



# House of Representatives

General Assembly

**File No. 135**

January Session, 2005

Substitute House Bill No. 6520

*House of Representatives, April 4, 2005*

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING THE RIGHT OF PERSONS PROVIDING SERVICES ON PUBLIC WORK PROJECTS TO BE PAID ON A SURETY BOND.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-42 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person who performed work or supplied materials for  
4 which a requisition was submitted to, or for which an estimate was  
5 prepared by, the awarding authority and who does not receive full  
6 payment for such work or materials within sixty days of the applicable  
7 payment date provided for in subsection (a) of section 49-41a, or any  
8 person who supplied materials or performed subcontracting work not  
9 included on a requisition or estimate who has not received full  
10 payment for such materials or work within sixty days after the date  
11 such materials were supplied or such work was performed, may  
12 enforce such person's right to payment under the bond by serving a

13 notice of claim on the surety that issued the bond and a copy of such  
14 notice to the contractor named as principal in the bond within one  
15 hundred eighty days [of the applicable payment date provided for in  
16 subsection (a) of section 49-41a, or, in the case of a person supplying  
17 materials or performing subcontracting work not included on a  
18 requisition or estimate, within one hundred eighty days] after the date  
19 such materials were supplied or such work was performed. Any  
20 person making such claim for the payment of retainage, as defined in  
21 section 42-158i, shall serve notice of such claim on the surety that  
22 issued the bond not later than one hundred eighty days after the  
23 applicable payment date provided in subsection (a) of section 49-41a.  
24 The notice of claim shall state with substantial accuracy the amount  
25 claimed and the name of the party for whom the work was performed  
26 or to whom the materials were supplied, and shall provide a detailed  
27 description of the bonded project for which the work or materials were  
28 provided. If the content of a notice prepared in accordance with  
29 subsection (b) of section 49-41a complies with the requirements of this  
30 section, a copy of such notice, served within one hundred eighty days  
31 of the [payment] applicable date provided for in [subsection (a) of  
32 section 49-41a] this section upon the surety that issued the bond and  
33 upon the contractor named as principal in the bond, shall satisfy the  
34 notice requirements of this section. Within ninety days after service of  
35 the notice of claim, the surety shall make payment under the bond and  
36 satisfy the claim, or any portion of the claim which is not subject to a  
37 good faith dispute, and shall serve a notice on the claimant denying  
38 liability for any unpaid portion of the claim. The notices required  
39 under this section shall be served by registered or certified mail,  
40 postage prepaid in envelopes addressed to any office at which the  
41 surety, principal or claimant conducts business, or in any manner in  
42 which civil process may be served. If the surety denies liability on the  
43 claim, or any portion thereof, the claimant may bring action upon the  
44 payment bond in the Superior Court for such sums and prosecute the  
45 action to final execution and judgment. An action to recover on a  
46 payment bond under this section shall be privileged with respect to  
47 assignment for trial. The court shall not consolidate for trial any action

48 brought under this section with any other action brought on the same  
49 bond unless the court finds that a substantial portion of the evidence to  
50 be adduced, other than the fact that the claims sought to be  
51 consolidated arise under the same general contract, is common to such  
52 actions and that consolidation will not result in excessive delays to any  
53 claimant whose action was instituted at a time significantly prior to the  
54 motion to consolidate. In any such proceeding, the court judgment  
55 shall award the prevailing party the costs for bringing such proceeding  
56 and allow interest at the rate of interest specified in the labor or  
57 materials contract under which the claim arises or, if no such interest  
58 rate is specified, at the rate of interest as provided in section 37-3a  
59 upon the amount recovered, computed from the date of service of the  
60 notice of claim, provided, for any portion of the claim which the court  
61 finds was due and payable after the date of service of the notice of  
62 claim, such interest shall be computed from the date such portion  
63 became due and payable. The court judgment may award reasonable  
64 attorneys fees to either party if upon reviewing the entire record, it  
65 appears that either the original claim, the surety's denial of liability, or  
66 the defense interposed to the claim is without substantial basis in fact  
67 or law or contravenes the provisions of this section. Any person having  
68 direct contractual relationship with a subcontractor but no contractual  
69 relationship express or implied with the contractor furnishing the  
70 payment bond shall have a right of action upon the payment bond  
71 upon giving written notice of claim as provided in this section.

72 (b) Every suit instituted under this section shall be brought in the  
73 name of the person suing, in the superior court for the judicial district  
74 where the contract was to be performed, irrespective of the amount in  
75 controversy in the suit, but no such suit may be commenced after the  
76 expiration of one year after the [applicable payment date provided for  
77 in subsection (a) of section 49-41a, or, in the case of a person supplying  
78 materials or performing subcontracting work not included on a  
79 requisition or estimate, no such suit may be commenced after the  
80 expiration of one year after the] date such materials were supplied or  
81 such work was performed, except that any such suit seeking payment,  
82 in whole or in part, for retainage, as defined in section 42-158i, shall be

83 commenced not later than one year after the date payment of such  
84 retainage was due, as determined by the provisions of subsection (a) of  
85 section 49-41a.

86 (c) The word "material" as used in sections 49-33 to 49-43, inclusive,  
87 shall include construction equipment and machinery that is rented or  
88 leased for use (1) in the prosecution of work provided for in the  
89 contract within the meaning of sections 49-33 to 49-43, inclusive, or (2)  
90 in the construction, raising or removal of any building or improvement  
91 of any lot or in the site development or subdivision of any plot of land  
92 within the meaning of sections 49-33 to 49-39, inclusive.

