

SENATE BILL REPORT

SB 5222

As Reported by Senate Committee On:
Commerce, Labor & Sports, February 15, 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: Senators Hasegawa, Baumgartner, Takko, O'Ban, Conway, Zeiger, Bailey, King, Chase, Wilson, Keiser and Saldaña.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/02/17, 2/15/17 [DP].

Brief Summary of Bill

- Requires a contractor on a public improvement project, at the request of a subcontractor, to submit a bond to the public owner of the project for the portion of the contractor's retainage that pertains to the subcontractor.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Keiser, Ranking Minority Member; Conway, Hasegawa, King, Saldaña and Wilson.

Staff: Jarrett Sacks (786-7448)

Background: Retainage. For public improvement projects costing \$35,000 or more, state law requires that public bodies withhold up to 5 percent of the monies earned by the contractor as retainage until the project is completed. The retainage is set aside as a trust fund in the event claims arise under the contract or taxes are not paid by the contractor. State law also permits prime contractors to hold a contract retainage of no more than 5 percent of the monies earned by subcontractors or suppliers. All retainage must be paid to the contractor within 60 days of completion of all contract work other than landscaping. This

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provision applies to the state, as well as to cities, counties, towns, districts, boards, and other public bodies.

Public improvement contracts for highway, road, and street projects that are funded by federal transportation funds are exempted from the retainage requirement. Instead, the contract bond is used in the event of claims or unpaid taxes.

Retainage Bonds. A contractor may submit a surety bond instead of having retainage withheld. The bond may be for all or any portion of the retainage. The bond must be in a form acceptable to the public body and from an authorized surety insurer. The public body may require that the authorized surety have a minimum A.M. Best Financial Strength Rating so long as that minimum rating does not exceed A-.

The contractor's bond is subject to claims and liens in the same manner as the retainage that would typically be withheld. Within 30 days of accepting the bond, the public body must release the the bonded portion of the retained funds to the contractor. If a public body accepts a bond in lieu of retained funds, the contractor must accept like bonds from any subcontractors and suppliers from which the contractor has retained funds.

Summary of Bill: At any time prior to the final formal acceptance of the public improvement project, a subcontractor may request the contractor submit a bond to the public owner for that portion of the contractor's retainage pertaining to the subcontractor. The bond must be in a form acceptable to the public body and must meet standards established by the public body.

Within 30 days of receiving the request from the subcontractor, the contractor must provide, and the public body must accept, the bond unless the public body demonstrates good cause for refusing to accept the bond or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill allows subcontractors to save money and improve their cash flow. Subcontractors cannot get a new job until they get their money back. There is no reason why general contractors should be the only entity able to decide if a project is bonded. Subcontractors fund construction projects. Sometimes, a subcontractor will not get their retainage back for years after they are finished working.

CON: Existing statute takes care of the problem. Most projects are bonded and subcontractors can get bonds on those projects. Sureties will look at subcontractor's credit and the bill will raise costs on public works projects.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Ed Kommers, Executive Director, MCA of Western WA; Arne Hedeem, Mechanical Contractors Association of Western WA; Mark Tobin, Holmberg Company/Controller; Amy Hightower, Apollo Mechanical.

CON: Jerry Vanderwood, Associated General Contractors; Jake Jacobson, Osborne Construction, AGC; Vince Campanella, Lydig Construction and Inland NW AGC.

Persons Signed In To Testify But Not Testifying: No one.