
ENGROSSED SUBSTITUTE SENATE BILL 5528

State of Washington 68th Legislature 2023 Regular Session

By Senate Labor & Commerce (originally sponsored by Senator Stanford)

READ FIRST TIME 02/15/23.

1 AN ACT Relating to retainage requirements for private
2 construction projects; and adding a new chapter to Title 60 RCW.

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

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

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

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

1 (4) The party shall, within 15 days after receiving the notice,
2 either accept the work or notify the contractor or subcontractor of
3 work yet to be performed under the contract or subcontract. If the
4 party does not accept the work or does not notify the contractor or
5 subcontractor of work yet to be performed within the time allowed,
6 the interest required under this subsection shall commence 30 days
7 after the end of the 15-day period. A contractor may provide notice
8 under this subsection to an owner or upper-tier contractor for
9 release of retainage due to a subcontractor whose work is complete.
10 If an owner or upper-tier contractor does not accept the
11 subcontractor's work or does not notify the contractor of work yet to
12 be performed by the subcontractor within 15 days after receiving the
13 notice, the interest required under this section shall commence 30
14 days after the end of the 15-day period. A contractor's obligation to
15 pay interest to a subcontractor under this section does not begin
16 until the contractor has received payment for the subcontractor's
17 retainage provided that the contractor has submitted the
18 subcontractor's retainage request to the owner or upper-tier
19 contractor within 30 days after receipt from the subcontractor.

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

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

26 (2) A contractor must provide a good and sufficient bond from an
27 authorized surety company, conditioned that such person or persons
28 must:

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

30 (b) Pay all laborers, mechanics, and subcontractors and material
31 suppliers, and all persons who supply such person or persons, or
32 subcontractors, with provisions and supplies for the carrying on of
33 such work; and

34 (c) Pay the taxes, increases, and penalties incurred on the
35 project.

36 (3) The contractor may require that the authorized surety have a
37 minimum A.M. Best financial strength rating so long as that minimum
38 rating does not exceed A-. The contractor may withhold the
39 subcontractor's portion of the bond premium. Within 30 days of

1 receipt of the request, the contractor shall accept a bond meeting
2 these requirements. The contractor's bond and any proceeds therefrom
3 are subject to all claims and liens and in the same manner and
4 priority as set forth for retained percentages in this chapter.
5 Whenever a contractor accepts a bond in lieu of retained funds from a
6 contractor, the contractor must accept like bonds from any
7 subcontractors or suppliers from which the contractor has retained
8 funds. The contractor must then release the funds retained from the
9 subcontractor or supplier to the subcontractor or supplier within 30
10 days of accepting the bond from the subcontractor or supplier.

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

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

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

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