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**SUBSTITUTE SENATE BILL 5657**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Vognild, Amondson, Sutherland, Pelz, Erwin and Winsley)

Read first time 03/03/93.

1 AN ACT Relating to prompt pay for works of improvement; adding a  
2 new chapter to Title 60 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly  
5 requires otherwise, the definitions in this section apply throughout  
6 sections 1 through 5 of this act.

7 (1) "Retainage" means a portion of any payment which is due a  
8 retaineer but is being withheld or retained by an owner, contractor, or  
9 subcontractor as security for, until, or conditioned upon completion  
10 of the work of improvement and to serve as a source of funds to meet  
11 lien claims under chapter 60.04 RCW which may arise. The retainage is  
12 considered conditionally earned by and owed to the retaineer.

13 (2) "Retaineer" means a contractor, subcontractor, material  
14 supplier, equipment, or professional services provider who has  
15 performed all or part of a work of improvement and who has had some  
16 portion of sums due under a contract withheld.

17 (3) "Prime retainor" means any person or entity, excluding those  
18 persons loaning or advancing funds pursuant to interim or construction  
19 financing, that withholds retainage from the prime contractor.

1 (4) "Completion" means the date upon which the work of improvement  
2 has been completed in accordance with the terms and conditions of the  
3 contract, the date upon which the work becomes usable or fit for the  
4 purposes for which it was intended, the date of issuance of a  
5 certificate of occupancy, or the date of occupation or use by the owner  
6 or an agent of the owner, whichever occurs first.

7 (5) "Work of improvement" means work performed or provided,  
8 including labor, materials, equipment, and professional services, which  
9 has led to the improvement of real property for a private owner. Work  
10 of improvement includes incremental improvements which are in  
11 themselves complete in accordance with the terms and conditions of the  
12 contract but do not necessarily bring a property improvement to a state  
13 of completion. "Work of improvement" does not include single family  
14 residential construction, or multifamily residential construction  
15 consisting of common wall residential buildings of four or fewer units  
16 that do not exceed two stories in height.

17 NEW SECTION. **Sec. 2.** PROMPT PAY. (1) Except under subsection (2)  
18 of this section, the owner shall pay amounts due the prime contractor  
19 for a private work of improvement in accordance with the terms and  
20 conditions of the contract but shall pay amounts due to the prime  
21 contractor no later than ten days after receipt of draws or loan  
22 disbursements. The prime contractor shall pay amounts due  
23 subcontractors and suppliers for a work of improvement, and the  
24 subcontractor shall pay amounts due their suppliers and lower tier  
25 subcontractors for a work of improvement, no later than ten days after  
26 receipt of draws, progress payments, final payment, or retainage for  
27 that work of improvement.

28 (2) In the event there is a good faith dispute over all or any  
29 portion of the amount due from the owner to the prime contractor, prime  
30 contractor to a subcontractor, subcontractor to a subcontractor, or  
31 contractor to a supplier, then the owner, prime contractor, or  
32 subcontractor may withhold no more than one hundred fifty percent of  
33 the disputed amount. Those not party to the dispute and who are  
34 otherwise due payment are entitled to full and prompt payment of their  
35 portion of a draw, progress payment, final payment, or released  
36 retainage including interest.

1        NEW SECTION.    **Sec. 3.**    PORTION OF CONTRACT PRICE RETAINED.    (1)

2 Except for improvements made on an existing owner-occupied single  
3 family residential property, retainage for private works of improvement  
4 shall be regarded and treated as the property of the retainee.  
5 Retainage shall accrue interest for the benefit of the prime retainee  
6 and subsequent retainees at the lower of either the rate given for  
7 certificates of deposit at the bank or lending institution of the prime  
8 retainor or at the rate established in RCW 19.52.025. Interest shall  
9 accrue from the date retainage is withheld until the date the retainage  
10 is released to the prime retainee.

11        (2) Except as permitted in subsections (3) and (4) of this section,  
12 retainage and interest earned on the retainage shall be released no  
13 later than ninety days from the date of completion of the work of  
14 improvement and the prime contractor and each contractor or  
15 subcontractor shall pay each of its contractors, subcontractors, or  
16 suppliers their proportionate share of the retention and interest  
17 within ten days from the time that all or any portion of the retainage  
18 and interest is received. If retainage is not disbursed within ten  
19 days, then interest under subsection (1) of this section will resume  
20 until retainage is paid to the retainee.

21        (3) In the event there is a good faith dispute over the release of  
22 all or any portion of the retainage, the prime retainor may not  
23 withhold an amount in excess of one hundred fifty percent of the  
24 estimated value of the issue in dispute. Those not party to a dispute,  
25 and who are otherwise due payment are entitled to full and prompt  
26 payment of their portion of the retained amount.

27        (4) In addition to amounts withheld as permitted under section 2 of  
28 this act, the prime retainor may withhold from the retained percentage  
29 amounts required to meet the claims of those who have given notice  
30 under chapter 60.04 RCW, together with sums sufficient to defray the  
31 cost of foreclosing the liens of such claims, and to pay attorneys'  
32 fees. The retainor may retain an amount equal to such unpaid claims  
33 together with a sum sufficient to defray the costs and attorneys' fees  
34 incurred in foreclosing the lien of such claims, and shall pay the  
35 remainder to the retainee.

36        NEW SECTION.    **Sec. 4.**    REMEDIES. In addition to all other remedies  
37 either civil, administrative, or criminal, any person from whom funds  
38 have been withheld in violation of this chapter is entitled to receive

1 from the person wrongfully withholding the funds, for every month and  
2 portion thereof that payment including retainage is not made, interest  
3 as established under RCW 19.52.025, plus an additional charge of one  
4 and one-half percent per month. In any action for the collection of  
5 funds withheld, the prevailing party is entitled to costs of suit and  
6 his or her reasonable attorneys' fees.

7 NEW SECTION. **Sec. 5.** APPLICATION--DATES. Sections 1 through 4 of  
8 this act are applicable to all contracts entered into on or after  
9 September 1, 1993, relating to the construction of any work of  
10 improvement.

11 NEW SECTION. **Sec. 6.** CAPTIONS. Captions used in this act do not  
12 constitute any part of the law.

13 NEW SECTION. **Sec. 7.** This act shall take effect September 1,  
14 1993.

15 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall  
16 constitute a new chapter in Title 60 RCW.

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