

2 **ESB 6404** - H COMM AMD  
3 By Committee on Commerce & Labor

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.76 RCW  
8 to read as follows:

9 (1) Except as provided in RCW 39.76.020, every state agency,  
10 county, city, town, school district, board, commission, or any other  
11 public body shall pay interest at the highest rate allowed under RCW  
12 19.52.025, on amounts due on written contracts for public works,  
13 personal services, goods and services, equipment, and travel, whenever  
14 the public body fails to make timely payment.

15 (2) For purposes of this section, payment shall be timely if:

16 (a) Except under (b), (c), or (d) of this subsection, a check or  
17 warrant is mailed or is available on the date specified for the amount  
18 specified in the applicable contract documents but not later than  
19 thirty days of receipt of a properly completed invoice or receipt of  
20 goods or services, whichever is later.

21 (b) On written contracts for public works, when part or all of a  
22 payment is going to be withheld for unsatisfactory performance or if  
23 the payment request made does not comply with the requirements of the  
24 contract, the public body shall notify the prime contractor in writing  
25 within eight working days after receipt of the payment request stating  
26 specifically why part or all of the payment is being withheld and what  
27 remedial actions must be taken by the prime contractor to receive the  
28 withheld amount.

1 (c) If the notification by the public body required by (b) of this  
2 subsection does not comply with the notice contents required under (b)  
3 of this subsection, the public body shall pay the interest under  
4 subsection (1) of this section from the ninth working day after receipt  
5 of the initial payment request until the contractor receives notice  
6 that does comply with the notice contents required under (b) of this  
7 subsection.

8 (d) If part or all of a payment is withheld under (b) of this  
9 subsection, the public body shall pay the withheld amount within thirty  
10 calendar days after the prime contractor satisfactorily completes the  
11 remedial actions identified in the notice. If the withheld amount is  
12 not paid within the thirty calendar days, the public body shall pay  
13 interest under subsection (1) of this section from the thirty-first  
14 calendar day until the date paid."

15 "NEW SECTION. Sec. 2. (1) Contracts for public improvements or  
16 work, other than for professional services, by the state, or any  
17 county, city, town, school district, commission, district, board, or  
18 other public body, herein referred to as "public body", shall provide,  
19 and there shall be reserved by the public body from the moneys earned  
20 by the contractor on estimates during the progress of the improvement  
21 or work, a sum not to exceed five percent of the moneys earned, this  
22 sum to be retained by the state, county, city, town, district, board,  
23 or other public body, as a trust fund for the protection and payment of  
24 any person or persons, mechanic, subcontractor or materialman who  
25 performs any labor upon such a contract or the doing of the work, and  
26 all persons who supply such a person or persons or subcontractors with  
27 provisions and supplies for the carrying on of the work, and the state  
28 with respect to taxes imposed pursuant to Title 82 RCW which may be due  
29 from the contractor. A public body may not, for any purpose, reserve

1 or retain from the moneys earned by a contractor under a public  
2 improvement contract any sum exceeding the five percent amount  
3 permitted in this subsection. Every person performing labor or  
4 furnishing supplies toward the completion of the improvement or work  
5 has a lien upon the moneys so reserved: PROVIDED, That the notice of  
6 the lien of the claimant is given within forty-five days of completion  
7 of all of the contract work other than landscaping, and in the manner  
8 provided in RCW 39.08.030: PROVIDED FURTHER, That if the board,  
9 council, commission, trustees, officer, or body acting for the state,  
10 county, or municipality or other public body:

11 (a) At any time after fifty percent of the original contract work  
12 has been completed, finds that satisfactory progress is being made, may  
13 make any of the partial payments which would otherwise be subsequently  
14 made in full; but in no event may the amount to be retained be reduced  
15 to less than five percent of the amount of the moneys earned by the  
16 contractor; and

17 (b) Sixty days after completion of all contract work other than  
18 landscaping, the public body must release and pay in full the amounts  
19 retained during the performance of the contract (other than continuing  
20 retention of five percent of the moneys earned for landscaping) subject  
21 to the provisions of RCW 60.28.020, 60.28.050, and chapter 39.12 RCW.

