
SUBSTITUTE HOUSE BILL 1384

State of Washington

62nd Legislature

2011 Regular Session

By House Transportation (originally sponsored by Representatives Moscoso, Lias, Clibborn, Billig, Ryu, Kenney, Stanford, and Reykdal; by request of Department of Transportation)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to public improvement contracts involving certain
2 federally funded transportation projects; reenacting and amending RCW
3 60.28.011; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that federal
6 regulations include requirements that pertain to contracts funded by
7 federal-aid highway funds. One such requirement is that states must
8 ensure that prime contractors pay subcontractors in full by no later
9 than thirty days after the subcontractor's work is satisfactorily
10 completed. One option for meeting this requirement is to decline to
11 hold retainage from prime contractors. The legislature also recognizes
12 that retainage is currently used to ensure that claims against the
13 contractor are resolved in a timely manner. The legislature intends
14 that the contract bond provided by sureties on behalf of general
15 contractors provides adequate security for claimants under the bond.

16 **Sec. 2.** RCW 60.28.011 and 2009 c 432 s 5 and 2009 c 219 s 6 are
17 each reenacted and amended to read as follows:

18 (1)(a) Except as provided in (b) of this subsection, public

1 improvement contracts shall provide, and public bodies shall reserve,
2 a contract retainage not to exceed five percent of the moneys earned by
3 the contractor as a trust fund for the protection and payment of:
4 ~~((a))~~ (i) The claims of any person arising under the contract; and
5 ~~((b))~~ (ii) the state with respect to taxes imposed pursuant to Titles
6 50, 51, and 82 RCW which may be due from such contractor.

7 (b) Public improvement contracts involving the construction,
8 alteration, repair, or improvement of any highway, road, or street
9 funded in whole or in part by federal transportation funds shall rely
10 upon the contract bond as referred to in chapter 39.08 RCW for the
11 protection and payment of: (i) The claims of any person or persons
12 arising under the contract to the extent such claims are provided for
13 in RCW 39.08.010; and (ii) the state with respect to taxes imposed
14 pursuant to Titles 50, 51, and 82 RCW which may be due. The contract
15 bond must remain in full force and effect until, at a minimum, all
16 claims filed in compliance with chapter 39.08 RCW are resolved.

17 (2) Every person performing labor or furnishing supplies toward the
18 completion of a public improvement contract shall have a lien upon
19 moneys reserved by a public body under the provisions of a public
20 improvement contract. However, the notice of the lien of the claimant
21 shall be given within forty-five days of completion of the contract
22 work, and in the manner provided in RCW 39.08.030.

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

26 (a) After completion of all contract work other than landscaping,
27 the contractor may request that the public body release and pay in full
28 the amounts retained during the performance of the contract, and sixty
29 days thereafter the public body must release and pay in full the
30 amounts retained (other than continuing retention of five percent of
31 the moneys earned for landscaping) subject to the provisions of
32 chapters 39.12 and 60.28 RCW.

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

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

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

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

6 (c) Placed in escrow with a bank or trust company by the public
7 body. When the moneys reserved are placed in escrow, the public body
8 shall issue a check representing the sum of the moneys reserved payable
9 to the bank or trust company and the contractor jointly. This check
10 shall be converted into bonds and securities chosen by the contractor
11 and approved by the public body and the bonds and securities shall be
12 held in escrow. Interest on the bonds and securities shall be paid to
13 the contractor as the interest accrues.

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

23 (6) A contractor may submit a bond for all or any portion of the
24 contract retainage in a form acceptable to the public body and from a
25 bonding company meeting standards established by the public body. The
26 public body shall accept a bond meeting these requirements unless the
27 public body can demonstrate good cause for refusing to accept it. This
28 bond and any proceeds therefrom are subject to all claims and liens and
29 in the same manner and priority as set forth for retained percentages
30 in this chapter. The public body shall release the bonded portion of
31 the retained funds to the contractor within thirty days of accepting
32 the bond from the contractor. Whenever a public body accepts a bond in
33 lieu of retained funds from a contractor, the contractor shall accept
34 like bonds from any subcontractors or suppliers from which the
35 contractor has retained funds. The contractor shall then release the
36 funds retained from the subcontractor or supplier to the subcontractor
37 or supplier within thirty days of accepting the bond from the
38 subcontractor or supplier.

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

18 (8) Whenever the department of transportation has contracted for
19 the construction of two or more ferry vessels, sixty days after
20 completion of all contract work on each ferry vessel, the department
21 must release and pay in full the amounts retained in connection with
22 the construction of the vessel subject to the provisions of RCW
23 60.28.021 and chapter 39.12 RCW. However, the department of
24 transportation may at its discretion condition the release of funds
25 retained in connection with the completed ferry upon the contractor
26 delivering a good and sufficient bond with two or more sureties, or
27 with a surety company, in the amount of the retained funds to be
28 released to the contractor, conditioned that no taxes shall be
29 certified or claims filed for work on the ferry after a period of sixty
30 days following completion of the ferry; and if taxes are certified or
31 claims filed, recovery may be had on the bond by the department of
32 revenue, the employment security department, the department of labor
33 and industries, and the material suppliers and laborers filing claims.

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

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

5 (11) This subsection applies only to a public body that has
6 contracted for the construction of a facility using the general
7 contractor/construction manager procedure, as defined under RCW
8 39.10.210. If the work performed by a subcontractor on the project has
9 been completed within the first half of the time provided in the
10 general contractor/construction manager contract for completing the
11 work, the public body may accept the completion of the subcontract.
12 The public body must give public notice of this acceptance. After a
13 forty-five day period for giving notice of liens, and compliance with
14 the retainage release procedures in RCW 60.28.021, the public body may
15 release that portion of the retained funds associated with the
16 subcontract. Claims against the retained funds after the forty-five
17 day period are not valid.

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

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

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

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

29 (d) "Public improvement contract" means a contract for public
30 improvements or work, other than for professional services, or a work
31 order as defined in RCW 39.10.210.

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