



House of Representatives

File No. 696

General Assembly

February Session, 2016

(Reprint of File No. 180)

House Bill No. 5328
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 21, 2016

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 Section 49-41b of the general statutes is repealed and the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] seven and one-half per cent from any
12 periodic or final payment which is otherwise properly due to the
13 general or prime contractor under the terms of such contract,
14 provided, when fifty per cent of the contract is completed, said amount

15 shall be reduced to five per cent, and (B) any such general or prime
16 contractor shall not withhold from any subcontractor more than (i)
17 [ten] seven and one-half per cent from any periodic or final payment
18 which is otherwise due to the subcontractor, or (ii) the amount
19 withheld by the awarding authority from such general or prime
20 contractor under subparagraph (A) of this subdivision, whichever is
21 less, provided, when fifty per cent of the contract is completed, said
22 amount shall be reduced to five per cent. Payment shall be made not
23 later than ninety days after a complete application for payment
24 demonstrating that fifty per cent contract completion has been
25 submitted to the awarding authority. Notwithstanding the provisions
26 of this subdivision (1), the awarding authority shall establish an early
27 release program with respect to periodic payments by general or prime
28 contractors to subcontractors.

29 (2) In the case of a contract advertised by the state Department of
30 Transportation, (A) the department shall not withhold more than two
31 and one-half per cent from any periodic or final payment which is
32 otherwise properly due to the general or prime contractor under the
33 terms of such contract, and (B) any such general or prime contractor
34 shall not withhold more than two and one-half per cent from any
35 periodic or final payment which is otherwise due to any subcontractor.

36 (3) If the awarding authority is a municipality, (A) [it] the
37 municipality shall not withhold more than five per cent from any
38 periodic or final payment which is otherwise properly due to the
39 general or prime contractor under the terms of such contract, and (B)
40 any such general or prime contractor shall not withhold more than five
41 per cent from any periodic or final payment which is otherwise due to
42 any subcontractor.

43 Sec. 2. Subsection (a) of section 49-42 of the general statutes is
44 repealed and the following is substituted in lieu thereof (*Effective July*
45 *1, 2016*):

46 (a) (1) Any person who performed work or supplied materials for

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

82 obligations under this section, then the surety shall indemnify the
83 claimant for the reasonable attorneys' fees and costs the claimant
84 incurs thereafter to recover any sums found due and owing to the
85 claimant. The notices required under this section shall be served by
86 registered or certified mail, postage prepaid in envelopes addressed to
87 any office at which the surety, principal or claimant conducts business,
88 or in any manner in which civil process may be served.

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

116 with the contractor furnishing the payment bond shall have a right of
117 action upon the payment bond upon giving written notice of claim as
118 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)

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.

House "A" reduces the maximum retainage for certain state and municipal public works contracts from 10% to 7.5%. This will not result in a fiscal impact.

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

OLR Bill Analysis**HB 5328 (as amended by House "A")******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 7.5%. The bill prohibits state agencies, except the Department of Transportation, from withholding more than 7.5% 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 from the subcontractor more than 7.5% or the amount the state agency withheld.

The bill requires the retainage amount to be reduced to 5% when the contract is 50% complete. Such payment must be made within 90 days after a contractor or subcontractor submits a complete application for payment to the awarding authority demonstrating the contract is 50% complete.

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.

*House Amendment "A" (1) increases the maximum retainage amount permitted under the original bill from 5% to 7.5% and (2) requires the retainage amount to be reduced to 5% when the contract is 50% complete.

EFFECTIVE DATE: July 1, 2016

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/11/2016)