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HOUSE BILL 2521

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Haigh, Armstrong, Miloscia, Nixon, Hunt, Shabro, McDermott, Moeller and Chase

Read first time 01/15/2004. Referred to Committee on State Government.

1 AN ACT Relating to requiring prime contractors to bond the  
2 subcontractor's portion of retainage upon request; and amending RCW  
3 60.28.011.

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

5 **Sec. 1.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to read  
6 as follows:

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

13 (2) Every person performing labor or furnishing supplies toward the  
14 completion of a public improvement contract shall have a lien upon  
15 moneys reserved by a public body under the provisions of a public  
16 improvement contract. However, the notice of the lien of the claimant  
17 shall be given within forty-five days of completion of the contract  
18 work, and in the manner provided in RCW 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) A contractor may submit a bond for all or any portion of the  
2 contract retainage in a form acceptable to the public body and from a  
3 bonding company meeting standards established by the public body. The  
4 public body shall accept a bond meeting these requirements unless the  
5 public body can demonstrate good cause for refusing to accept it.  
6 ~~((This))~~ At any time prior to final formal acceptance of the project,  
7 a subcontractor may request the contractor to submit a bond to the  
8 public owner for that portion of the contractor's retainage pertaining  
9 to the subcontractor in a form acceptable to the public body and from  
10 a bonding company meeting standards established by the public body.  
11 The contractor shall provide and the public body shall accept a bond  
12 meeting these requirements unless the public body can demonstrate good  
13 cause for refusing to accept it or the subcontractor refuses to pay the  
14 subcontractor's portion of the bond premium and to provide the  
15 contractor with a like bond. The contractor's bond and any proceeds  
16 therefrom are subject to all claims and liens and in the same manner  
17 and priority as set forth for retained percentages in this chapter.  
18 The public body shall release the bonded portion of the retained funds  
19 to the 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  
31 remaining work and accept as final the improvement at the stage of  
32 completion then attained and make payment in proportion to the amount  
33 of the work accomplished and in this case any amounts retained and  
34 accumulated under this section shall be held for a period of sixty days  
35 following the completion. In the event that the work is terminated  
36 before final completion as provided in this section, the public body  
37 may thereafter enter into a new contract with the same contractor to  
38 perform the remaining work or improvement for an amount equal to or

1 less than the cost of the remaining work as was provided for in the  
2 original contract without advertisement or bid. The provisions of this  
3 chapter are exclusive and shall supersede all provisions and  
4 regulations in conflict herewith.

5 (8) Whenever the department of transportation has contracted for  
6 the construction of two or more ferry vessels, sixty days after  
7 completion of all contract work on each ferry vessel, the department  
8 must release and pay in full the amounts retained in connection with  
9 the construction of the vessel subject to the provisions of RCW  
10 60.28.020 and chapter 39.12 RCW. However, the department of  
11 transportation may at its discretion condition the release of funds  
12 retained in connection with the completed ferry upon the contractor  
13 delivering a good and sufficient bond with two or more sureties, or  
14 with a surety company, in the amount of the retained funds to be  
15 released to the contractor, conditioned that no taxes shall be  
16 certified or claims filed for work on the ferry after a period of sixty  
17 days following completion of the ferry; and if taxes are certified or  
18 claims filed, recovery may be had on the bond by the department of  
19 revenue and the materialmen and laborers filing claims.

20 (9) Except as provided in subsection (1) of this section,  
21 reservation by a public body for any purpose from the moneys earned by  
22 a contractor by fulfilling its responsibilities under public  
23 improvement contracts is prohibited.

24 (10) Contracts on projects funded in whole or in part by farmers  
25 home administration and subject to farmers home administration  
26 regulations are not subject to subsections (1) through (9) of this  
27 section.

28 (11) This subsection applies only to a public body that has  
29 contracted for the construction of a facility using the general  
30 contractor/construction manager procedure, as defined under RCW  
31 39.10.061. If the work performed by a subcontractor on the project has  
32 been completed within the first half of the time provided in the  
33 general contractor/construction manager contract for completing the  
34 work, the public body may accept the completion of the subcontract.  
35 The public body must give public notice of this acceptance. After a  
36 forty-five day period for giving notice of liens, and compliance with  
37 the retainage release procedures in RCW 60.28.021, the public body may

1 release that portion of the retained funds associated with the  
2 subcontract. Claims against the retained funds after the forty-five  
3 day period are not valid.

4 (12) Unless the context clearly requires otherwise, the definitions  
5 in this subsection apply throughout this section.

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

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

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

15 (d) "Public improvement contract" means a contract for public  
16 improvements or work, other than for professional services, or a work  
17 order as defined in RCW 39.10.020.

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