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HOUSE BILL NO. 755

Offered January 22, 1996

A *BILL to amend and reenact §§ 11-56 and 11-56.1 of the Code of Virginia, relating to the Public Procurement Act; interest on retainage.*

Patron—Woodrum

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 11-56 and 11-56.1 of the Code of Virginia are amended and reenacted as follows:**

§ 11-56. Retainage on construction contracts.

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment. *Interest shall be paid on the amount retained within ninety calendar days of the final payment. The public body shall accrue such interest in six-month increments, at a rate equal to the Federal Reserve Board discount rate as of January 1 of each year, beginning January 1, 1997, on the amount retained; however, no interest shall be due and payable unless the amount retained has been held by the public body for a period exceeding thirteen months after the start date of the construction project.*

B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

§ 11-56.1. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure *and the provisions of § 11-56 shall apply.*

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The "Escrow Agreement" and all regulations promulgated by the political subdivision entering into the contract shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, ~~which includes payment of interest on retained funds~~, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

2. That the provisions of this act shall apply to contracts entered into on or after July 1, 1996.

INTRODUCED

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