
SENATE BILL 6110

State of Washington

63rd Legislature

2014 Regular Session

By Senators Ericksen and Hobbs

Read first time 01/15/14. Referred to Committee on Financial Institutions, Housing & Insurance.

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. The public body must (~~accept a bond~~
31 ~~meeting these requirements unless the public body can demonstrate good~~
32 ~~cause for refusing to accept it~~) comply with the provisions of RCW
33 48.28.010. This bond and any proceeds therefrom are subject to all
34 claims and liens and in the same manner and priority as set forth for
35 retained percentages in this chapter. The public body must release the
36 bonded portion of the retained funds to the contractor within thirty
37 days of accepting the bond from the contractor. Whenever a public body
38 accepts a bond in lieu of retained funds from a contractor, the

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

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

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

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

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

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

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

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

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

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

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

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