

# SENATE BILL REPORT

## SSB 6108

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As Passed Senate, February 8, 2024

**Title:** An act relating to retainage on private construction projects.

**Brief Description:** Addressing retainage on private construction projects.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators King, Stanford and Mullet).

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/23/24, 1/29/24 [DPS].

**Floor Activity:** Passed Senate: 2/8/24, 49-0.

**Brief Summary of First Substitute Bill**

- Adds suppliers to the statutes pertaining to retainage on private construction projects.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 6108 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Jarrett Sacks (786-7448)

**Background:** Last year, the Legislature established retainage requirements for contractors and subcontractors in private construction projects. 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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.

**Summary of First Substitute Bill:** Suppliers are added to the laws related to retainage for private construction projects, which includes provisions related to:

- a 5 percent cap on retainage;
- the interest due on completed work and when that interest begins to accrue; and
- notification to relevant parties upon completion of contracted work, the release of retainage, and notifications of any non-acceptance of work.

**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 First Substitute:** PRO: This bill just adds suppliers to the bill that passed last year. Retainage is tough for subcontractors and providing guidelines has helped a lot. Suppliers are not currently included, so none of the guidelines apply, making it difficult to get retainage back.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; John Gehlsen; Jerry VanderWood, AGC of Washington.

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