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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 878

02/07/2019 Authored by Mahoney, Bahr, Rarick, Nash, Dettmer and others
The bill was read for the first time and referred to the Committee on Labor

1.1 A bill for an act
1.2 relating to contracts; modifying retainage requirements for building and construction
1.3 contracts; amending Minnesota Statutes 2018, section 337.10, subdivisions 4, 5.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2018, section 337.10, subdivision 4, is amended to read:

1.6 Subd. 4. Progress payments and retainages. (a) Unless the building and construction
1.7 contract provides otherwise, the owner or other persons making payments under the contract
1.8 must make progress payments monthly as the work progresses. Payments shall be based
1.9 upon estimates of work completed as approved by the owner or the owner's agent. A progress
1.10 payment shall not be considered acceptance or approval of any work or waiver of any defects
1.11 therein.

1.12 (b) Retainage on a building and construction contract may not exceed five percent. An
1.13 owner or owner's agent may reduce the amount of retainage and may eliminate retainage
1.14 on any monthly contract payment if, in the owner's opinion, the work is progressing
1.15 satisfactorily. Nothing in this subdivision is intended to require that retainage be withheld
1.16 in any building or construction contract.

1.17 (c) The maximum retainage percentage allowed for a building and construction contract
1.18 is the retainage percentage withheld by the public agency or owner from the prime contractor.

1.19 (d) Withholding retainage for warranties or warranty work is prohibited.

1.20 (e) Retainage must be released within 30 days of the completed improvement date. For
1.21 purposes of this paragraph, the completed improvement date is the last day of work or the
1.22 last day an item of skill, material, or machinery is provided, whichever occurs first.

2.1 (f) Retainage withheld under this subdivision must be held in an interest-bearing escrow
2.2 account or trust account at a banking institution whose principal place of business is
2.3 Minnesota. The reserved retainage and interest must be released and paid only to the person
2.4 for whom the retainage was reserved.

2.5 (g) A prime contractor must include the name, address, and telephone number of the
2.6 responsible agent in any construction contract with a subcontractor. Upon written request
2.7 of a subcontractor who has not been paid for work as required under this section, the
2.8 responsible agent must notify the requesting subcontractor when a progress payment,
2.9 retainage payment, or final payment has been made to the prime contractor.

2.10 (h) Any dispute regarding retainage payment, incomplete work, or defective work must
2.11 be documented. Documentation created under this paragraph must be provided to all parties
2.12 to the dispute.

2.13 (e) (i) Paragraphs (c) to (h) apply to all contracts governed by sections 15.71 to 15.74.
2.14 This subdivision does not apply to contracts for professional services as defined in sections
2.15 326.02 to 326.15.

2.16 Sec. 2. Minnesota Statutes 2018, section 337.10, subdivision 5, is amended to read:

2.17 Subd. 5. **Definition.** (a) For the purpose purposes of this section, the terms in this
2.18 subdivision have the meanings given them.

2.19 (b) "Building and construction contract" has the meaning given the term in section
2.20 337.01.

2.21 (c) "Responsible agent" means the public contracting agency's representative, the owner's
2.22 authorized agent, or the person who entered into a contract with the prime contractor.