

HB 1484 -- CONTRACTOR RETAINAGE

SPONSOR: Korman

This bill adds professional engineers, architects, landscape architects, and land surveyors to those persons or entities to whom prompt payment must be made under a public works project;

The bill specifies that retainage withheld on a construction contract or subcontract for a public works project cannot exceed 5% of the value of the contract or subcontract. The threshold dollar amount of a public works project that requires a contractor to purchase a security bond is increased from \$25,000 to \$50,000. If the contractor is not required to obtain a bond the public owner may withhold retainage on the project in an amount up to 10% of the value of the contract or subcontract.

The bill changes from 200% to 150% of the value of an item a public owner can withhold from a subcontractor once retainage is released for each minor item the subcontractor needs to complete. The value of each item is determined by the public owner's authorized representatives. The public owner must pay at least 98% of the retainage, less any offsets or deductions authorized by contract or by law, to the contractor, subcontractor, or supplier after substantial completion of the contract work and acceptance by the public owner. If the public owner determines the work is not substantially completed and accepted, the owner must provide a written explanation of why within 14 days. If this explanation is not given, the public body must pay at least 98% of the retainage within 30 days. If at that time there are any remaining minor items to be completed, an amount equal to 150% of the value of each item must be withheld until the item is completed.

The bill specifies that when a contractor receives any payment, he or she must pay each subcontractor and material supplier in proportion to the work each completed less any retention up to 5%. If the public owner rejects specific areas of work and does not release the full payment due, the subcontractors and suppliers involved will not be paid for the rejected work as long as the public owner gives a written explanation to the contractor, subcontractor, and supplier involved of why the work was rejected.

Public owners are required to pay any professional engineer, architect, landscape architect, or land surveyor the amount due within 30 days following receipt of an invoice prepared and submitted in accordance with the contract. The contracting public owner also is required to pay interest at the rate of one and one half percent per month calculated from the expiration of the 30 day period until fully paid.

The bill specifies that these provisions must not be construed to require direct payment by a public owner to a subcontractor or supplier, except in the case of default by the contractor on the contract with the public owner where a performance or payment bond is not required or where the surety fails to execute its duties under a bond, as determined by a court.