



General Assembly

February Session, 2016

***Raised Bill No. 5328***

LCO No. 1416



Referred to Committee on GENERAL LAW

Introduced by:  
(GL)

***AN ACT CONCERNING PUBLIC WORK CONTRACT RETAINAGE AND ENFORCEMENT OF THE RIGHT TO PAYMENT ON A BOND.***

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

1 Section 1. Section 49-41b of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2016*):

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

8 (1) In the case of a contract advertised by the Department of  
9 Administrative Services or any other state agency, except as specified  
10 in subdivision (2) of this section, (A) the awarding authority shall not  
11 withhold more than [ten] five per cent from any periodic or final  
12 payment which is otherwise properly due to the general or prime  
13 contractor under the terms of such contract, and (B) any such general  
14 or prime contractor shall not withhold from any subcontractor more

15 than (i) [ten] five per cent from any periodic or final payment which is  
16 otherwise due to the subcontractor, or (ii) the amount withheld by the  
17 awarding authority from such general or prime contractor under  
18 subparagraph (A) of this subdivision, whichever is less.  
19 Notwithstanding the provisions of this subdivision (1), the awarding  
20 authority shall establish an early release program with respect to  
21 periodic payments by general or prime contractors to subcontractors.

22 (2) In the case of a contract advertised by the state Department of  
23 Transportation, (A) the department shall not withhold more than two  
24 and one-half per cent from any periodic or final payment which is  
25 otherwise properly due to the general or prime contractor under the  
26 terms of such contract, and (B) any such general or prime contractor  
27 shall not withhold more than two and one-half per cent from any  
28 periodic or final payment which is otherwise due to any subcontractor.

29 (3) If the awarding authority is a municipality, (A) [it] the  
30 municipality shall not withhold more than five per cent from any  
31 periodic or final payment which is otherwise properly due to the  
32 general or prime contractor under the terms of such contract, and (B)  
33 any such general or prime contractor shall not withhold more than five  
34 per cent from any periodic or final payment which is otherwise due to  
35 any subcontractor.

36 Sec. 2. Subsection (a) of section 49-42 of the general statutes is  
37 repealed and the following is substituted in lieu thereof (*Effective July*  
38 *1, 2016*):

39 (a) (1) Any person who performed work or supplied materials for  
40 which a requisition was submitted to, or for which an estimate was  
41 prepared by, the awarding authority and who does not receive full  
42 payment for such work or materials within sixty days of the applicable  
43 payment date provided for in subsection (a) of section 49-41a, or any  
44 person who supplied materials or performed subcontracting work not  
45 included on a requisition or estimate who has not received full

46 payment for such materials or work within sixty days after the date  
47 such materials were supplied or such work was performed, may  
48 enforce such person's right to payment under the bond by serving a  
49 notice of claim on the surety that issued the bond and a copy of such  
50 notice to the contractor named as principal in the bond not later than  
51 one hundred eighty days after the last date any such materials were  
52 supplied or any such work was performed by the claimant. For the  
53 payment of retainage, as defined in section 42-158i, such notice shall be  
54 served not later than one hundred eighty days after the applicable  
55 payment date provided for in subsection (a) of section 49-41a. The  
56 notice of claim shall state with substantial accuracy the amount  
57 claimed and the name of the party for whom the work was performed  
58 or to whom the materials were supplied, and shall provide a detailed  
59 description of the bonded project for which the work or materials were  
60 provided. If the content of a notice prepared in accordance with  
61 subsection (c) of section 49-41a complies with the requirements of this  
62 section, a copy of such notice, served not later than one hundred eighty  
63 days after the date provided for in this section upon the surety that  
64 issued the bond and upon the contractor named as principal in the  
65 bond, shall satisfy the notice requirements of this section. Not later  
66 than ninety days after service of the notice of claim, the surety shall  
67 make payment under the bond and satisfy the claim, or any portion of  
68 the claim which is not subject to a good faith dispute, and shall serve a  
69 notice on the claimant denying liability for any unpaid portion of the  
70 claim. The surety's failure to discharge its obligations under this  
71 section shall not be deemed to constitute a waiver of defenses the  
72 surety or its principal on the bond may have or acquire as to the claim,  
73 except as to undisputed amounts for which the surety and claimant  
74 have reached agreement. If, however, the surety fails to discharge its  
75 obligations under this section, then the surety shall indemnify the  
76 claimant for the reasonable attorneys' fees and costs the claimant  
77 incurs thereafter to recover any sums found due and owing to the  
78 claimant. The notices required under this section shall be served by  
79 registered or certified mail, postage prepaid in envelopes addressed to

80 any office at which the surety, principal or claimant conducts business,  
81 or in any manner in which civil process may be served.

82 (2) If the surety denies liability on the claim, or any portion thereof,  
83 the claimant may bring an action upon the payment bond in the  
84 Superior Court for such sums and prosecute the action to final  
85 execution and judgment. An action to recover on a payment bond  
86 under this section shall be privileged with respect to assignment for  
87 trial. The court shall not consolidate for trial any action brought under  
88 this section with any other action brought on the same bond unless the  
89 court finds that a substantial portion of the evidence to be adduced,  
90 other than the fact that the claims sought to be consolidated arise  
91 under the same general contract, is common to such actions and that  
92 consolidation will not result in excessive delays to any claimant whose  
93 action was instituted at a time significantly prior to the filing of the  
94 motion to consolidate. In any such proceeding, the court judgment  
95 shall award the prevailing party the costs for bringing such proceeding  
96 and allow interest at the rate of interest specified in the labor or  
97 materials contract under which the claim arises or, if no such interest  
98 rate is specified, at the rate of interest as provided in section 37-3a  
99 upon the amount recovered, computed from the date of service of the  
100 notice of claim, provided, for any portion of the claim which the court  
101 finds was due and payable after the date of service of the notice of  
102 claim, such interest shall be computed from the date such portion  
103 became due and payable. The court judgment may award reasonable  
104 [attorneys] attorneys' fees to either party if upon reviewing the entire  
105 record, it appears that either the original claim, the surety's denial of  
106 liability, or the defense interposed to the claim is without substantial  
107 basis in fact or law. Any person having direct contractual relationship  
108 with a subcontractor but no contractual relationship express or implied  
109 with the contractor furnishing the payment bond shall have a right of  
110 action upon the payment bond upon giving written notice of claim as  
111 provided in this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	49-41b
Sec. 2	<i>July 1, 2016</i>	49-42(a)

**Statement of Purpose:**

To change the retainage amount for certain public work contracts from ten per cent to five per cent and to allow for collection of reasonable attorneys' fees and costs when a payment bond surety company does not respond in a timely fashion to a claim for payment.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*