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**ENGROSSED SUBSTITUTE SENATE BILL 5528**

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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.

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