93 Sec. 2. Section 49-41b of the general statutes is repealed and the  
94 following is substituted in lieu thereof (*Effective from passage*):

95 When any public work is awarded by a contract for which a  
96 payment bond is required by section 49-41 and such contract contains  
97 a provision requiring the general or prime contractor under such  
98 contract to furnish a performance bond in the full amount of the  
99 contract price, the following shall apply:

100 (1) In the case of a contract advertised by the state Department of  
101 Public Works or any other state agency, except as specified in  
102 subdivision (2) of this section, (A) the awarding authority shall not  
103 withhold more than [ten] five per cent from any periodic or final  
104 payment which is otherwise properly due to the general or prime  
105 contractor under the terms of such contract, and (B) any such general  
106 or prime contractor shall not withhold from any subcontractor more  
107 than (i) [ten] five per cent from any periodic or final payment which is  
108 otherwise due to the subcontractor, or (ii) the amount withheld by the  
109 awarding authority from such general or prime contractor under  
110 subparagraph (A) of this subdivision, whichever is less.  
111 Notwithstanding the provisions of this subdivision, [(1),] the awarding  
112 authority shall establish an early release program with respect to  
113 periodic payments by general or prime contractors to subcontractors.

114 (2) In the case of a contract advertised by the state Department of



The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

---

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Treasurer, Debt Serv.	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill reduces from 10% to 5% the amount retained by the Department of Public Works (DPW) to insure that the contractor will complete the punch list <sup>1</sup>. To the degree that reducing retainage removes the incentive for contractors to complete the punch list, the bill will increase the project cost because another contractor will have to be hired to finish the punch list. Since most construction projects are financed with General Obligation (GO) bonds, the fiscal impact would be to the General Fund debt service account.

The other provisions of the bill have no fiscal impact.

---

<sup>1</sup> A punch list is a record of all items within a project that the contractor must correct or complete to the satisfaction of the client before the job is considered finalized. Prior to the project closeout and final payments, the client and contractor jointly conduct a project inspection to observe all items that need correcting or completing. All parties understand that when the client agrees that the punch list details have been satisfactorily completed, the project is entirely complete and all outstanding payments will be made to the contractor.

---

**OLR Bill Analysis**

sHB 6520

**AN ACT CONCERNING THE RIGHT OF PERSONS PROVIDING SERVICES ON PUBLIC WORK PROJECTS TO BE PAID ON A SURETY BOND**

**SUMMARY:**

This bill reduces from 10% to 5% the maximum retainage on public works contracts advertised by most state agencies, including the Department of Public Works (DPW). It also changes a subcontractor's or supplier's deadline for filing payment claims against a general contractor's surety company and for suing a surety company to compel payment. Finally, it adds a ground on which a court in these cases may award reasonable attorney's fees.

EFFECTIVE DATE: Upon passage

**MAXIMUM RETAINAGE ON PUBLIC WORKS CONTRACTS**

The bill decreases the maximum retainage allowed on a public works contract advertised by DPW or any state agency other than the Department of Transportation from 10% to 5%. It makes the same reduction to the maximum retainage that a general contractor may withhold from a subcontractor under these contracts.

**DEADLINES FOR FILING CLAIMS AGAINST A SURETY COMPANY**

The law requires public works contracts valued at more than \$50,000 to require the general contractor to (1) pay the amount due subcontractors or suppliers within 30 days after being paid by the state or municipality if the work performed or material supplied was included in a requisition or estimate and (2) include in its subcontracts a requirement that a subcontractor pay its subcontractors within 30 days after being paid by the general contractor. Public works contracts valued at \$50,000 or more must require the contractor to furnish a payment bond from a surety company. A general contractor or subcontractor who has not been fully paid after 60 days has the right to file a payment claim with the surety company.

The bill gives subcontractors and suppliers a deadline for filing a claim against the general contractor's surety that, unlike current law, does not depend on whether the services or supplies were included in a requisition or on an estimate prepared by the awarding agency. Under current law, the deadline for filing these claims is 180 days after the requisition for work or materials was submitted or, if the work or materials were not included in a requisition or estimate, 180 days after the work was performed or the materials supplied. The bill instead makes the deadline for filing claims, other than retainage, 180 days after supplying work or materials. For retainage, the deadline is 180 days after the requisition was submitted. "Retainage" is the amount withheld from progress payments conditioned on substantial or final completion of all work in accordance with a construction contract, but it does not include amounts withheld for failure to comply with construction plans or specifications.

### **DEADLINE FOR FILING SUIT TO ENFORCE A CLAIM**

The bill changes the deadline for filing a suit to enforce a claim in the same way that it changes the deadline for making a claim against the surety. The law requires a suit to be filed within one year after the requisition was submitted or, if the work or materials were not included in a requisition, within one year after the work was performed or the material was supplied. The bill instead makes the deadlines one year after supplying work or materials or, if the suit is being filed for payment of retainage, one year after the requisition was submitted.

### **GROUND FOR AWARDING REASONABLE ATTORNEY'S FEES**

The law allows a court to award reasonable attorney's fees to either party if it appears that the original claim, the surety's denial of liability, or the defense against the claim is without substantial basis in fact or law. The bill also allows reasonable attorney's fees if the defense against a claim violates the law establishing the right to enforce payment on a bond.

### **BACKGROUND**

#### ***Retainage Limits***

The other maximum retainage limits are 2.5% in Department of

Transportation contracts, 5% in municipal contracts, and 7.5% in private sector contracts (CGS §§ 49-41b and 42-158k).

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute Change of Reference

Yea 12 Nay 0

Government Administration and Elections Committee

Joint Favorable Report

Yea 10 Nay 7