

By: Shine

H.B. No. 2135

Substitute the following for H.B. No. 2135:

By: Smithee

C.S.H.B. No. 2135

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 Subdivision (6) to read as follows:

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

(6) "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. (a) A governmental entity shall:

(1) include in each public works contract a provision that establishes the circumstances under which:

(A) the public works project that is the subject of the contract is considered substantially complete; and

1 (B) the governmental entity may release all or a
2 portion of the retainage for:

3 (i) substantially completed portions of the
4 project; or

5 (ii) fully completed and accepted portions
6 of the project;

7 (2) maintain an accurate record of accounting for:

8 (A) [~~deposit in an interest-bearing account~~] the
9 retainage withheld on [~~of a public works contract that provides for~~
10 ~~retainage of more than five percent of the~~] periodic contract
11 payments; and

12 (B) the retainage released to the prime
13 contractor for a public works contract [~~payment~~]; and

14 (3) for a public works contract described by
15 Subsection (c), [~~(2)~~] pay any remaining retainage described by
16 Subdivision (2)(A) and the interest earned on the retainage to the
17 prime contractor on completion of the contract.

18 (b) If the total value of a public works contract is \$1
19 million or more, a governmental entity may not withhold retainage
20 in an amount that exceeds five percent of the contract price and the
21 rate of retainage may not exceed five percent for any item in a bid
22 schedule or schedule of values for the project, including materials
23 and equipment delivered on-site to be installed.

24 (c) For a competitively awarded contract with a value of \$10
25 million or more, and for a contract that was awarded using a method
26 other than competitive bidding, a governmental entity and prime
27 contractor may agree to deposit in an interest-bearing account the

1 retainage withheld on periodic contract payments.

2 (d) If, for the purpose of fulfilling an obligation of a
3 prime contractor under a contract described by Subsection (b), the
4 prime contractor enters into a subcontract:

5 (1) the prime contractor may not withhold from a
6 subcontractor a greater percentage of retainage than the percentage
7 that may be withheld from the prime contractor by the governmental
8 entity under Subsection (b); and

9 (2) a subcontractor who enters into a contract with
10 another subcontractor to provide labor or materials under the
11 contract may not withhold from that subcontractor a greater
12 percentage of retainage than the percentage that may be withheld
13 from the subcontractor as determined under Subdivision (1).

14 (e) A governmental entity may not withhold retainage:

15 (1) after completion of the contract by the prime
16 contractor, including during the warranty period; or

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

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

21 (B) properly installed by the contractor.

22 (f) On application to a governmental entity for final
23 payment and release of retainage, the governmental entity may
24 withhold retainage if there is a bona fide dispute between the
25 governmental entity and the prime contractor and the reason for the
26 dispute is that labor, services, or materials provided by the prime
27 contractor or the prime contractor's subcontractors were not

1 provided in compliance with the contract. The prime contractor may
2 be entitled to:

3 (1) cure the noncompliance of the labor, services, or
4 materials that are the subject of the dispute; or

5 (2) offer the governmental entity a reasonable amount
6 of money as compensation for the noncompliant labor, services, or
7 materials that cannot be promptly cured.

8 SECTION 4. The changes in law made by this Act apply only to
9 a contract to which Subchapter B, Chapter 2252, Government Code,
10 applies that is entered into on or after the effective date of this
11 Act. A contract to which Subchapter B, Chapter 2252, Government
12 Code, applies that is entered into before the effective date of this
13 Act is governed by the law in effect when the contract was entered
14 into, and the former law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2019.