
SENATE BILL 5528

State of Washington

68th Legislature

2023 Regular Session

By Senator Stanford

1 AN ACT Relating to the retainage percentage withheld by prime
2 contractors from subcontractors; and adding new sections to chapter
3 60.28 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 60.28
6 RCW to read as follows:

7 (1) An owner, contractor, or subcontractor may withhold as
8 retainage an amount equal to not more than five percent of the
9 contract price of the work completed for nonpublic works projects.
10 Partial payment allowed under this subsection is not acceptance or
11 approval of some of the work or a waiver of defects in the work.

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

19 (3) When the contractor or subcontractor considers the work that
20 the contractor or subcontractor is contracted to perform to be
21 complete, the contractor or subcontractor shall notify the party to

1 whom the contractor or subcontractor is responsible for performing
2 the construction work under the contract.

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

10 (5) This section does not apply to single-family residential
11 construction.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 60.28
13 RCW to read as follows:

14 (1) When a contractor pays a subcontractor in full, including the
15 amount the contractor withheld as retainage, the owner with whom the
16 contractor has the contract shall pay the contractor, out of the
17 amount that the owner withheld from the contractor as retainage, a
18 sum equal to the amount of retainage that the contractor paid the
19 subcontractor.

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

27 (3) This section does not apply to single-family residential
28 construction.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 60.28
30 RCW to read as follows:

31 (1) In lieu of retainage, a subcontractor may tender, and a
32 contractor or owner must accept, a retainage bond in an amount not to
33 exceed five percent of the moneys earned by the contractor.

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

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

1 (b) Pay all laborers, mechanics, and subcontractors and material
2 suppliers, and all persons who supply such person or persons, or
3 subcontractors, with provisions and supplies for the carrying on of
4 such work; and

5 (c) Pay the taxes, increases, and penalties incurred on the
6 project.

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

21 (4) This section does not apply to single-family residential
22 construction.

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