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**SUBSTITUTE SENATE BILL 6110**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Ericksen and Hobbs)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to retainage bonds on public contracts; and  
2 amending RCW 48.28.010 and 60.28.011.

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

4 **Sec. 1.** RCW 48.28.010 and 1947 c 79 s .28.01 are each amended to  
5 read as follows:

6 Whenever by law or by rule of any court, public official, or public  
7 body, any surety bond, recognizance, obligation, stipulation or  
8 undertaking is required or is permitted to be given, any such bond,  
9 recognizance, obligation, stipulation, or undertaking which is  
10 otherwise proper and the conditions of which are guaranteed by an  
11 authorized surety insurer, or by an unauthorized surety insurer as a  
12 surplus line pursuant to chapter 48.15 RCW of this code, shall be  
13 approved and accepted and shall be deemed to fulfill all requirements  
14 as to number of sureties, residence or status of sureties, and other  
15 similar requirements, and no justification by such surety shall be  
16 necessary. This section applies to any and all surety bonds executed,  
17 filed, posted, furnished, or otherwise given as security pursuant to  
18 any statute of this state or any law or ordinance of any public body.

1       **Sec. 2.** RCW 60.28.011 and 2013 c 113 s 1 are each amended to read  
2 as follows:

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

10       (b) Public improvement contracts funded in whole or in part by  
11 federal transportation funds must rely upon the contract bond as  
12 referred to in chapter 39.08 RCW for the protection and payment of:  
13 (i) The claims of any person or persons arising under the contract to  
14 the extent such claims are provided for in RCW 39.08.010; and (ii) the  
15 state with respect to taxes, increases, and penalties incurred on the  
16 public improvement project under Titles 50, 51, and 82 RCW which may be  
17 due. The contract bond must remain in full force and effect until, at  
18 a minimum, all claims filed in compliance with chapter 39.08 RCW are  
19 resolved.

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

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

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

36       (b) Sixty days after completion of all contract work the public  
37 body must release and pay in full the amounts retained during the

1 performance of the contract subject to the provisions of chapters 39.12  
2 and 60.28 RCW.

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

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

6 (b) Deposited by the public body in an interest bearing account in  
7 a bank, mutual savings bank, or savings and loan association. Interest  
8 on moneys reserved by a public body under the provision of a public  
9 improvement contract must be paid to the contractor;

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

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

27 (6) A contractor may submit a bond for all or any portion of the  
28 contract retainage in a form acceptable to the public body and from (~~a~~  
29 ~~bonding company meeting standards established by the public body~~) an  
30 authorized surety insurer with a financial strength rating from A.M.  
31 Best Co. of "A-" or higher. The public body must (~~accept a bond~~  
32 ~~meeting these requirements unless the public body can demonstrate good~~  
33 ~~cause for refusing to accept it~~) comply with the provisions of RCW  
34 48.28.010. This bond and any proceeds therefrom are subject to all  
35 claims and liens and in the same manner and priority as set forth for  
36 retained percentages in this chapter. The public body must release the  
37 bonded portion of the retained funds to the contractor within thirty  
38 days of accepting the bond from the contractor. Whenever a public body

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

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

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

1 the employment security department, the department of labor and  
2 industries, and the material suppliers and laborers filing claims.

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

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

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

24 (12) The definitions in this subsection apply throughout this  
25 section unless the context clearly requires otherwise.

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

28 (b) "Person" means a person or persons, mechanic, subcontractor, or  
29 materialperson who performs labor or provides materials for a public  
30 improvement contract, and any other person who supplies the person with  
31 provisions or supplies for the carrying on of a public improvement  
32 contract.

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

35 (d) "Public improvement contract" means a contract for public  
36 improvements or work, other than for professional services, or a work

1 order as defined in RCW 39.10.210.

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