22 (2) The moneys reserved under the provisions of subsection (1) of  
23 this section, at the option of the contractor, shall be:

24 (a) Retained in a fund by the public body until forty-five days  
25 following completion of all contract work;

26 (b) Deposited by the public body in an interest bearing account in  
27 a bank, mutual savings bank, or savings and loan association, not  
28 subject to withdrawal until forty-five days following completion of the  
29 improvement or work as completed, or until agreed to by both parties.  
30 Interest on the account shall be paid to the contractor; or

1 (c) Placed in escrow with a bank or trust company by the public  
2 body until forty-five days following completion of the improvement.  
3 When the moneys reserved are placed in escrow, the public body shall  
4 issue a check representing the sum of the moneys reserved payable to  
5 the bank or trust company and the contractor jointly. This check shall  
6 be converted into bonds and securities chosen by the contractor and  
7 approved by the public body and the bonds and securities shall be held  
8 in escrow. Interest on the bonds and securities shall be paid to the  
9 contractor as the interest accrues.

10 (3) The contractor or subcontractor may withhold payment of not  
11 more than five percent from the moneys earned by any subcontractor or  
12 sub-subcontractor or supplier contracted with by the contractor to  
13 provide labor, materials, or equipment to the public project. Whenever  
14 the contractor or subcontractor reserves funds earned by a  
15 subcontractor or sub-subcontractor or supplier, the contractor or  
16 subcontractor shall pay interest to the subcontractor or sub-  
17 subcontractor or supplier at a rate equal to that received by the  
18 contractor or subcontractor from reserved funds.

19 (4) With the consent of the public body the contractor may submit  
20 a bond for all or any portion of the amount of funds retained by the  
21 public body in a form acceptable to the public body. This bond and any  
22 proceeds therefrom are subject to all claims and liens and in the same  
23 manner and priority as set forth for retained percentages in this  
24 chapter. The public body shall release the bonded portion of the  
25 retained funds to the contractor within thirty days of accepting the  
26 bond from the contractor. Whenever a public body accepts a bond in  
27 lieu of retained funds from a contractor, the contractor shall accept  
28 like bonds from any subcontractors or suppliers from which the  
29 contractor has retained funds. The contractor shall then release the  
30 funds retained from the subcontractor or supplier to the subcontractor

1 or supplier within thirty days of accepting the bond from the  
2 subcontractor or supplier.

3 (5) If the public body administering a contract, after a  
4 substantial portion of the work has been completed, finds that an  
5 unreasonable delay will occur in the completion of the remaining  
6 portion of the contract for any reason not the result of a breach  
7 thereof, it may, if the contractor agrees, delete from the contract the  
8 remaining work and accept as final the improvement at the stage of  
9 completion then attained and make payment in proportion to the amount  
10 of the work accomplished and in this case any amounts retained and  
11 accumulated under this section shall be held for a period of forty-five  
12 days following the completion. In the event that the work is  
13 terminated before final completion as provided in this section, the  
14 public body may thereafter enter into a new contract with the same  
15 contractor to perform the remaining work or improvement for an amount  
16 equal to or less than the cost of the remaining work as was provided  
17 for in the original contract without advertisement or bid. The  
18 provisions of this chapter are exclusive and supersede all provisions  
19 and regulations in conflict herewith.

20 (6) Whenever the department of transportation has contracted for  
21 the construction of two or more ferry vessels, sixty days after  
22 completion of all contract work on each ferry vessel, the department  
23 must release and pay in full the amounts retained in connection with  
24 the construction of the vessel subject to the provisions of RCW  
25 60.28.020 and chapter 39.12 RCW: PROVIDED, That the department of  
26 transportation may at its discretion condition the release of funds  
27 retained in connection with the completed ferry upon the contractor  
28 delivering a good and sufficient bond with two or more sureties, or  
29 with a surety company, in the amount of the retained funds to be  
30 released to the contractor, conditioned that no taxes shall be

1 certified or claims filed for work on the ferry after a period of  
2 forty-five days following completion of the ferry; and if taxes are  
3 certified or claims filed, recovery may be had on the bond by the  
4 department of revenue and the materialmen and laborers filing claims.

5 (7) Contracts on projects funded in whole or in part by farmers  
6 home administration and subject to farmers home administration  
7 regulations are not subject to subsections (1) through (6) of this  
8 section."

