

SENATE BILL REPORT

ESSB 5528

As Amended by House, April 7, 2023

Title: An act relating to retainage requirements for private construction projects.

Brief Description: Concerning retainage requirements for private construction projects.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senator Stanford).

Brief History:

Committee Activity: Labor & Commerce: 2/09/23, 2/14/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 3/8/23, 49-0.

Passed House: 4/7/23, 96-0.

Brief Summary of Engrossed First Substitute Bill

- Establishes retainage requirements for contractors and subcontractors in private construction projects.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5528 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; MacEwen, Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Jarrett Sacks (786-7448)

Background: For public improvement projects, public entities are required to withhold up to 5 percent of the value of the contract, called retainage, for any payment required and not

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made or for penalties. The retainage is withheld over the course of payments made during the contract period. The contractor or subcontractor may withhold 5 percent of payments owed to subcontractors or material suppliers.

A contractor may submit a bond for all or a portion of the contract retainage. A subcontractor may also request the contractor to submit a retainage bond for the portion of the subcontractor's retainage. Individuals performing labor or furnishing supplies under the public improvement contract have a lien on the retainage or the retainage bond.

There is currently no state law regarding retainage for private construction projects.

Summary of Engrossed First Substitute Bill: An owner, contractor, or subcontractor may withhold as retainage an amount up to 5 percent of the contract price of the work completed for private construction projects, excluding single-family residential construction less than 12 units.

The owner, contractor, or subcontractor must pay interest at the rate of 1 percent per month on the final payment due to the contractor or subcontractor. The interest commences 30 days after the contractor or subcontractor has completed, and the owner has accepted, the work under the contract. The interest runs until final payment is tendered to the contractor or subcontractor.

A contractor or subcontractor must provide notification upon completing their contracted work to the party for whom they are performing work. The party must, within 15 days after receiving the notice, either accept the work or notify the contractor or subcontractor of work yet to be performed under the contract. If the party does not accept the work or does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required commences 30 days after the end of the 15-day period.

A contractor may provide notice to an owner or upper-tier contractor for release of retainage due to a subcontractor whose work is complete. If an owner or upper-tier contractor does not accept the subcontractor's work or does not notify the contractor of work yet to be performed by the subcontractor within 15 days after receiving the notice, interest commences 30 days after the end of the 15-day period. A contractor's obligation to pay interest to a subcontractor does not begin until the contractor has received payment for the subcontractor's retainage, so long as the contractor has submitted the subcontractor's retainage request to the owner or upper-tier contractor within 30 days after receipt from the subcontractor.

In lieu of retainage, a subcontractor may tender a retainage bond not to exceed 5 percent of the moneys earned by the contractor, which must meet certain specified requirements. Whenever a contractor accepts a bond in lieu of retained funds from a subcontractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the

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

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill is applying same retainage percentage to nonpublic projects as there is for public improvement projects. Retainage has a 5 percent cap on public project, but 10 percent is typically withheld on private projects. Small businesses need to grow and invest and the bill will allow them to have working capital. Retainage limits the ability to take on new projects. Bonding will improve subcontractors' cash flow. Retention accounts for a large amount of accounts receivable and affects the credit lines and working capital for these contractors.

Persons Testifying: PRO: Senator Curtis King; Bill Stauffacher, Northwest Wall and Ceiling Contractors Association; Jimmy Matta, Ahora Construction, LLC; Doug Bagnell, Olympic Interiors, Inc.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- 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.