

ESSB 5528 - H COMM AMD

By Committee on Labor & Workplace Standards

ADOPTED 04/07/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) An owner, contractor, or
4 subcontractor may withhold as retainage an amount equal to not more
5 than five percent of the contract price of the work completed for
6 private construction projects. Partial payment allowed under this
7 subsection is not acceptance or approval of some of the work or a
8 waiver of defects in the work.

9 (2) The owner, contractor, or subcontractor shall pay interest at
10 the rate of one percent per month on the final payment due the
11 contractor or subcontractor. The interest shall commence 30 days
12 after the contractor or subcontractor has completed and the owner has
13 accepted the work under the contract for construction for which the
14 final payment is due. The interest shall run until the date when
15 final payment is tendered to the contractor or subcontractor.

16 (3) When the contractor or subcontractor considers the work that
17 the contractor or subcontractor is contracted to perform to be
18 complete, the contractor or subcontractor shall notify the party to
19 whom the contractor or subcontractor is responsible for performing
20 the construction work under the contract.

21 (4) The party shall, within 15 days after receiving the notice,
22 either accept the work or notify the contractor or subcontractor of
23 work yet to be performed under the contract or subcontract. If the
24 party does not accept the work or does not notify the contractor or
25 subcontractor of work yet to be performed within the time allowed,
26 the interest required under this subsection shall commence 30 days
27 after the end of the 15-day period. A contractor may provide notice
28 under this subsection to an owner or upper-tier contractor for
29 release of retainage due to a subcontractor whose work is complete.
30 If an owner or upper-tier contractor does not accept the
31 subcontractor's work or does not notify the contractor of work yet to
32 be performed by the subcontractor within 15 days after receiving the

1 notice, the interest required under this section shall commence 30
2 days after the end of the 15-day period. A contractor's obligation to
3 pay interest to a subcontractor under this section does not begin
4 until the contractor has received payment for the subcontractor's
5 retainage provided that the contractor has submitted the
6 subcontractor's retainage request to the owner or upper-tier
7 contractor within 30 days after receipt from the subcontractor.

8 (5) This section does not apply to single-family residential
9 construction less than 12 units.

10 NEW SECTION. **Sec. 2.** (1) In lieu of retainage, a subcontractor
11 or contractor may tender, and a contractor or owner must accept, a
12 retainage bond in an amount not to exceed five percent of the moneys
13 earned by the subcontractor or contractor.

14 (2) A subcontractor or contractor must provide a good and
15 sufficient bond from an authorized surety company, conditioned that
16 such person or persons must:

17 (a) Faithfully perform all the provisions of such contract;

18 (b) Pay all laborers, mechanics, and subcontractors and material
19 suppliers, and all persons who supply such person or persons, or
20 subcontractors, with provisions and supplies for the carrying on of
21 such work; and

22 (c) Pay the taxes, increases, and penalties incurred on the
23 project.

24 (3) The contractor or owner may require that the authorized
25 surety have a minimum A.M. Best financial strength rating so long as
26 that minimum rating does not exceed A-. The contractor may withhold
27 the subcontractor's portion of the bond premium, to the extent the
28 contractor provides a retainage bond to obtain a release of the
29 subcontractor's retainage.

30 (4) The contractor or owner must accept a bond meeting the
31 requirements of this section. The subcontractor or contractor's bond
32 and any proceeds therefrom are subject to all claims and liens and in
33 the same manner and priority as set forth for retained percentages in
34 the contract and other applicable provisions.

35 (5) Whenever an owner accepts a bond in lieu of retained funds
36 from a contractor, the contractor must accept like bonds from any
37 subcontractors or suppliers from which the contractor has retained
38 funds. The contractor must then release the funds retained from the

1 subcontractor or supplier to the subcontractor or supplier within 30
2 days of accepting the bond from the subcontractor or supplier.

3 (6) This section does not apply to single-family residential
4 construction less than 12 units.

5 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act only apply to
6 private construction projects and do not apply to public improvement
7 contracts, as defined in RCW 60.28.011.

8 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act
9 constitute a new chapter in Title 60 RCW."

10 Correct the title.

EFFECT: Allows general contractors, in addition to subcontractors as provided in the underlying bill, to submit retainage bonds in lieu of retainage. Aligns references to owners, contractors, and subcontractors in provisions pertaining to retainage bonds. Provides that the contractor may withhold the subcontractor's portion of the bond premium to the extent the contractor provides a retainage bond to obtain a release of the subcontractor's retainage. Specifies that a bond is subject to the claims and liens in a manner set forth in the applicable contract (rather than the new chapter created in the bill). Adds subsection numbering and removes superfluous language.

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