

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2702

53rd Legislature
1994 Regular Session

Passed by the House February 12, 1994
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 4, 1994
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2702** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2702

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Representatives Brown, Orr and Padden

Read first time 01/21/94. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to bonds for retainage on public works; and
2 amending RCW 60.28.011

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 60.28.011 and 1992 c 223 s 2 are each amended to read
5 as follows:

6 (1) Public improvement contracts shall provide, and public bodies
7 shall reserve, a contract retainage not to exceed five percent of the
8 moneys earned by the contractor as a trust fund for the protection and
9 payment of: (a) The claims of any person arising under the contract;
10 and (b) the state with respect to taxes imposed pursuant to Title 82
11 RCW which may be due from such contractor.

12 (2) Every person performing labor or furnishing supplies toward the
13 completion of a public improvement contract shall have a lien upon
14 moneys reserved by a public body under the provisions of a public
15 improvement contract(~~(:—PROVIDED, That)~~). However, the notice of the
16 lien of the claimant shall be given within forty-five days of
17 completion of the contract work, and in the manner provided in RCW
18 39.08.030.

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

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

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

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

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

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

22 (c) Placed in escrow with a bank or trust company by the public
23 body. When the moneys reserved are placed in escrow, the public body
24 shall issue a check representing the sum of the moneys reserved payable
25 to the bank or trust company and the contractor jointly. This check
26 shall be converted into bonds and securities chosen by the contractor
27 and approved by the public body and the bonds and securities shall be
28 held in escrow. Interest on the bonds and securities shall be paid to
29 the contractor as the interest accrues.

30 (5) The contractor or subcontractor may withhold payment of not
31 more than five percent from the moneys earned by any subcontractor or
32 sub-subcontractor or supplier contracted with by the contractor to
33 provide labor, materials, or equipment to the public project. Whenever
34 the contractor or subcontractor reserves funds earned by a
35 subcontractor or sub-subcontractor or supplier, the contractor or
36 subcontractor shall pay interest to the subcontractor or sub-
37 subcontractor or supplier at a rate equal to that received by the
38 contractor or subcontractor from reserved funds.

1 (6) (~~With the consent of the public body the~~) A contractor may
2 submit a bond for all or any portion of the contract retainage in a
3 form acceptable to the public body and from a bonding company meeting
4 standards established by the public body. The public body shall accept
5 a bond meeting these requirements unless the public body can
6 demonstrate good cause for refusing to accept it. This bond and any
7 proceeds therefrom are subject to all claims and liens and in the same
8 manner and priority as set forth for retained percentages in this
9 chapter. The public body shall release the bonded portion of the
10 retained funds to the contractor within thirty days of accepting the
11 bond from the contractor. Whenever a public body accepts a bond in
12 lieu of retained funds from a contractor, the contractor shall accept
13 like bonds from any subcontractors or suppliers from which the
14 contractor has retained funds. The contractor shall then release the
15 funds retained from the subcontractor or supplier to the subcontractor
16 or supplier within thirty days of accepting the bond from the
17 subcontractor or supplier.

18 (7) If the public body administering a contract, after a
19 substantial portion of the work has been completed, finds that an
20 unreasonable delay will occur in the completion of the remaining
21 portion of the contract for any reason not the result of a breach
22 thereof, it may, if the contractor agrees, delete from the contract the
23 remaining work and accept as final the improvement at the stage of
24 completion then attained and make payment in proportion to the amount
25 of the work accomplished and in this case any amounts retained and
26 accumulated under this section shall be held for a period of sixty days
27 following the completion. In the event that the work is terminated
28 before final completion as provided in this section, the public body
29 may thereafter enter into a new contract with the same contractor to
30 perform the remaining work or improvement for an amount equal to or
31 less than the cost of the remaining work as was provided for in the
32 original contract without advertisement or bid. The provisions of this
33 chapter are exclusive and shall supersede all provisions and
34 regulations in conflict herewith.

35 (8) Whenever the department of transportation has contracted for
36 the construction of two or more ferry vessels, sixty days after
37 completion of all contract work on each ferry vessel, the department
38 must release and pay in full the amounts retained in connection with
39 the construction of the vessel subject to the provisions of RCW

1 60.28.020 and chapter 39.12 RCW(~~(:—PROVIDED, That)~~). However, the
2 department of transportation may at its discretion condition the
3 release of funds retained in connection with the completed ferry upon
4 the contractor delivering a good and sufficient bond with two or more
5 sureties, or with a surety company, in the amount of the retained funds
6 to be released to the contractor, conditioned that no taxes shall be
7 certified or claims filed for work on the ferry after a period of sixty
8 days following completion of the ferry; and if taxes are certified or
9 claims filed, recovery may be had on the bond by the department of
10 revenue and the materialmen and laborers filing claims.

11 (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 are not subject to subsections (1) through (9) of this
18 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.

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

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