

**JBC STAFF FISCAL ANALYSIS
SENATE APPROPRIATIONS COMMITTEE**

CONCERNING THE PAYMENT OF RETAINAGE IN CONSTRUCTION CONTRACTS INVOLVING PUBLIC ENTITIES.

Prime Sponsors: Reps. Priola and Soper
Senator Tochtrop

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Summary of Amendments Made to the Bill After the 01/28/11 Legislative Council Staff Fiscal Note Was Prepared (Amended by the House Economic and Business Development Committee 02/04/11, amended on the House Floor 02/09/11, amended by the Senate Business, Labor, and Technology Committee 02/23/11, and amended by the Senate Finance Committee 03/24/11)

The House Economic and Business Development Committee Report: (1) exempts the opening of a portion of a highway or bridge improvement project to traffic prior to completion of the final configuration from the requirement that a public entity release the withheld (or discrete portion of the) percentage of the payment for the work if it occupies or begins to use the work, improvement, or construction; (2) allows a public entity to retain the withheld (or discrete portion of the) percentage of the payment for the work until a comprehensive list of items to be completed or corrected is approved by the public entity rather than only until the contractor has submitted a comprehensive list of items to be completed or corrected; and (3) allows a public entity to withhold twice the amount of the value of the work to be completed or corrected until 30 days or the next scheduled monthly payment after the work is completed or corrected rather than only 30 days after.

The House floor amendments: (1) allow a public entity to make final settlement within 60 days after the contract is completed satisfactorily and finally accepted by the public entity rather than only 45 days after; (2) define the term "discrete portion" within the bill; and (3) clarify that the requirement that a public entity release the withheld (or discrete portion of the) percentage of the payment for the work if it occupies or begins to use the work, improvement, or construction does not apply to water storage projects.

The Senate Business, Labor, and Technology Committee Report: (1) strikes the definition of "discrete portion"; (2) clarifies when a public entity must release the withheld percentage of the payment for the work if it occupies or begins to use the work, improvement, or construction; and (3) allows rather than requires a public entity to authorize final payment from the withheld percentage if it finds that satisfactory progress is being made in any phase of the contract.

The Senate Finance Committee Report: (1) strikes the Senate Business, Labor, and Technology Committee Report dated February 23, 2011; (2) strikes the definition of "discrete portion"; (3) clarifies when a public entity shall make a final settlement on a contract; (4) removes the requirement that a public entity release the withheld percentage of the payment for the work if it occupies or begins

to use the work, improvement, or construction; and (5) allows rather than requires a public entity to authorize final payment from the withheld percentage if it finds that satisfactory progress is being made in any phase of the contract.

These amendments do not alter the fiscal impact of the bill.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

Concurs **Does Not Concur** **Updated Analysis**

Amendments/Appropriation Status

The bill neither requires nor contains an appropriation clause for FY 2011-12.

Bill Sponsor Amendments

Staff is not aware of any sponsor amendments to be offered.

Points to Consider

The Joint Budget Committee has introduced a balanced budget package for FY 2011-12 based on the March 2011 Office of State Planning and Budgeting forecast. The budget package appropriates all General Fund revenues projected to be available, less a statutorily required four percent General Fund reserve. This bill reduces General Fund revenues by up to \$1,151,026 for FY 2011-12. If this bill is enacted, other General Fund appropriations for existing programs will need to be reduced by up to \$1,151,026 in order to maintain the statutorily required General Fund reserve.