

By: Shine, Cyrier

H.B. No. 3913

Substitute the following for H.B. No. 3913:

By: Alvarado

C.S.H.B. No. 3913

A BILL TO BE ENTITLED

AN ACT

relating to retainage requirements for certain public works construction projects.

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

SECTION 1. The heading to Subchapter B, Chapter 2252, Government Code, is amended to read as follows:

SUBCHAPTER B. [~~INTEREST ON~~] RETAINED PUBLIC WORKS CONTRACT PAYMENTS

SECTION 2. Section 2252.031, Government Code, is amended by amending Subdivision (5) and adding Subdivisions (6) and (7) to read as follows:

(5) "Retainage" means the part of a:

(A) public works contract payment withheld by a governmental entity to secure performance of the contract; or

(B) payment under a public works contract withheld by a prime contractor or subcontractor to secure performance of any work that is required of the prime contractor under the contract that a subcontractor contracts to perform.

(6) "Subcontractor" means a person who contracts with a prime contractor or any other subcontractor to provide labor or materials to fulfill an obligation of the prime contractor under a public works contract.

(7) "Warranty period" means the period of time specified in a contract during which certain terms applicable to the warranting of work performed under the contract are in effect.

SECTION 3. Section 2252.032, Government Code, is amended to read as follows:

Sec. 2252.032. RETAINAGE WITHHELD BY GOVERNMENTAL ENTITY.

(a) A governmental entity shall:

(1) include in each public works contract to which the governmental entity is a party a provision that establishes, for the project that is the subject of the contract:

(A) the circumstances under which the project will be considered substantially complete; and

(B) if retainage will be released on substantial completion of the project and, if so, the percentage of the amount of retainage that will be released on substantial completion;

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

(3) [~~(2)~~] pay the retainage remaining in the account described by Subdivision (2), including any interest earned on the retainage, to the prime contractor on completion of the contract.

(b) If the total value of a public works contract is \$1 million or more, a governmental entity:

(1) may not withhold retainage in an amount that exceeds five percent of the contract price;

(2) may release retainage for completed portions of the work; and

(3) may release a portion of the retainage on substantial completion of the project.

1 (c) A governmental entity may not withhold retainage:

2 (1) after completion of the contract by the prime
3 contractor, including during any warranty period after completion
4 of the contract; or

5 (2) for the purpose of requiring the prime contractor,
6 after completion of the contract, to perform work on manufactured
7 goods or systems that were:

8 (A) specified by the designer of record; and

9 (B) properly installed by the contractor.

10 SECTION 4. Subchapter B, Chapter 2252, Government Code, is
11 amended by adding Section 2252.0325 to read as follows:

12 Sec. 2252.0325. RETAINAGE WITHHELD BY PRIME CONTRACTOR OR
13 SUBCONTRACTOR. (a) If, for the purpose of fulfilling an obligation
14 of the prime contractor under a public works contract, a prime
15 contractor enters into a subcontract that has a total value of at
16 least \$250,000:

17 (1) the prime contractor may not withhold from a
18 subcontractor a greater percentage of retainage than the percentage
19 being withheld from the prime contractor by the governmental entity
20 under the public works contract; and

21 (2) a subcontractor who enters into a contract with
22 another subcontractor to provide labor or materials under the
23 public works contract may not withhold from that subcontractor a
24 greater percentage of retainage than the percentage that may be
25 withheld from the subcontractor as determined under Subdivision
26 (1).

27 (b) A prime contractor who receives a payment of interest

1 under Section 2252.032 shall pay to any subcontractor of the prime
2 contractor from whom the prime contractor has withheld retainage
3 under a public works contract a proportionate share of the interest
4 the prime contractor receives in an amount based on the ratio of the
5 amount of retainage withheld by the prime contractor from the
6 subcontractor to the amount of retainage withheld by the
7 governmental entity from the prime contractor.

8 (c) A subcontractor who receives a payment of interest under
9 this section shall pay to any contracting subcontractor from whom
10 the subcontractor withheld retainage a proportionate share of the
11 interest the subcontractor receives in an amount based on the ratio
12 of the amount of retainage withheld by the subcontractor from the
13 contracting subcontractor to the amount of retainage withheld from
14 the subcontractor by the prime contractor or by another
15 subcontractor, as applicable.

16 SECTION 5. The changes in law made by this Act apply only to
17 a contract to which Subchapter B, Chapter 2252, Government Code,
18 applies that is entered into on or after the effective date of this
19 Act. A contract to which Subchapter B, Chapter 2252, Government
20 Code, applies that is entered into before the effective date of this
21 Act is governed by the law in effect when the contract was entered
22 into, and the former law is continued in effect for that purpose.

23 SECTION 6. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2017.