

2 SHB 1736 - S AMD  
3 By Senator Matson

4 ADOPTED 3/10/92

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 a rate of one percent per month, but  
12 at least one dollar per month, on amounts due on written contracts for  
13 public works, personal services, goods and services, equipment, and  
14 travel, whenever the public body fails to make timely payment.

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

16 (a) Except as provided otherwise in 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. If a contract is funded by  
21 grant or federal money, the public body shall pay the prime contractor  
22 for satisfactory performance within thirty calendar days of the date  
23 the public body receives a payment request that complies with the  
24 contract or within thirty calendar days of the date the public body  
25 actually receives the grant or federal money, whichever is later.

26 (b) On written contracts for public works, when part or all of a  
27 payment is going to be withheld for unsatisfactory performance or if  
28 the payment request made does not comply with the requirements of the

1 contract, the public body shall notify the prime contractor in writing  
2 within eight working days after receipt of the payment request stating  
3 specifically why part or all of the payment is being withheld and what  
4 remedial actions must be taken by the prime contractor to receive the  
5 withheld amount.

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

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

20 (e)(i) If the prime contractor on a public works contract, after  
21 making a request for payment to the public body but before paying a  
22 subcontractor for the subcontractor's performance covered by the  
23 payment request, discovers that part or all of the payment otherwise  
24 due to the subcontractor is subject to withholding from the  
25 subcontractor under the subcontract for unsatisfactory performance, the  
26 prime contractor may withhold the amount as allowed under the  
27 subcontract. If the prime contractor withholds an amount under this  
28 subsection, the prime contractor shall:

1 (A) Give the subcontractor notice of the remedial actions that must  
2 be taken as soon as practicable after determining the cause for the  
3 withholding but before the due date for the subcontractor payment;

4 (B) Give the contracting officer of the public body a copy of the  
5 notice furnished to the subcontractor under (e)(i)(A) of this  
6 subsection; and

7 (C) Pay the subcontractor within eight working days after the  
8 subcontractor satisfactorily completes the remedial action identified  
9 in the notice.

10 (ii) If the prime contractor does not comply with the notice and  
11 payment requirements of (e)(i) of this subsection, the contractor shall  
12 pay the subcontractor interest on the withheld amount from the eighth  
13 working day at an interest rate that is equal to the amount set forth  
14 in subsection (1) of this section.

15 (3) For the purposes of this section:

16 (a) A payment is considered to be made when mailed or personally  
17 delivered to the party being paid.

18 (b) An invoice is considered to be received when it is date-stamped  
19 or otherwise marked as delivered. If the invoice is not date-stamped  
20 or otherwise marked as delivered, the date of the invoice is considered  
21 to be the date when the invoice is received."

22 "NEW SECTION. Sec. 2. (1) Public improvement contracts shall  
23 provide, and public bodies shall reserve, a contract retainage not to  
24 exceed five percent of the moneys earned by the contractor as a trust  
25 fund for the protection and payment of: (a) The claims of any person  
26 arising under the contract; and (b) the state with respect to taxes  
27 imposed pursuant to Title 82 RCW which may be due from such contractor.

28 (2) Every person performing labor or furnishing supplies toward the  
29 completion of a public improvement contract shall have a lien upon

1 moneys reserved by a public body under the provisions of a public  
2 improvement contract: PROVIDED, That the notice of the lien of the  
3 claimant shall be given within forty-five days of completion of the  
4 contract work, and in the manner provided in RCW 39.08.030.

5 (3) The contractor at any time may request the contract retainage  
6 be reduced to one hundred percent of the value of the work remaining on  
7 the project.

8 (a) After completion of all contract work other than landscaping,  
9 the contractor may request that the public body release and pay in full  
10 the amounts retained during the performance of the contract, and sixty  
11 days thereafter the public body must release and pay in full the  
12 amounts retained (other than continuing retention of five percent of  
13 the moneys earned for landscaping) subject to the provisions of  
14 chapters 39.12 and 60.28 RCW.

15 (b) Sixty days after completion of all contract work the public  
16 body must release and pay in full the amounts retained during the  
17 performance of the contract subject to the provisions of chapters 39.12  
18 and 60.28 RCW.

