

# FINAL BILL REPORT

## ESSB 5528

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**Brief Description:** Concerning retainage requirements for private construction projects.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senator Stanford).

**Senate Committee on Labor & Commerce**

**House Committee on Labor & Workplace Standards**

**Background:** For public improvement projects, public entities are required to withhold up to 5 percent of the value of the contract, called retainage, for any payment required and not made or for penalties. The retainage is withheld over the course of payments made during the contract period. The contractor or subcontractor may withhold 5 percent of payments owed to subcontractors or material suppliers.

A contractor may submit a bond for all or a portion of the contract retainage. A subcontractor may also request the contractor to submit a retainage bond for the portion of the subcontractor's retainage. Individuals performing labor or furnishing supplies under the public improvement contract have a lien on the retainage or the retainage bond.

There is currently no state law regarding retainage for private construction projects.

**Summary:** 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.

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

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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 contractor or 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.

**Votes on Final Passage:**

Senate	49	0	
House	96	0	(House amended)
Senate	48	0	(Senate concurred)

**Effective:** Ninety days after adjournment of session in which bill is passed.