

IN THE SENATE

SENATE BILL NO. 1006

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO CONSTRUCTION CONTRACTS; AMENDING SECTION 29-115, IDAHO CODE, TO  
2 PROVIDE FOR CERTAIN CONSTRUCTION CONTRACTS TO BE SUBJECT TO IDAHO LAW  
3 AND TO PROVIDE THAT SUCH CONTRACTS SHALL NOT REQUIRE DISPUTE RESOLUTION  
4 IN ANOTHER JURISDICTION; AND DECLARING AN EMERGENCY AND PROVIDING AN  
5 EFFECTIVE DATE.  
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 29-115, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 29-115. CONSTRUCTION CONTRACTS. (1) This section is applicable with  
11 respect to all contracts entered into on or after July 1, 1990, between own-  
12 ers and original contractors relating to the construction of any private  
13 work of improvement.

14 (2) In any contract relating to the construction of any private work  
15 of improvement, the retention proceeds withheld by the owner from the orig-  
16 inal contractor or by the original contractor from any subcontractor from  
17 any payment shall not exceed five percent (5%) of the payment and in no event  
18 shall the total retention withheld exceed five percent (5%) of the contract  
19 price. However, the five percent (5%) maximum that may be withheld does not  
20 apply if the original contractor or the subcontractor fails to provide a per-  
21 formance bond issued by a surety acceptable to the owner or original contrac-  
22 tor if requested to do so by the owner or original contractor respectively.  
23 The five percent (5%) maximum shall not apply to any contract for the perfor-  
24 mance of a private work of improvement to residential real property consist-  
25 ing of one (1) to four (4) units occupied or to be occupied by the owner.

26 (3) Within thirty-five (35) days from the date on which the work of im-  
27 provement is substantially complete, as mutually agreed to by the parties  
28 to the contract, the retention withheld by the owner shall be reduced to the  
29 lesser of one hundred fifty percent (150%) of the estimated value of work yet  
30 to be completed in accordance with the contract or the retention then with-  
31 held by the owner, not to exceed five percent (5%) of the contract price.  
32 Within thirty-five (35) days from the date of final completion of the work  
33 of improvement, the retention withheld by the owner shall be released, ex-  
34 cept in the event of a dispute between the owner and the original contractor,  
35 the owner may withhold from the final retention payment an amount not to ex-  
36 ceed one hundred fifty percent (150%) of the estimated value of the issue in  
37 dispute. The owner may condition the final release of the retention upon re-  
38 ceipt of satisfactory lien waivers from all persons with actual or potential  
39 lien claims on the work of improvement.

40 (4) Subject to subsection (5) of this section, within ten (10) days from  
41 the time that all or any portion of the retention proceeds are received by the  
42 original contractor, the original contractor shall pay each of its subcon-

1 tractors from whom retention has been withheld, each subcontractor's share  
2 of the retention received. However, if a retention payment received by the  
3 original contractor is specifically designated for a particular subcontractor,  
4 payment of the retention shall be made to the designated subcontractor.

5 (5) The original contractor shall not be required to pay the retention  
6 to a subcontractor if a bona fide dispute exists between the subcontractor  
7 and the original contractor. The amount withheld from the retention payment  
8 shall not exceed one hundred fifty percent (150%) of the estimated value of  
9 the work yet to be completed or issue in dispute.

10 (6) Any contract relating to the construction of any private work of  
11 improvement in Idaho, including contracts entered into by the original con-  
12 tractor, any subcontractor, and anyone furnishing materials, equipment, or  
13 services in construction of such improvement, shall be subject to the laws of  
14 Idaho. Such contract shall not require litigation, arbitration, or another  
15 dispute resolution process to occur in another state or country.

16 ~~(6)~~ (7) It shall be against public policy for any party to require any  
17 other party to waive any provision of this statute.

18 SECTION 2. An emergency existing therefor, which emergency is hereby  
19 declared to exist, this act shall be in full force and effect on and after  
20 July 1, 2025.