

## HB0108 - Contractors-final payment provisions restructure.

The current version of the bill text is displayed below. To view all versions of the bill with page and line numbers, use the PDF documents located to the right, under "Bill Versions & Resources."

2019

STATE OF WYOMING

19LSO-0285

ENGROSSED

## HOUSE BILL NO. HB0108

Contractors-final payment provisions restructure.

Sponsored by: Representative(s) Larsen, Furphy and Greear and Senator(s) Pappas

A BILL

for

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

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

**Section 1.** W.S. 16-6-101(a) by creating new paragraphs (vi) and (vii) and by renumbering (vi) as (viii), 16-6-102(a), 16-6-112(a)(intro), (i), (ii), (iv) and (b), 16-6-113 through 16-6-117, 16-6-121(a) and 16-6-1001(a)(iv) are amended to read:

**16-6-101. Definitions.**

(a) As used in this act:

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

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

~~(vi)~~(viii) "This act" means W.S. 16-6-101 through 16-6-121.

**16-6-102. Resident contractors; preference limitation with reference to lowest bid or qualified response; decertification; denial of application for residency.**

(a) If a contract is let by the state, any department thereof, or any county, city, town, school district, community college district, political subdivision of the state or other public corporation of the state for the construction, major maintenance or renovation of any public building, or other public structure, or for making any addition thereto, or for any public work or improvements, the contract shall be let, if advertisement for bids or request for proposal is not required, to a resident of the state. If advertisement for bids is required, the contract shall be let to the responsible certified resident making the lowest bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder.

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

(a) Except as provided under W.S. 9-2-3004(c)(iv), any contract entered into with the state, any county, city, town, school district, the University of Wyoming, a Wyoming community college, a public corporation or other political subdivision of the state for the construction, major maintenance or renovation of any public building or other public structure or for any public work or

improvement and the contract price exceeds seven thousand five hundred dollars (\$7,500.00), shall require any contractor before beginning work under the contract to furnish the state or ~~any political subdivision~~ entity, as appropriate, a bond or if the contract price is one hundred fifty thousand dollars (\$150,000.00) or less, any other form of guarantee approved by the state or the ~~political subdivision~~ appropriate entity. The bond or other form of guarantee shall be:

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

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

(iv) Approved by and filed with the appropriate officer, agent or other designee of the state or ~~governing body of the political subdivision~~ appropriate entity.

(b) A bond or other guarantee satisfactory to the state or ~~political subdivision~~ appropriate entity, as the case may be, shall include the obligations specified under subsection (a) of this section even though not expressly written into the guarantee.

**16-6-113. Contractor's bond or other guarantee; right of action; notice to obligee; intervention by interested parties; pro rata distribution.**

Any person entitled to the protection of a bond or other form of guarantee approved by the state or ~~any political subdivision~~ entity under W.S. 16-6-112, may maintain an action for the amount due him. He shall notify the obligee named in the bond or other guarantee of the beginning of the action, giving the names of the parties, describing the guarantee and stating the amount and nature of his claim. No judgment shall be entered in the action within thirty (30) days after the giving of the notice. The obligee or any person having a cause of action may on his motion, be admitted as a party to the action. The court shall determine the rights of all parties to the action. If the amount realized on the bond or other guarantee is insufficient to discharge all claims in full, the amount shall be distributed among the parties pro rata.

**16-6-114. Contractor's bond or other guarantee; requiring new or additional bond or other guarantee; failure to furnish.**

If in its judgment any of the sureties on a bond or other form of guarantee approved by the state or ~~any political subdivision~~ entity under W.S. 16-6-112 are insolvent or for any cause are no longer proper or sufficient sureties, the obligee may within ten (10) days require the contractor to furnish a new or additional bond or other approved guarantee. If ordered by the obligee, all work on the contract shall cease until a new or additional bond or other guarantee is furnished. If the guarantee is not furnished within ten (10) days, the obligee may at its option ~~determine~~ terminate the contract and complete the contract as the agent and at the expense of the contractor and his sureties.

