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SENATE BILL NO. 165

SENATE BILL NO. 103
Offered January 14, 2026

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A BILL to amend the Code of Virginia by adding a section numbered 11-4.7, relating to contracts; retainage bonds permitted in construction contracts.

Patron—McPike

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 11-4.7 as follows:

§ 11-4.7. Retainage bonds permitted in construction contracts.

A. As used in this section:

"Construction contract," "contractor," "general contractor," "owner," and "subcontractor" mean the same as those terms are defined in § 11-4.6.

"Retainage bond" means a bond that names an owner as obligee issued by any surety company authorized to issue surety bonds in the Commonwealth in the amount of the retainage released pursuant to a construction contract.

B. In any construction contract between an owner and a general contractor, a contractor may tender to an owner a retainage bond with a written request for release of retainage in the amount of the retainage bond. The contractor shall either be entitled to receive cash payment of retainage or not be subject to the withholding of retainage to the extent of the security tendered, provided that the contractor is not in default of its agreement with the owner.

If the tender described in this subsection is made after retainage has been withheld, the owner shall, within five business days after receipt of the tender, pay to the contractor the withheld retainage to the extent of the retainage bond obtained. If the tender is made before retainage has been withheld, the owner shall, to the extent of the retainage bond obtained, refrain from withholding any retainage from the future payments.

C. In any construction contract between a general contractor and a subcontractor, a subcontractor may tender to the contractor a retainage bond with a written request for release of retainage in the amount of the retainage bond. The contractor shall tender the subcontractor's retainage bond to the owner with a written request as described in subsection B. Provided that the subcontractor is not in default of its agreement with the contractor, the contractor shall pay the subcontractor, except that the contractor shall not be required to pay retainage in excess of the amount properly attributable to work completed by the subcontractor at the time of payment. Provided that the subcontractor is not in default of its agreement with the contractor, the contractor shall refrain from withholding retainage from payments to the subcontractor to the extent the owner has refrained from withholding retainage from payments to the contractor on account of the subcontractor's retainage bond.

D. A contractor or subcontractor that has tendered a retainage bond pursuant to this section shall be entitled to receive all interest and income earned on account of such retainage bond.