19 (4) The moneys reserved by a public body under the provisions of a  
20 public improvement contract, at the option of the contractor, shall be:

21 (a) Retained in a fund by the public body;

22 (b) Deposited by the public body in an interest bearing account in  
23 a bank, mutual savings bank, or savings and loan association. Interest  
24 on moneys reserved by a public body under the provision of a public  
25 improvement contract shall be paid to the contractor;

26 (c) Placed in escrow with a bank or trust company by the public  
27 body. When the moneys reserved are placed in escrow, the public body  
28 shall issue a check representing the sum of the moneys reserved payable  
29 to the bank or trust company and the contractor jointly. This check  
30 shall be converted into bonds and securities chosen by the contractor

1 and approved by the public body and the bonds and securities shall be  
2 held in escrow. Interest on the bonds and securities shall be paid to  
3 the contractor as the interest accrues.

4 (5) The contractor or subcontractor may withhold payment of not  
5 more than five percent from the moneys earned by any subcontractor or  
6 sub-subcontractor or supplier contracted with by the contractor to  
7 provide labor, materials, or equipment to the public project. Whenever  
8 the contractor or subcontractor reserves funds earned by a  
9 subcontractor or sub-subcontractor or supplier, the contractor or  
10 subcontractor shall pay interest to the subcontractor or sub-  
11 subcontractor or supplier at a rate equal to that received by the  
12 contractor or subcontractor from reserved funds.

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

26 (7) If the public body administering a contract, after a  
27 substantial portion of the work has been completed, finds that an  
28 unreasonable delay will occur in the completion of the remaining  
29 portion of the contract for any reason not the result of a breach  
30 thereof, it may, if the contractor agrees, delete from the contract the

1 remaining work and accept as final the improvement at the stage of  
2 completion then attained and make payment in proportion to the amount  
3 of the work accomplished and in this case any amounts retained and  
4 accumulated under this section shall be held for a period of sixty days  
5 following the completion. In the event that the work is terminated  
6 before final completion as provided in this section, the public body  
7 may thereafter enter into a new contract with the same contractor to  
8 perform the remaining work or improvement for an amount equal to or  
9 less than the cost of the remaining work as was provided for in the  
10 original contract without advertisement or bid. The provisions of this  
11 chapter are exclusive and shall supersede all provisions and  
12 regulations in conflict herewith.

13 (8) Whenever the department of transportation has contracted for  
14 the construction of two or more ferry vessels, sixty days after  
15 completion of all contract work on each ferry vessel, the department  
16 must release and pay in full the amounts retained in connection with  
17 the construction of the vessel subject to the provisions of RCW  
18 60.28.020 and chapter 39.12 RCW: PROVIDED, That the department of  
19 transportation may at its discretion condition the release of funds  
20 retained in connection with the completed ferry upon the contractor  
21 delivering a good and sufficient bond with two or more sureties, or  
22 with a surety company, in the amount of the retained funds to be  
23 released to the contractor, conditioned that no taxes shall be  
24 certified or claims filed for work on the ferry after a period of sixty  
25 days following completion of the ferry; and if taxes are certified or  
26 claims filed, recovery may be had on the bond by the department of  
27 revenue and the materialmen and laborers filing claims.

28 (9) Except as provided in subsection (1) of this section,  
29 reservation by a public body for any purpose from the moneys earned by

1 a contractor by fulfilling its responsibilities under public  
2 improvement contracts is prohibited.

3 (10) Contracts on projects funded in whole or in part by farmers  
4 home administration and subject to farmers home administration  
5 regulations are not subject to subsections (1) through (9) of this  
6 section.

7 (11) Unless the context clearly requires otherwise, the definitions  
8 in this subsection apply throughout this section.

9 (a) "Contract retainage" means an amount reserved by a public body  
10 from the moneys earned by a person under a public improvement contract.

11 (b) "Person" means a person or persons, mechanic, subcontractor, or  
12 materialperson who performs labor or provides materials for a public  
13 improvement contract, and any other person who supplies the person with  
14 provisions or supplies for the carrying on of a public improvement  
15 contract.

16 (c) "Public body" means the state, or a county, city, town,  
17 district, board, or other public body.

18 (d) "Public improvement contract" means a contract for public  
19 improvements or work, other than for professional services."

