

## HOUSE BILL NO. HB0108

Contractors-final payment provisions restructure.

Sponsored by: Representative(s) Larsen

A BILL

for

1 AN ACT relating to public works and contracts; creating  
2 definitions; modifying final settlement and payment to  
3 contractors procedures; updating bond requirements; requiring  
4 disputes be directed to a prime contractor's surety bond; and  
5 providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9       **Section 1.** W.S. 16-6-101(a) by creating new paragraphs  
10 (vi) and (vii) and by renumbering (vi) as (viii),  
11 16-6-112(a)(intro), (i) and (ii), 16-6-115, 16-6-116,  
12 16-6-117 and 16-6-1001(a)(iv) are amended to read:

13

14       **16-6-101. Definitions.**

15

16       (a) As used in this act:

1

2 (vi) "Laborer" means as defined in W.S.3 16-6-202(a)(i);

4

5 (vii) "Materialman" means as defined in W.S.6 29-1-201(a)(ix);

7

8 ~~(vi)~~(viii) "This act" means W.S. 16-6-101 through

9 16-6-121.

10

11 **16-6-112. Contractor's bond or other guarantee; when**  
12 **required; conditions; amount; approval; filing; enforcement**  
13 **upon default.**

14

15 (a) Except as provided under W.S. 9-2-3004(c)(iv), any  
16 contract entered into with the state, any county, city, town,  
17 school district, the University of Wyoming, a Wyoming  
18 community college or other political subdivision of the state  
19 for the construction, major maintenance or renovation of any  
20 public building or other public structure or for any public  
21 work or improvement and the contract price exceeds seven  
22 thousand five hundred dollars (\$7,500.00), shall require any  
23 contractor before beginning work under the contract to

1 furnish the state or any political subdivision, as  
2 appropriate, a bond or if the contract price is one hundred  
3 fifty thousand dollars (\$150,000.00) or less, any other form  
4 of guarantee approved by the state or the political  
5 subdivision. The bond or other form of guarantee shall be:

6

7 (i) ~~Conditioned~~ Available and with such conditions  
8 that allow for the payment of all taxes, excises, licenses,  
9 assessments, contributions, penalties and interest lawfully  
10 due the state or any political subdivision;

11

12 (ii) For the use and benefit of any person  
13 performing any work or labor or furnishing any material or  
14 goods of any kind which were used in the execution of the  
15 contract, conditioned for the performance and completion of  
16 the contract according to its terms, compliance with all the  
17 requirements of law and payment as due of all just claims for  
18 work or labor performed, ~~material~~ and materials furnished ~~and~~  
19 ~~taxes, excises, licenses, assessments, contributions,~~  
20 ~~penalties and interest accrued~~ in the execution of the  
21 contract;

22

1           **16-6-115. Contractor's bond or other guarantee;**  
2 **limitation of actions.**

3

4 No action shall be maintained on any bond or other form of  
5 guarantee satisfactory to the state or any political  
6 subdivision under W.S. 16-6-112 unless commenced within one  
7 (1) year after the date of first ~~publication~~posting of the  
8 notice of final payment of the contract as set forth in W.S.  
9 16-6-116.

10

11           **16-6-116. Final settlement with and payment to**  
12 **contractor; required notices.**

13

14           (a) When any public work is let by contract the  
15 commission, board or person under whose direction or  
16 supervision the work is being carried on and conducted and  
17 upon whose approval intermediate and final estimates  
18 settlements are paid for the construction of the work, ~~forty~~  
19 ~~(40) days before the final estimate is paid,~~ shall cause  
20 notice to be ~~published in a newspaper of general circulation,~~  
21 ~~published nearest the point at which the work is being carried~~  
22 ~~on, once a week for three (3) consecutive weeks, and also to~~  
23 ~~post in three (3) conspicuous places on the work, a notice~~

1 posted on the project owner's and supervising agency's  
2 official website forty (40) days before the final settlement  
3 is paid to the prime contractor setting forth in substance,  
4 that the commission, board or person has accepted the work as  
5 completed according to the plans, ~~and~~ specifications and  
6 rules set forth in the contract between the commission, board  
7 or person and the contractor, and that the contractor is  
8 entitled to final settlement therefor. The notice shall also  
9 set forth that upon the 41st day (and the notice shall specify  
10 the exact date) after the ~~first publication of the~~ notice was  
11 first posted the commission, board or person under whose  
12 direction or supervision the work has been carried on will  
13 pay to the contractor the full amount due under the contract.  
14 This section does not relieve the contractor and the sureties  
15 on his bond from any claims for work or labor done or  
16 materials or supplies furnished in the execution of the  
17 contract.

