

2 SHB 2659 - S COMM AMD

3 By Committee on Governmental Operations

4 ADOPTED 3/5/92

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

7 "Sec. 1. RCW 60.28.010 and 1986 c 181 s 6 are each amended to read
8 as follows:

9 (1) (~~Contracts for public improvements or work, other than for~~
10 ~~professional services, by the state, or any county, city, town,~~
11 ~~district, board, or other public body, herein referred to as "public~~
12 ~~body", shall provide, and there shall be reserved by the public body~~
13 ~~from the moneys earned by the contractor on estimates during the~~
14 ~~progress of the improvement or work, a sum not to exceed five percent,~~
15 ~~said sum to be retained by the state, county, city, town, district,~~
16 ~~board, or other public body,)) Public improvement contracts shall
17 provide, and public bodies shall reserve, a contract retainage not to
18 exceed five percent of the moneys earned by the contractor as a trust
19 fund for the protection and payment of: (a) The claims of any person
20 ~~((or persons, mechanic, subcontractor or materialman who shall perform~~
21 ~~any labor upon such contract or the doing of said work, and all persons~~
22 ~~who shall supply such person or persons or subcontractors with~~
23 ~~provisions and supplies for the carrying on of such work, and)) arising
24 under the contract; and (b) the state with respect to taxes imposed
25 pursuant to Title 82 RCW which may be due from such contractor.~~~~

26 (2) Every person performing labor or furnishing supplies toward the
27 completion of (~~said improvement or work~~) a public improvement
28 contract shall have a lien upon ((said moneys so reserved)) moneys

1 reserved by a public body under the provisions of a public improvement
2 contract: PROVIDED, That such notice of the lien of such claimant
3 shall be given ((in the manner and within the time)) as provided in RCW
4 39.08.030 ((as now existing and in accordance with any amendments that
5 may hereafter be made thereto:—PROVIDED FURTHER, That the board,
6 council, commission, trustees, officer or body acting for the state,
7 county or municipality or other public body; (a) at any time after
8 fifty percent of the original contract work has been completed, if it
9 finds that satisfactory progress is being made, may make any of the
10 partial payments which would otherwise be subsequently made in full;
11 but in no event shall the amount to be retained be reduced to less than
12 five percent of the amount of the moneys earned by the contractor:
13 PROVIDED, That)).

14 (3) The contractor at any time may request ((that)) the contract
15 retainage be reduced to one hundred percent of the value of the work
16 remaining on the project((; and (b))). Thirty days after completion
17 and acceptance of all contract work other than landscaping, a public
18 body may release and pay in full the amounts retained during the
19 performance of the contract (other than continuing retention of five
20 percent of the moneys earned for landscaping) subject to the provisions
21 of RCW 60.28.020.

22 ((+2)) (4) The moneys reserved ((under the provisions of
23 subsection (1) of this section,)) by a public body under the provisions
24 of a public improvement contract, at the option of the contractor,
25 shall be:

26 (a) Retained in a fund by the public body until thirty days
27 following the final acceptance of said improvement or work as
28 completed;

29 (b) Deposited by the public body in an interest bearing account in
30 a bank, mutual savings bank, or savings and loan association, not

1 subject to withdrawal until after the final acceptance of said
2 improvement or work as completed, or until agreed to by both parties:
3 PROVIDED, That interest on (~~such account~~) moneys reserved by a public
4 body under the provision of a public improvement contract shall be paid
5 to the contractor;

6 (c) Placed in escrow with a bank or trust company by the public
7 body until thirty days following the final acceptance of said
8 improvement or work as completed. When the moneys reserved are to be
9 placed in escrow, the public body shall issue a check representing the
10 sum of the moneys reserved payable to the bank or trust company and the
11 contractor jointly. Such check shall be converted into bonds and
12 securities chosen by the contractor and approved by the public body and
13 such bonds and securities shall be held in escrow. Interest on such
14 bonds and securities shall be paid to the contractor as the said
15 interest accrues.

