

By: Shine

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 to read as follows:

Sec. 2252.031. DEFINITIONS. In this subchapter:

(1) "Beneficial use" means, following completion of all or a portion of work under a public works contract:

(A) for a public works project, the ability of a governmental entity to place the project into operation for the project's intended purpose; or

(B) for a public building, the ability of a governmental entity to be issued a certificate of occupancy or temporary certificate of occupancy for the building.

(2) "Governmental entity" means:

(A) the state, a county, or a municipality;

(B) a department, board, or agency of the state, a county, or a municipality;

(C) a school district or a subdivision of a school district; or

1 (D) any other governmental or quasi-governmental
2 authority authorized by statute to make a public works contract.

3 (3) [~~(2)~~] "Prime contractor" means a person or
4 persons, firm, or corporation contracting with a governmental
5 entity for a public work.

6 (4) [~~(3)~~] "Public works" includes the construction,
7 alteration, or repair of a public building or the construction or
8 completion of a public work.

9 (5) [~~(4)~~] "Public works contract payment" means a
10 payment by a governmental entity for the value of labor, material,
11 machinery, fixtures, tools, power, water, fuel, or lubricants used
12 or consumed, ordered and delivered for use or consumption, or
13 specially fabricated for use or consumption but not yet delivered,
14 in the direct performance of a public works contract.

15 (6) [~~(5)~~] "Retainage" means the percentage [~~part~~] of a
16 public works contract payment withheld by a governmental entity to
17 secure performance of the contract.

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

21 SECTION 3. Section [2252.032](#), Government Code, is amended to
22 read as follows:

23 Sec. 2252.032. RETAINAGE. (a) A governmental entity
24 shall:

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

1 public works contract; and

2 (2) pay the retainage remaining in the account
3 described by Subdivision (1), including any interest earned on the
4 retainage, to the prime contractor on completion of the contract.

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

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

9 (2) after the governmental entity has beneficial use
10 of the public work that is the subject of the contract, may not
11 withhold retainage in an amount that exceeds two percent of the
12 contract price, excluding interest earned on the retainage.

13 (c) If the total value of a public works contract is less
14 than \$1 million, a governmental entity, on receipt of beneficial
15 use of the public work that is the subject of the contract, may not
16 withhold more than one-half of the total retainage under the
17 contract.

18 (d) A governmental entity may not withhold retainage:

19 (1) after completion of the contract by the prime
20 contractor, including during the warranty; or

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

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

25 (B) properly installed by the contractor.

26 SECTION 4. The changes in law made by this Act apply only to
27 a contract to which Subchapter B, Chapter 2252, Government Code,

1 applies that is entered into on or after the effective date of this
2 Act. A contract to which Subchapter B, Chapter 2252, Government
3 Code, applies that is entered into before the effective date of this
4 Act is governed by the law in effect when the contract was entered
5 into, and the former law is continued in effect for that purpose.

6 SECTION 5. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2017.