18

19 (b) The owner or his agent shall provide written notice  
20 of the information in this section in the project  
21 specifications.

22

1           16-6-117. Final settlement with and payment to  
2 contractor; prerequisite filing of contractor's statement of  
3 payment; disputed claims.

4  
5 In all formal contracts entered into by any person with the  
6 state, or any department or commission thereof, or with any  
7 county, city, town, school district, ~~high school district,~~  
8 the University of Wyoming, a Wyoming community college or  
9 other public corporation of this state, for the construction  
10 of any public building, or the prosecution and completion of  
11 any public work, or for repairs upon any public building or  
12 public work, no final payment shall be made until the person  
13 files with the officer, department or commission of the state,  
14 or with the clerk of the county, city, town or school  
15 district, or with a similar officer of any other public  
16 corporation by which the contract has been made, a sworn  
17 statement setting forth that all claims for material,  
18 supplies and labor performed under the contract have been and  
19 are paid for the entire period of time for which the final  
20 payment is to be made. If any claim for material, ~~and supplies~~  
21 or labor is disputed the sworn statement shall so state, and  
22 the amount claimed to be due the ~~laborer subcontractor or~~  
23 materialmen shall be ~~deducted from the final payment and~~

1 ~~retained by the state, county, city, town or school district~~  
2 ~~authority or public corporation until the determination of~~  
3 ~~the dispute, either by judicial action or consent of the~~  
4 ~~parties, and then paid by the agent or agency to the persons~~  
5 ~~found entitled thereto~~ filed by the claimant as a claim  
6 against the prime contractor's surety bond. The final payment  
7 to the prime contractor shall be made without regard to any  
8 pending claims against the prime contractor's surety bond  
9 unless the payor has actual knowledge that the surety bond is  
10 deficient to settle known present claims, in which case an  
11 amount equal to the disputed claims may be withheld.

12

13 **16-6-1001. Capital construction projects restrictions;**  
14 **preference requirements; waivers.**

15

16 (a) Unless otherwise prohibited by federal law, any  
17 funds appropriated or authorized for expenditure for capital  
18 construction projects shall be subject to the restrictions of  
19 this section which shall be construed where possible as  
20 complimentary and consistent with other statutory  
21 requirements relating to competitive bidding and contractor  
22 preferences. To the extent the restrictions in this section  
23 are inconsistent with other state statutes, this section

1 shall supersede all such inconsistent provisions and shall  
2 govern. This section shall be applied as follows:

3  
4 (iv) Contractor progress payments shall be made  
5 only in accordance with this paragraph. If a contracting  
6 entity determines that a general contractor in good standing  
7 on a project requires a progress payment due for work  
8 completed in a workmanlike manner in order to pay a  
9 materialman, subcontractor or laborer for their work  
10 performed to date, the entity may issue the progress payment  
11 upon verification that all materialmen, subcontractors and  
12 laborers have been paid for completed work through the date  
13 of the most recent previous progress payment, less any  
14 contracted amounts held for retainage. If a progress payment  
15 has been withheld by a general contractor due to a reasonable  
16 dispute between a general contractor and a materialman,  
17 subcontractor or laborer, ~~further progress payments shall not~~  
18 ~~be paid to the general contractor but shall be retained in~~  
19 ~~accordance with the guidelines addressing disputed final~~  
20 ~~payments~~ the claimant shall file a claim in the disputed  
21 amount against the prime contractor's surety bond under the  
22 provisions of W.S. 16-6-117. A person submitting false



1 information regarding a progress payment subject to this  
2 paragraph shall be subject to the provisions of W.S. 16-6-120.

3

4 **Section 3.** This act is effective July 1, 2019.

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(END)