
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. If the party does not
4 accept the work or does not notify the contractor or subcontractor of
5 work yet to be performed within the time allowed, the interest
6 required under this subsection shall commence 30 days after the end
7 of the 15-day period.

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

10 NEW SECTION. **Sec. 2.** (1) When a contractor pays a subcontractor
11 in full, including the amount the contractor withheld as retainage,
12 the owner with whom the contractor has the contract shall pay the
13 contractor, out of the amount that the owner withheld from the
14 contractor as retainage, a sum equal to the amount of retainage that
15 the contractor paid the subcontractor.

16 (2) The contractor shall notify the owner when the contractor
17 pays a subcontractor in full under this section and the owner shall,
18 within 15 days after receiving the notice, pay the contractor the
19 amount due the contractor under this subsection. Interest on the
20 amount due the contractor at the rate of one percent per month shall
21 commence 30 days after the owner receives notice of full payment to
22 the subcontractor.

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

25 NEW SECTION. **Sec. 3.** (1) In lieu of retainage, a subcontractor
26 may tender, and a contractor or owner must accept, a retainage bond
27 in an amount not to exceed five percent of the moneys earned by the
28 contractor.

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

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

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

37 (c) Pay the taxes, increases, and penalties incurred on the
38 project.

1 (3) The contractor may require that the authorized surety have a
2 minimum A.M. Best financial strength rating so long as that minimum
3 rating does not exceed A-. The contractor may withhold the
4 subcontractor's portion of the bond premium. Within 30 days of
5 receipt of the request, the contractor shall accept a bond meeting
6 these requirements. The contractor's bond and any proceeds therefrom
7 are subject to all claims and liens and in the same manner and
8 priority as set forth for retained percentages in this chapter.
9 Whenever a contractor accepts a bond in lieu of retained funds from a
10 contractor, the contractor must accept like bonds from any
11 subcontractors or suppliers from which the contractor has retained
12 funds. The contractor must then release the funds retained from the
13 subcontractor or supplier to the subcontractor or supplier within 30
14 days of accepting the bond from the subcontractor or supplier.

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

17 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act only
18 apply to private construction projects and do not apply to public
19 improvement contracts, as defined in RCW 60.28.011.

20 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act
21 constitute a new chapter in Title 60 RCW.

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