

HOUSE BILL 2528

By Calfee

AN ACT to amend Tennessee Code Annotated, Title 66,  
Chapter 34, relative to retainage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-34-103(b), is amended by deleting the first sentence and substituting instead the following:

The owner, whether public or private, shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within the time period required by § 66-34-204.

SECTION 2. Tennessee Code Annotated, Section 66-34-104(d), is amended by deleting the language:

(d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing, escrow account with a third party shall have the affirmative duty to provide written notice that it has complied with the requirements of this section to any prime contractor upon withholding the amount of retained funds from each and every application for payment, including:

and substituting instead:

(d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing, escrow account with a third party has the affirmative duty to provide notice that the party has complied with the requirements of this section to any prime contractor. Notice must be given upon withholding the amount of retained funds upon the initial deposit of the funds or as further agreed by the parties by contract. The notice must include the following:

SECTION 3. Tennessee Code Annotated, Section 66-34-204, is amended by deleting the section and substituting the following:

(a) An owner shall pay the contractor all retainage the owner may have withheld pursuant to the written contract between the owner and the contractor, minus any sum that the owner may reasonably withhold in accordance with the written contract, after one (1) of the following events:

(1) The owner has received a use or occupancy permit for an improvement from a governmental agency lawfully issuing the permit;

(2) The owner has received a certificate of substantial completion from an architect charged with supervision of the construction of an improvement; or

(3) The owner begins to use an improvement.

(b) The retainage, less the amount eligible to be withheld, must be paid within ninety (90) days after the date of an event described in subdivision (a)(1), (a)(2), or (a)(3).

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to contracts entered into, and retainages deposited into escrow accounts, on or after the effective date of this act.