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

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

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

(a) When any public work is let by contract the commission, board or person under whose direction or supervision the work is being carried on and conducted and upon whose approval intermediate and final ~~estimates~~ settlements are paid for the construction of the work, ~~forty (40) days before the final estimate is paid,~~ shall cause notice to be ~~published in a newspaper of general circulation, published nearest the point at which the work is being carried on, once a week for three (3) consecutive weeks, and also to post in three (3) conspicuous places on the work, a notice posted on the project owner's and supervising agency's official website forty (40) days before the final settlement is paid to the prime contractor~~ setting forth in substance, that the commission, board or person has accepted the work as completed according to the plans, ~~and~~ specifications and rules set forth in the contract between the commission, board or person and the contractor, and that the contractor is entitled to final settlement therefor. The notice shall also set forth that upon the 41st day (and the notice shall specify the exact date) after the ~~first publication of the~~ notice was first posted the commission, board or person under whose direction or supervision the work has been carried on will pay to the contractor the full amount due under the contract. This section does not relieve the contractor and the sureties on his bond from any claims for work or labor done or materials or supplies furnished in the execution of the contract.

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

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

In all formal contracts entered into by any person with the state, or any department or commission thereof, or with any county, city, town, school district, ~~high school district,~~ the University of Wyoming, a Wyoming community college, political subdivision or other public corporation of this state, for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, no final payment shall be made until the person files with the officer, department or commission of the state, or with the clerk of the county, city, town or school district, or with a similar officer of any other public corporation by which the contract has been made, a sworn statement setting forth that all claims for material, supplies and labor performed under the contract have been and are paid for the entire period of time for which the final payment is to be made. If any claim for material, ~~and supplies or~~ labor is disputed the sworn statement shall so state, and the amount claimed to be due the ~~laborer subcontractor or materialmen~~ shall be ~~deducted from the final payment and retained by the state, county, city, town or school district authority or public corporation until the determination of the dispute, either by judicial action or consent of the parties, and then paid by the agent or agency to the persons found entitled thereto~~ filed by the claimant as a claim against the prime contractor's surety bond. The final payment to the prime contractor shall be made without regard to any pending claims against the prime contractor's surety bond unless the payor has actual knowledge that the surety bond is deficient to settle known present claims, in which case an amount equal to the disputed claims may be withheld.

**16-6-121. Notice required to receive protection under a bond or guarantee; limitation; notice required by owner in project specifications.**

(a) Any subcontractor or materialman entitled to the protection of a bond or other form of guarantee approved by the state or ~~any political subdivision~~ entity under W.S. 16-6-112 shall give notice of his right to that protection to the prime contractor. Failure to give notice to a prime contractor who has complied with subsections (f) and (g) of this section waives the subcontractor or materialman's protection under the bond or guarantee and waives any right to a lien for materials or services provided.

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

(a) Unless otherwise prohibited by federal law, any funds appropriated or authorized for expenditure for capital construction projects shall be subject to the restrictions of this section which shall be construed where possible as complimentary and consistent with other statutory requirements relating to competitive bidding and contractor preferences. To the extent the restrictions in this section are inconsistent with other state statutes, this section shall supersede all such inconsistent provisions and shall govern. This section shall be applied as follows:

(iv) Contractor progress payments shall be made only in accordance with this paragraph. If a contracting entity determines that a general contractor in good standing on a project requires a progress payment due for work completed in a workmanlike manner in order to pay a materialman, subcontractor or laborer for their work performed to date, the entity may issue the progress payment upon verification that all materialmen, subcontractors and

laborers have been paid for completed work through the date of the most recent previous progress payment, less any contracted amounts held for retainage. If a progress payment has been withheld by a general contractor due to a reasonable dispute between a general contractor and a materialman, or subcontractor, or laborer, further progress payments shall not be paid to the general contractor but shall be retained in accordance with the guidelines addressing disputed final payments the claimant shall file a claim in the disputed amount against the prime contractor's surety bond under the provisions of W.S. 16-6-117. A person submitting false information regarding a progress payment subject to this paragraph shall be subject to the provisions of W.S. 16-6-120.

**Section 2.** This act is effective July 1, 2019.

(END)

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HB0108

Sponsor:

Representative Larsen


Co-Sponsor:


Representative(s) Furphy, Greear


Senator(s) Pappas


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Bill Versions and Resources:

Introduced  Version initially introduced on the floor for debate.

Engrossed  Version that includes adopted amendments from first chamber.

Fiscal note  Estimate of the fiscal and personnel impact to the state for the bill.

Digest  A summary of proceedings for the bill as it moves through the process.

