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SB-61 Private works of improvement: retention payments. (2025-2026)

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Senate Bill No. 61

CHAPTER 49

An act to add Section 8811 to the Civil Code, relating to works of improvement.

[Approved by Governor July 14, 2025. Filed with Secretary of State July 14, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

SB 61, Cortese. Private works of improvement: retention payments.

Existing law generally governs retention payments withheld with respect to a contract for a private work of improvement, including by requiring an owner that withholds a retention from a direct contractor to, within 45 days after completion of the work of improvement, pay the retention to the contractor.

With respect to a contract for a private work of improvement, this bill would limit the amount of a retention payment by, among other things, prohibiting a retention payment withheld from a payment by an owner from the direct contractor, by the direct contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, from exceeding 5% of the payment, subject to certain exceptions. The bill would require a court to award reasonable attorney's fees to the prevailing party in any action to enforce these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8811 is added to the Civil Code, to read:

8811. (a) This section is applicable to a contract relating to a private work of improvement entered into on or after January 1, 2026.

(b) (1) (A) A retention payment withheld from a payment by an owner from the direct contractor, by the direct contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, for a private work of improvement, shall not exceed 5 percent of the payment.

(B) In no event shall the total retention proceeds withheld exceed 5 percent of the contract price.

(C) In a contract between the direct contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention payment withheld shall not exceed the percentage specified in the contract between the owner and the direct contractor.

(2) Paragraph (1) does not apply to a direct contractor or subcontractor if the direct contractor or subcontractor provides written notice to a subcontractor before, or at, the time that the bid is requested that a faithful performance and payment bond shall be

required, and a subcontractor subsequently fails to furnish to the direct contractor or subcontractor a performance and payment bond issued by an admitted surety insurer.

(3) Paragraph (1) does not apply to an owner, direct contractor, or subcontractor on a residential project if the project is not mixed-use and does not exceed four stories.

(c) In any action to enforce the provisions of this section, a court shall award reasonable attorney's fees to the prevailing party.