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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2451

01/29/2016 Authored by Rarick, Hertaus, Sundin and Albright  
The bill was referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act  
1.2 relating to contracts; regulating building and construction contracts; providing  
1.3 for certain progress payments and retainages; amending Minnesota Statutes  
1.4 2014, section 337.10, subdivisions 4, 5.

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

1.6 Section 1. Minnesota Statutes 2014, section 337.10, subdivision 4, is amended to read:

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

1.14 (b) ~~Unless the building and construction contract provides otherwise, an~~ The owner  
1.15 or owner's agent, prime contractor, or other persons making payments under a building  
1.16 and construction contract or a subcontract of any tier may reserve as retainage from any  
1.17 progress payment on a building and construction contract an amount not to exceed five  
1.18 percent of the payment. An owner or owner's agent may reduce the amount of retainage  
1.19 and may eliminate retainage on any monthly contract payment if, in the owner's opinion,  
1.20 the work is progressing satisfactorily.

1.21 (c) The owner or owner's agent shall release and pay retainage to the prime contractor  
1.22 for work completed on any construction contract no later than 60 days after substantial  
1.23 completion of the project. The prime contractor and all subcontractors shall release and

2.1 pay retainage to their subcontractors within ten days of receipt by the party responsible for  
2.2 payment of the payment for services provided by the party requesting payment.

2.3 (d) Nothing in this subdivision limits or alters the paying party's right to withhold or  
2.4 not approve payment for work not properly performed or payment not earned.

2.5 (e) The contract shall be deemed to require the party responsible for payment of  
2.6 retainage to pay interest of 1-1/2 percent per month to the party requesting payment on  
2.7 any undisputed amount not paid as required in this subdivision. The minimum monthly  
2.8 interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid  
2.9 balance of less than \$100, the party responsible for payment shall pay the actual penalty  
2.10 due to the party requesting payment. A party requesting payment who prevails in a civil  
2.11 action to collect interest penalties from a party responsible for payment must be awarded  
2.12 its costs and disbursements, including attorney fees incurred in bringing the action.

2.13 (f) This subdivision does not apply to contracts for professional services as defined  
2.14 in sections 326.02 to 326.15.

2.15 Sec. 2. Minnesota Statutes 2014, section 337.10, subdivision 5, is amended to read:

2.16 Subd. 5. **Definition Definitions.** (a) For the purpose of this section, "building and  
2.17 construction contract" has the meaning given the term in section 337.01.

2.18 (b) For the purposes of this section, "retainage" means money or other security as  
2.19 agreed to by the parties to a construction contract, which is withheld and conditioned  
2.20 on completion and acceptance of work in connection with a project by the contractor,  
2.21 subcontractor or lower tier sub-subcontractor, or supplier, and which is earned by the  
2.22 contractor, subcontractor or lower tier sub-subcontractor, or supplier for:

2.23 (1) work performed; or

2.24 (2) materials stored, if payment for stored materials is provided for in the contract.

2.25 (c) For the purposes of this section, "substantial completion" means the date when  
2.26 construction is sufficiently completed so that the owner or the owner's representative can  
2.27 occupy or use the improvement for the intended purpose.