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Last Action:

S 3rd Reading:Failed 5-22-3-0-0

Last Action Date:



02/22/2019

### Scheduled Committee Meetings

No Meetings Currently Scheduled

### Scheduled Floor Sessions

No Floor Sessions Currently Scheduled

Date	Action	Location	Vote
02/22/2019	S 3rd Reading:Failed 5-22-3-0-0	Senate	Details
02/21/2019	S 2nd Reading:Passed	Senate	
02/20/2019	S COW:Passed 11-10-9-0-0	Senate	Details
02/15/2019	S Placed on General File	Senate	
02/15/2019	S01 - Judiciary:Recommend Do Pass 5-0-0-0-0	Senate	Details
02/07/2019	S Introduced and Referred to S01 - Judiciary	Senate	
01/30/2019	S Received for Introduction	Senate	
01/29/2019	H 3rd Reading:Passed 34-24-2-0-0	House	Details
01/28/2019	H 2nd Reading:Passed	House	
01/25/2019	H COW:Passed	House	
01/23/2019	H Placed on General File	House	
01/23/2019	H09 - Minerals:Recommend Do Pass 9-0-0-0-0	House	Details
01/11/2019	H Introduced and Referred to H09 - Minerals	House	
01/10/2019	H Received for Introduction	House	
01/10/2019	Bill Number Assigned	LSO	

### House Amendments

Amendment ↑	Origin	Sponsor	Status
<a href="#">HB0108H3001</a>	3rd reading	Representative Stith	Withdrawn
<a href="#">HB0108HW001</a>	Committee of the Whole	Representative Larsen	Adopted
<a href="#">HB0108HW002</a>	Committee of the Whole	Representative MacGuire	Adopted

### Senate Amendments

Amendment ↑	Origin	Sponsor	Status
<a href="#">HB0108SW001</a>	Committee of the Whole	Senator Pappas	Adopted
Contractors-final payment provisions restructure.			19LSO-0285, 1.0

#### FISCAL NOTE

NON-ADMINISTRATIVE IMPACT	FY 2020	FY 2021	FY 2022
Anticipated Expenditure / (decrease)			
HIGHWAY FUND	(\$35,000)	(\$35,000)	(\$35,000)

Source of expenditure (decrease):

State cost incurred by the Wyoming Department of Transportation (WYDOT) of advertising with newspapers on completed projects;

Assumptions:

The above estimate is provided by WYDOT, and is based on a three-year average of advertising costs.

According to the State Construction Department (Department), this bill would reduce capital construction expenditures in advertising. While the Department is not able to calculate the exact decrease in expenditures, it is anticipated that each job on average would save \$300-\$500 per project as a result of not having to run the advertisement.

According to the University of Wyoming (UW), UW could incur additional litigation costs and staff time to prepare for such litigation. Where a subcontractor's payment is withheld by a general contractor and they are in dispute, UW may be brought into the lawsuit regarding the final payment. UW would also incur additional expenditures for having to determine whether the contractors bond is sufficient to cover the cost of claims. These costs are undeterminable, as the number of claims will vary from project to project.

Prepared by: Dean Temte, LSO Phone: 777-7881  
(Information provided by Rodney Freier, Department of Transportation, 777-4174; Rory Horsley, Dept. of Administration & Information, 777-5010; Brandon Finney, State Construction Department, 777-8671; Matthew F Kibbon, University of Wyoming, (307) 766-2470)

HB0108

[H09 - Minerals:Recommend Do Pass 9-0-0-0](#)

**Vote recorded:** 1/23/2019 2:24PM

**Ayes:** BURKHART, CRANK, DUNCAN, EYRE, FURPHY, HENDERSON, LOUCKS, MACGUIRE, GREER

**Nays:**

**Excused:** 1/29/2019 10:57AM

**Absent:** BARLOW, BROWN, BURKHART, DUNCAN, EKLUND, EYRE, FLITNER, FURPHY, GREER, HALEY, HALLINAN,

**Present:** ANDERSON, HUNT, KINNER, HARSHMAN, KIRKBRIDE, LARSEN LLOYD, LAURSEN DAN, LINDHOLM, LOUCKS,

**Ayes:** ANDERSON, HUNT, KINNER, HARSHMAN, KIRKBRIDE, LARSEN LLOYD, LAURSEN DAN, LINDHOLM, LOUCKS,

**Nays:** WESTERN, WILSON, WINTER, WENZ, WOSTER, WYON FLATERN, NETHERCOTT

**Ayes:** ANDERSON, HUNT, KINNER, HARSHMAN, KIRKBRIDE, LARSEN LLOYD, LAURSEN DAN, LINDHOLM, LOUCKS,

**Nays:** BLACKBURN, BLAKE, BURLINGAME, CLAUSEN, CLEM, CLIFFORD, CONNOLLY, CRANK, DAYTON-SELMAN,