16 (~~(3)~~) (5) The contractor or subcontractor may withhold payment of
17 not more than five percent from the moneys earned by any subcontractor
18 or sub-subcontractor or supplier contracted with by the contractor to
19 provide labor, materials, or equipment to the public project. Whenever
20 the contractor or subcontractor reserves funds earned by a
21 subcontractor or sub-subcontractor or supplier, the contractor or
22 subcontractor shall pay interest to the subcontractor or sub-
23 subcontractor or supplier at a rate equal to that received by the
24 contractor or subcontractor from reserved funds.

25 (~~(4)~~) (6) With the consent of the public body the contractor may
26 submit a bond for all or any portion of the (~~amount of funds retained~~
27 ~~by the public body~~) contract retainage in a form acceptable to the
28 public body. Such bond and any proceeds therefrom shall be made
29 subject to all claims and liens and in the same manner and priority as
30 set forth for retained percentages in this chapter. The public body

1 shall release the bonded portion of the retained funds to the
2 contractor within thirty days of accepting the bond from the
3 contractor. Whenever a public body accepts a bond in lieu of retained
4 funds from a contractor, the contractor shall accept like bonds from
5 any subcontractors or suppliers from which the contractor has retained
6 funds. The contractor shall then release the funds retained from the
7 subcontractor or supplier to the subcontractor or supplier within
8 thirty days of accepting the bond from the subcontractor or supplier.

9 (~~(5)~~) (7) If the public body administering a contract, after a
10 substantial portion of the work has been completed, finds that an
11 unreasonable delay will occur in the completion of the remaining
12 portion of the contract for any reason not the result of a breach
13 thereof, it may, if the contractor agrees, delete from the contract the
14 remaining work and accept as final the improvement at the stage of
15 completion then attained and make payment in proportion to the amount
16 of the work accomplished and in such case any amounts retained and
17 accumulated under this section shall be held for a period of thirty
18 days following such acceptance. In the event that the work shall have
19 been terminated before final completion as provided in this section,
20 the public body may thereafter enter into a new contract with the same
21 contractor to perform the remaining work or improvement for an amount
22 equal to or less than the cost of the remaining work as was provided
23 for in the original contract without advertisement or bid. The
24 provisions of this chapter 60.28 RCW shall be deemed exclusive and
25 shall supersede all provisions and regulations in conflict herewith.

26 (~~(6)~~) (8) Whenever the department of transportation has
27 contracted for the construction of two or more ferry vessels, thirty
28 days after completion and final acceptance of each ferry vessel, the
29 department may release and pay in full the amounts retained in
30 connection with the construction of such vessel subject to the

1 provisions of RCW 60.28.020: PROVIDED, That the department of
2 transportation may at its discretion condition the release of funds
3 retained in connection with the completed ferry upon the contractor
4 delivering a good and sufficient bond with two or more sureties, or
5 with a surety company, in the amount of the retained funds to be
6 released to the contractor, conditioned that no taxes shall be
7 certified or claims filed for work on such ferry after a period of
8 thirty days following final acceptance of such ferry; and if such taxes
9 are certified or claims filed, recovery may be had on such bond by the
10 department of revenue and the materialmen and laborers filing claims.

11 ~~((7))~~ (9) Except as provided in subsection (1) of this section,
12 reservation by a public body for any purpose from the moneys earned by
13 a contractor by fulfilling its responsibilities under public
14 improvement contracts is prohibited.

15 (10) Contracts on projects funded in whole or in part by farmers
16 home administration and subject to farmers home administration
17 regulations shall not be subject to subsections (1) through ~~((6))~~ (9)
18 of this section.

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

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

23 (b) "Person" means a person or persons, mechanic, subcontractor, or
24 materialperson who performs labor or provides materials for a public
25 improvement contract, and any other person who supplies the person with
26 provisions or supplies for the carrying on of a public improvement
27 contract.

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

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

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6 On page 1, line 3 of the title, after "owner;" strike the remainder
7 of the title and insert "and amending RCW 60.28.010."