

HOUSE BILL REPORT

ESHB 1538

As Passed House:
March 7, 2017

Title: An act relating to requiring prime contractors to bond the subcontractor's portion of retainage upon request.

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).

Brief History:

Committee Activity:

Capital Budget: 2/3/17, 2/10/17 [DPS].

Floor Activity:

Passed House: 3/7/17, 82-15.

Brief Summary of Engrossed Substitute Bill

- Requires the prime contractor to provide a bond for the subcontractor's portion of retainage if requested.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; Smith, Assistant Ranking Minority Member; Dye, Koster, Macri, Morris, Reeves, Riccelli, Ryu, Sells, Steele, Stonier and J. Walsh.

Minority Report: Without recommendation. Signed by 4 members: Representatives DeBolt, Ranking Minority Member; Johnson, Kraft and MacEwen.

Staff: Steve Masse (786-7115).

Background:

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.

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 of Engrossed Substitute Bill:

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.

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.

Staff Summary of Public Testimony:

(In support) For larger firms a large retainage is manageable. Smaller contractors are not as able to manage the 5 percent and this sometimes puts subcontractors out of business. The bill allows subcontractors to ask the prime contractor to bond retainage. The subcontractor is holding on to the risk. Small contractors can have a large portion of their profit being held for retainage. More hurdles means fewer bidders for public works. This bill helps small and disadvantaged businesses. It should not be an administrative burden

(Opposed) Surety companies have indicated that multiple subcontractor requests would raise administrative and underwriting costs. The bill does not address when a general contractor

could shop for multiple surety bonds. There is support for the bond to be waived for smaller companies. The process takes a long time even in the best circumstances. The bill would provide a more holistic approach to retainage release.

(Other) Counties use a lot of contracting for public works. One concern is that the mixture of retainage and bonds creates additional administrative costs and work.

Persons Testifying: (In support) Representative Stambaugh, prime sponsor; Ed Kommers and Scott Middleton, Mechanical Contractors Association of Western Washington; and Tim Herbert, Washington State Association of United Association Plumbers and Pipefitters.

(Opposed) Jerry Vanderwood, Associated General Contractors.

(Other) Gary Rowe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.