

HOUSE BILL NO. 319
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONTRACT INDEMNIFICATION PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS AND HIGHWAY CONSTRUCTION CONTRACTS; REVISING RETAINAGE REQUIREMENTS ON CERTAIN CONSTRUCTION CONTRACTS; PROVIDING FOR THE PAYMENT OF CONTRACTORS AND SUBCONTRACTORS ON HIGHWAY CONSTRUCTION CONTRACTS; AND AMENDING SECTION 28-2-2110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Construction contract indemnification provisions.** (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials,

or equipment for an improvement to real property.

Section 2. Section 28-2-2110, MCA, is amended to read:

"28-2-2110. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5%.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

~~(3) Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the construction contract.~~

(3) If a general contractor or subcontractor completes the general contractor or subcontractor's portion of a contract or subcontract and the owner has approved all payment requests as provided in 28-2-2103, the retainage for the contractor or subcontractor must be paid within 15 days of the contractor's or subcontractor's request for payment."

NEW SECTION. **Section 3. Payment of contractors and subcontractors.** Unless prohibited by federal law, payment under this part of a contractor or subcontractor for services performed by the contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

NEW SECTION. **Section 4. Contract indemnification provisions.** (1) Except as provided in subsections (2) and (3), a contract subject to the provisions of this part with a provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A contract subject to the provisions of this part may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not

limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "contract" means, with respect to highway construction, an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 3 and 4].

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