



House of Representatives

General Assembly

File No. 180

February Session, 2016

House Bill No. 5328

House of Representatives, March 24, 2016

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

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 Section 49-41b of the general statutes is repealed and the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	July 1, 2016	49-41b
Sec. 2	July 1, 2016	49-42(a)

GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill reduces the maximum retainage for certain state and municipal public works contracts from 10% to 5%. The bill also requires public works projects exceeding \$100,000 to require the contractor to furnish a payment bond from a surety company. These provisions have no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5328*****AN ACT CONCERNING PUBLIC WORK CONTRACT RETAINAGE AND ENFORCEMENT OF THE RIGHT TO PAYMENT ON A BOND.*****SUMMARY:**

This bill generally lowers the maximum retainage allowed in state contracts from 10% to 5%. The bill prohibits state agencies, except the Department of Transportation (DOT), from withholding more than 5% from any periodic or final payment that is properly due to the general or prime contractor. It also prohibits the general or prime contractor from withholding more than 5% or the amount the state agency withheld from the subcontractor. By law, DOT may retain up to 2.5%.

The law requires public works contracts valued at more than \$100,000 to require the general contractor to, among other things, furnish a payment bond from a surety company. The bill requires the surety company, if it fails to respond to a claim, to indemnify the claimant (e.g., subcontractor or supplier) for reasonable attorneys' fees and costs thereafter to recover any amount found to be due or owed. By law, sureties must pay or deny claims within 90 days.

The bill specifies that the surety's failure to respond is not deemed to constitute a waiver of defenses that the surety or the principal of the bond may have or acquire to the claim, except for the undisputed amounts that are reached in a settlement.

EFFECTIVE DATE: July 1, 2016

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/11/2016)