

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5528

Chapter 373, Laws of 2023

68th Legislature
2023 Regular Session

PRIVATE CONSTRUCTION PROJECTS—RETAINAGE

EFFECTIVE DATE: July 23, 2023

Passed by the Senate April 18, 2023
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 7, 2023
Yeas 96 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 9, 2023 11:15 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5528** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 10, 2023

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5528

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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 or contractor may tender, and a contractor or owner must accept, a
24 retainage bond in an amount not to exceed five percent of the moneys
25 earned by the subcontractor or contractor.

26 (2) A subcontractor or contractor must provide a good and
27 sufficient bond from an authorized surety company, conditioned that
28 such person or persons 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 or owner may require that the authorized
37 surety have a minimum A.M. Best financial strength rating so long as
38 that minimum rating does not exceed A-. The contractor may withhold
39 the subcontractor's portion of the bond premium, to the extent the

1 contractor provides a retainage bond to obtain a release of the
2 subcontractor's retainage.

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

8 (5) Whenever an owner accepts a bond in lieu of retained funds
9 from a contractor, the contractor must accept like bonds from any
10 subcontractors or suppliers from which the contractor has retained
11 funds. The contractor must then release the funds retained from the
12 subcontractor or supplier to the subcontractor or supplier within 30
13 days of accepting the bond from the subcontractor or supplier.

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

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

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

Passed by the Senate April 18, 2023.
Passed by the House April 7, 2023.
Approved by the Governor May 9, 2023.
Filed in Office of Secretary of State May 10, 2023.

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