
SENATE BILL 5657

State of Washington 53rd Legislature 1993 Regular Session

By Senators Vognild, Amondson, Sutherland, Pelz, Erwin and Winsley

Read first time 02/08/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to prompt pay for works of improvement; adding a
2 new chapter to Title 60 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly
5 requires otherwise, the definitions in this section apply throughout
6 sections 1 through 6 of this act.

7 (1) "Retainage" means a portion of any payment which is due a
8 retainee but is being withheld or retained by an owner, contractor, or
9 subcontractor as security for, until, or conditioned upon completion
10 of the work of improvement and to serve as a source of funds to meet
11 lien claims under chapter 60.04 RCW which may arise. The retainage is
12 considered conditionally earned by and owed to the retainee.

13 (2) "Retainee" means a contractor, subcontractor, material
14 supplier, equipment, or professional services provider who has
15 performed all or part of a work of improvement and who has had some
16 portion of sums due under a contract withheld.

17 (3) "Prime retainor" means any person or entity, excluding those
18 persons loaning or advancing funds pursuant to interim or construction
19 financing, that withholds retainage from the prime contractor.

1 (4) "Completion" means the date upon which the work of improvement
2 has been completed in accordance with the terms and conditions of a
3 contract.

4 (5) "Work of improvement" means work performed or provided,
5 including labor, materials, equipment, and professional services, which
6 has led to the improvement of real property for a private owner. Work
7 of improvement includes incremental improvements which are in
8 themselves complete in accordance with the terms and conditions of the
9 contract but do not necessarily bring a property improvement to a state
10 of completion. "Work of improvement" does not include single family
11 residential construction, or multifamily residential construction
12 consisting of common wall residential buildings of four or fewer units
13 that do not exceed two stories in height.

14 NEW SECTION. **Sec. 2.** PROMPT PAY. (1) Except under subsection (2)
15 of this section, the owner shall pay amounts due the prime contractor
16 for a private work of improvement in accordance with the terms and
17 conditions of the contract but shall pay amounts due to the prime
18 contractor no later than ten days after receipt of draws or loan
19 disbursements. The prime contractor shall pay amounts due
20 subcontractors and suppliers for a work of improvement, and the
21 subcontractor shall pay amounts due their suppliers and lower tier
22 subcontractors for a work of improvement, no later than ten days after
23 receipt of draws, progress payments, final payment, or retainage for
24 that work of improvement.

25 (2) In the event there is a good faith dispute over all or any
26 portion of the amount due from the owner to the prime contractor, prime
27 contractor to a subcontractor, subcontractor to a subcontractor, or
28 contractor to a supplier, then the owner, prime contractor, or
29 subcontractor may withhold no more than one hundred fifty percent of
30 the disputed amount. Those not party to the dispute and who are
31 otherwise due payment are entitled to full and prompt payment of their
32 portion of a draw, progress payment, final payment, or released
33 retainage including interest.

34 NEW SECTION. **Sec. 3.** PORTION OF CONTRACT PRICE RETAINED. (1)
35 Except for improvements made on an existing owner-occupied single
36 family residential property, retainage for private works of improvement
37 shall be regarded and treated as the property of the retainee.

1 Retainage shall accrue interest for the benefit of the prime retainee
2 and subsequent retainees at the lower of either the rate given for
3 certificates of deposit at the bank or lending institution of the prime
4 retainor or at the rate established in RCW 19.52.025. Interest shall
5 accrue from the date retainage is withheld until the date the retainage
6 is released to the prime retainee.

7 (2) Except as permitted in subsections (3) and (4) of this section,
8 retainage and interest earned on the retainage shall be released no
9 later than ninety days from the date of completion of the work of
10 improvement and the prime contractor and each contractor or
11 subcontractor shall pay each of its contractors, subcontractors, or
12 suppliers their proportionate share of the retention and interest
13 within ten days from the time that all or any portion of the retainage
14 and interest is received. If retainage is not disbursed within ten
15 days, then interest under subsection (1) of this section will resume
16 until retainage is paid to the retainee.

17 (3) In the event there is a good faith dispute over the release of
18 all or any portion of the retainage, the prime retainor may not
19 withhold an amount in excess of one hundred fifty percent of the
20 estimated value of the issue in dispute. Those not party to a dispute,
21 and who are otherwise due payment are entitled to full and prompt
22 payment of their portion of the retained amount.

23 (4) In addition to amounts withheld as permitted under section 2 of
24 this act, the prime retainor may withhold from the retained percentage
25 amounts required to meet the claims of those who have given notice
26 under chapter 60.04 RCW, together with sums sufficient to defray the
27 cost of foreclosing the liens of such claims, and to pay attorneys'
28 fees. The retainor may retain an amount equal to such unpaid claims
29 together with a sum sufficient to defray the costs and attorneys' fees
30 incurred in foreclosing the lien of such claims, and shall pay the
31 remainder to the retainee.

32 NEW SECTION. **Sec. 4.** REMEDIES. In addition to all other remedies
33 either civil, administrative, or criminal, any person from whom funds
34 have been withheld in violation of this chapter is entitled to receive
35 from the person wrongfully withholding the funds, for every month and
36 portion thereof that payment including retainage is not made, interest
37 as established under RCW 19.52.025, plus an additional charge of one
38 and one-half percent per month. In any action for the collection of

1 funds withheld, the prevailing party is entitled to costs of suit and
2 his or her reasonable attorneys' fees.

3 NEW SECTION. **Sec. 5.** APPLICATION--CONSTRUCTION. (1) It is
4 against public policy for any party to require any other party to waive
5 any provision of this chapter.

6 (2) It is against public policy to enforce a contract provision
7 which requires the receipt of construction funds by the owner, prime
8 contractor, or subcontractor, as a condition that must be fulfilled
9 before the owner, prime contractor, or subcontractor has any financial
10 obligation to those who provided labor and/or material for the
11 improvement of real property.

12 (3) This chapter is to be liberally construed to provide security
13 for all parties intended to be protected by its provisions.

14 NEW SECTION. **Sec. 6.** APPLICATION--DATES. (1) Sections 1 through
15 4 of this act are applicable to all contracts entered into on or after
16 September 1, 1993, relating to the construction of any work of
17 improvement.

18 (2) RCW 39.76.010, 60.28.010, 60.28.020, and 60.28.050 are
19 applicable to all public works contracts entered into prior to
20 September 1, 1993, relating to the construction of any work of
21 improvement.

22 NEW SECTION. **Sec. 7.** CAPTIONS. Captions used in this chapter do
23 not constitute any part of the law.

24 NEW SECTION. **Sec. 8.** This act shall take effect September 1,
25 1993.

26 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act shall
27 constitute a new chapter in Title 60 RCW.

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