

By: Workman

H.B. No. 3939

A BILL TO BE ENTITLED

AN ACT

Relating to the requirements for construction contracts for certain public works projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2252.032, Government Code, is amended to read as follows: Sec. 2252.032. RETAINAGE (a) A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract that provides for retainage of a portion [~~more than five percent~~] of the periodic contract payment; and

(2) pay the interest earned on the retainage to the prime contractor on completion of the contract.

(b) A governmental entity may not:

(1) withhold retainage in excess of five percent of the agreed contract price without the express written consent of all parties to the contract;

(2) withhold retainage in excess of one percent of the agreed contract price, excluding interest earned on the retainage, if the public work covered by the contract is capable of being used for the intended purpose of the public work; and

(3) items constituting additional withholding or retainage added to the schedule of values, general contract conditions, are prohibited.

1 (d) Withholding retainage for non-allocated project funds,
2 or during the warranty period is prohibited.

3 SECTION 2. Section 203.0941(a), Transportation Code, is
4 amended to read as follows:

5 (a) The relocation of a utility facility required by
6 improvement of any segment of the state highway system, for which a
7 political subdivision receives financial assistance made available
8 from either Subchapter D, F, G, or K, Chapter 17, Water Code, is not
9 subject to the requirements of Sections 17.183(a)(1)-(5)
10 [~~17.183(1)-(6)~~], Water Code, if the political subdivision has
11 agreed to allow the department to contract for the construction of
12 the utility facility relocation.

13 SECTION 3. Section 17.183, Water Code, is amended by
14 amending Subsections (a) and (c) and adding Subsections (a-1) and
15 (f) to read as follows:

16 (a) The governing body of each political subdivision
17 receiving financial assistance from the board shall require in all
18 contracts for the construction of a project:

19 (1) that each bidder furnish a bid guarantee
20 equivalent to five percent of the bid price;

21 (2) that each contractor awarded a construction
22 contract furnish performance and payment bonds;

23 (A) the performance bond shall include without
24 limitation guarantees that work done under the contract will be
25 completed and performed according to approved plans and
26 specifications[~~and in accordance with sound construction~~
27 ~~principles and practices, and]~~

1 (B) the performance and payment bonds shall be in
2 a penal sum of not less than 100 percent of the contract price~~[and~~
3 ~~remain in effect for one year beyond the date of approval by the~~
4 ~~engineer of the political subdivision]~~;

5 (3) that payment be made in partial payments as the
6 work progresses;

7 (4) that each partial payment shall not exceed 95
8 percent of the amount due at the time of the payment as shown by the
9 engineer of the project, but, if the project is substantially
10 complete or is capable of being used for its intended purpose;

11 (A) the political subdivision may not withhold
12 retainage in excess of one percent of the agreed contract price,
13 excluding interest earned on the retainage, [partial] and partial
14 release of [the five percent] the remaining retainage [may] shall
15 be made by the political subdivision [with approval of the
16 executive administrator];

17 (5) that payment of the retainage remaining due upon
18 completion of the contract shall be made only after:

19 (A) approval by the engineer for the political
20 subdivision as required under the bond proceedings;

21 (B) approval by the governing body of the
22 political subdivision by a resolution or other formal action; and

23 (C) certification by the engineer for the project
24 ~~[executive administrator in accordance with the rules of the board]~~
25 that the work to be done under the contract has been completed~~[and~~
26 ~~performed in a satisfactory manner and]~~ in accordance with approved
27 plans and specifications and in accordance with the rules of the

1 board;

2 (6) ~~[that no valid approval may be granted unless the~~
3 ~~work done under the contract has been completed and performed in a~~
4 ~~satisfactory manner according to approved plans and~~
5 ~~specifications;~~

6 (7) that, if a political subdivision receives
7 ~~[receiving]~~ financial assistance under Subchapter K ~~[of this~~
8 ~~chapter]~~, labor from inside the political subdivision be used to
9 the extent possible;

10 SECTION 4. The changes in law made by this Act apply only to
11 a contract entered into on or after the effective date of this Act.
12 A contract entered into before the effective date of this Act is
13 governed by the law in effect when the contract was entered into,
14 and the former law is continued in effect for that purpose.

15 SECTION 5. EFFECTIVE DATE. This Act takes effect
16 immediately if it receives a vote of two-thirds of all the members
17 elected to each house, as provided by Section 39, Article III, Texas
18 Constitution. If this Act does not receive the vote necessary for
19 immediate effect, this Act takes effect September 1, 2015.