9 "NEW SECTION. Sec. 3. After the expiration of the forty-five  
10 day period, and after receipt of the department of revenue's  
11 certificate, and the public body is satisfied that the taxes certified  
12 as due or to become due by the department of revenue are discharged,  
13 and the claims of materialmen and laborers who have filed their claims,  
14 together with a sum sufficient to defray the cost of foreclosing the  
15 liens of such claims, and to pay attorneys' fees, have been paid, the  
16 public body may withhold from the remaining retained amounts for claims  
17 the public body may have against the contractor and shall pay the  
18 balance, if any, to the contractor the fund retained by it or release  
19 to the contractor the securities and bonds held in escrow.

20 If such taxes have not been discharged or the claims, expenses, and  
21 fees have not been paid, the public body shall either retain in its  
22 fund, or in an interest bearing account, or retain in escrow, at the  
23 option of the contractor, an amount equal to such unpaid taxes and  
24 unpaid claims together with a sum sufficient to defray the costs and  
25 attorney fees incurred in foreclosing the lien of such claims, and  
26 shall pay, or release from escrow, the remainder to the contractor."

27 "NEW SECTION. Sec. 4. Upon completion of a contract, the  
28 state, county or other municipal officer charged with the duty of

1 disbursing or authorizing disbursement or payment of such contracts  
2 shall forthwith notify the department of revenue of the completion of  
3 contracts over twenty thousand dollars. Such officer shall not make  
4 any payment from the retained percentage fund or release any retained  
5 percentage escrow account to any person, until he has received from the  
6 department of revenue a certificate that all taxes, increases and  
7 penalties due from the contractor, and all taxes due and to become due  
8 with respect to such contract have been paid in full or that they are,  
9 in the department's opinion, readily collectible without recourse to  
10 the state's lien on the retained percentage."

11 "NEW SECTION. **Sec. 5.** A new section is added to chapter 39.04 RCW  
12 to read as follows:

13 (1) When payment is received by a contractor or subcontractor for  
14 work performed on a public work, the contractor or subcontractor shall  
15 pay to any subcontractor not later than ten days after the receipt of  
16 the payment, amounts allowed the contractor on account of the work  
17 performed by the subcontractor, to the extent of each subcontractor's  
18 interest therein.

19 (2) In the event of a good faith dispute over all or any portion of  
20 the amount due on a payment from the state or a municipality to the  
21 prime contractor, or from the prime contractor or subcontractor to a  
22 subcontractor, then the state or the municipality, or the prime  
23 contractor or subcontractor, may withhold no more than one hundred  
24 fifty percent of the disputed amount. Those not a party to a dispute  
25 are entitled to full and prompt payment of their portion of a draw,  
26 progress payment, final payment, or released retainage.

27 (3) In addition to all other remedies, any person from whom funds  
28 have been withheld in violation of this section shall be entitled to  
29 receive from the person wrongfully withholding the funds, for every

1 month and portion thereof that payment including retainage is not made,  
2 interest at the highest rate allowed under RCW 19.52.025. In any  
3 action for the collection of funds wrongfully withheld, the prevailing  
4 party shall be entitled to costs of suit and reasonable attorneys'  
5 fees."

6 "NEW SECTION. Sec. 6. (1) It is against public policy for any  
7 party to require any other party to waive any provision of this act.

8 (2) This act is to be liberally construed to provide security for  
9 all parties intended to be protected by its provisions."

10 "NEW SECTION. Sec. 7. (1) Sections 1 through 6 of this act are  
11 applicable to all contracts entered into on or after September 1, 1992,  
12 relating to the construction of any work of improvement.

13 (2) RCW 39.76.010, 60.28.010, 60.28.020, and 60.28.050 are  
14 applicable to all contracts entered into prior to September 1, 1992,  
15 relating to the construction of any work of improvement."

16 "NEW SECTION. Sec. 8. Sections 2 through 4 of this act are  
17 each added to chapter 60.28 RCW."

18 "NEW SECTION. Sec. 9. This act shall take effect September 1,  
19 1992."



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2 By Committee on Commerce & Labor

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4 On page 1, line 2 of the title, after "projects;" strike the  
5 remainder of the title and insert "adding a new section to chapter  
6 39.76 RCW; adding new sections to chapter 60.28 RCW; adding a new  
7 section to chapter 39.04 RCW; creating new sections; prescribing  
8 penalties; and providing an effective date."