20 "NEW SECTION. Sec. 3. After the expiration of the forty-five  
21 day period for giving notice of lien provided in section 2(2) of this  
22 act, and after receipt of the department of revenue's certificate, and  
23 the public body is satisfied that the taxes certified as due or to  
24 become due by the department of revenue are discharged, and the claims  
25 of materialmen and laborers who have filed their claims, together with  
26 a sum sufficient to defray the cost of foreclosing the liens of such  
27 claims, and to pay attorneys' fees, have been paid, the public body may  
28 withhold from the remaining retained amounts for claims the public body  
29 may have against the contractor and shall pay the balance, if any, to

1 the contractor the fund retained by it or release to the contractor the  
2 securities and bonds held in escrow.

3 If such taxes have not been discharged or the claims, expenses, and  
4 fees have not been paid, the public body shall either retain in its  
5 fund, or in an interest bearing account, or retain in escrow, at the  
6 option of the contractor, an amount equal to such unpaid taxes and  
7 unpaid claims together with a sum sufficient to defray the costs and  
8 attorney fees incurred in foreclosing the lien of such claims, and  
9 shall pay, or release from escrow, the remainder to the contractor."

10 "NEW SECTION. Sec. 4. Upon completion of a contract, the  
11 state, county or other municipal officer charged with the duty of  
12 disbursing or authorizing disbursement or payment of such contracts  
13 shall forthwith notify the department of revenue of the completion of  
14 contracts over twenty thousand dollars. Such officer shall not make  
15 any payment from the retained percentage fund or release any retained  
16 percentage escrow account to any person, until he has received from the  
17 department of revenue a certificate that all taxes, increases and  
18 penalties due from the contractor, and all taxes due and to become due  
19 with respect to such contract have been paid in full or that they are,  
20 in the department's opinion, readily collectible without recourse to  
21 the state's lien on the retained percentage."

22 "NEW SECTION. Sec. 5. A new section is added to chapter 39.04 RCW  
23 to read as follows:

24 (1) When payment is received by a contractor or subcontractor for  
25 work performed on a public work, the contractor or subcontractor shall  
26 pay to any subcontractor not later than ten days after the receipt of  
27 the payment, amounts allowed the contractor on account of the work



1 performed by the subcontractor, to the extent of each subcontractor's  
2 interest therein.

3 (2) In the event of a good faith dispute over all or any portion of  
4 the amount due on a payment from the state or a municipality to the  
5 prime contractor, or from the prime contractor or subcontractor to a  
6 subcontractor, then the state or the municipality, or the prime  
7 contractor or subcontractor, may withhold no more than one hundred  
8 fifty percent of the disputed amount. Those not a party to a dispute  
9 are entitled to full and prompt payment of their portion of a draw,  
10 progress payment, final payment, or released retainage.

11 (3) In addition to all other remedies, any person from whom funds  
12 have been withheld in violation of this section shall be entitled to  
13 receive from the person wrongfully withholding the funds, for every  
14 month and portion thereof that payment including retainage is not made,  
15 interest at the highest rate allowed under RCW 19.52.025. In any  
16 action for the collection of funds wrongfully withheld, the prevailing  
17 party shall be entitled to costs of suit and reasonable attorneys'  
18 fees."

19 "NEW SECTION. Sec. 6. (1) The rights provided in this act may  
20 not be waived by the parties and a contract provision that provides for  
21 waiver of the rights provided in this act is void as against public  
22 policy.

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

25 "NEW SECTION. Sec. 7. (1) Sections 1 through 6 of this act are  
26 applicable to all public works contracts entered into on or after  
27 September 1, 1992, relating to the construction of any work of  
28 improvement.

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

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

7 "NEW SECTION. Sec. 9. This act shall take effect September 1,  
8 1992."

9 **SHB 1736** - S AMD  
10 By Senator Matson

11 ADOPTED 3/10/92

12 On page 1, line 2 of the title, after "property;" strike the  
13 remainder of the title and insert "adding a new section to chapter  
14 39.76 RCW; adding new sections to chapter 60.28 RCW; adding a new  
15 section to chapter 39.04 RCW; creating new sections; prescribing  
16 penalties; and providing an effective date."