, the owner must pay the contractor, out of the amount that the owner withheld from the contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor.

The contractor must notify the owner when the contractor pays a subcontractor in full and the owner must, within 15 days after receiving the notice, pay the contractor the amount due the contractor. Interest on the amount due the contractor at the rate of one percent per month commences 30 days after the owner receives notice of full payment to the subcontractor.

In lieu of retainage, a subcontractor may tender a retainage bond in an amount not to exceed five percent of the moneys earned by the contractor, which must meet certain specified requirements. Whenever a contractor accepts a bond in lieu of retained funds from a subcontractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within 30 days of accepting the bond

from the subcontractor or supplier.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.