
SUBSTITUTE HOUSE BILL 1575

State of Washington 64th Legislature 2015 Regular Session

By House Capital Budget (originally sponsored by Representatives Buys, Dunshee, DeBolt, and Stanford)

READ FIRST TIME 02/13/15.

1 AN ACT Relating to retainage bonds on public contracts; 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 2013 c 113 s 1 are each amended to
5 read as follows:

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

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

1 until, at a minimum, all claims filed in compliance with chapter
2 39.08 RCW are resolved.

3 (2) Every person performing labor or furnishing supplies toward
4 the completion of a public improvement contract has a lien upon
5 moneys reserved by a public body under the provisions of a public
6 improvement contract. However, the notice of the lien of the claimant
7 must be given within forty-five days of completion of the contract
8 work, and in the manner provided in RCW 39.08.030.

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

12 (a) After completion of all contract work other than landscaping,
13 the contractor may request that the public body release and pay in
14 full the amounts retained during the performance of the contract, and
15 sixty days thereafter the public body must release and pay in full
16 the amounts retained (other than continuing retention of five percent
17 of the moneys earned for landscaping) subject to the provisions of
18 chapters 39.12 and 60.28 RCW.

19 (b) Sixty days after completion of all contract work the public
20 body must release and pay in full the amounts retained during the
21 performance of the contract subject to the provisions of chapters
22 39.12 and 60.28 RCW.

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

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

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

31 (c) Placed in escrow with a bank or trust company by the public
32 body. When the moneys reserved are placed in escrow, the public body
33 must issue a check representing the sum of the moneys reserved
34 payable to the bank or trust company and the contractor jointly. This
35 check must be converted into bonds and securities chosen by the
36 contractor and approved by the public body and the bonds and
37 securities must be held in escrow. Interest on the bonds and
38 securities must be paid to the contractor as the interest accrues.

39 (5) The contractor or subcontractor may withhold payment of not
40 more than five percent from the moneys earned by any subcontractor or

1 sub-subcontractor or supplier contracted with by the contractor to
2 provide labor, materials, or equipment to the public project.
3 Whenever the contractor or subcontractor reserves funds earned by a
4 subcontractor or sub-subcontractor or supplier, the contractor or
5 subcontractor must pay interest to the subcontractor or sub-
6 subcontractor or supplier at a rate equal to that received by the
7 contractor or subcontractor from reserved funds.

8 (6) A contractor may submit a bond for all or any portion of the
9 contract retainage in a form acceptable to the public body and from
10 (~~a bonding company meeting standards established by the public~~
11 ~~body~~) an authorized surety insurer. The public body may require that
12 the authorized surety have a minimum A.M. Best financial strength
13 rating so long as that minimum rating does not exceed A-. The public
14 body must (~~accept a bond meeting these requirements unless the~~
15 ~~public body can demonstrate good cause for refusing to accept it~~)
16 comply with the provisions of RCW 48.28.010. This bond and any
17 proceeds therefrom are subject to all claims and liens and in the
18 same manner and priority as set forth for retained percentages in
19 this chapter. The public body must release the bonded portion of the
20 retained funds to the contractor within thirty days of accepting the
21 bond from the contractor. Whenever a public body accepts a bond in
22 lieu of retained funds from a contractor, the contractor must accept
23 like bonds from any subcontractors or suppliers from which the
24 contractor has retained funds. The contractor must then release the
25 funds retained from the subcontractor or supplier to the
26 subcontractor or supplier within thirty days of accepting the bond
27 from the subcontractor or supplier.

28 (7) If the public body administering a contract, after a
29 substantial portion of the work has been completed, finds that an
30 unreasonable delay will occur in the completion of the remaining
31 portion of the contract for any reason not the result of a breach
32 thereof, it may, if the contractor agrees, delete from the contract
33 the remaining work and accept as final the improvement at the stage
34 of completion then attained and make payment in proportion to the
35 amount of the work accomplished and in this case any amounts retained
36 and accumulated under this section must be held for a period of sixty
37 days following the completion. In the event that the work is
38 terminated before final completion as provided in this section, the
39 public body may thereafter enter into a new contract with the same
40 contractor to perform the remaining work or improvement for an amount

1 equal to or less than the cost of the remaining work as was provided
2 for in the original contract without advertisement or bid. The
3 provisions of this chapter are exclusive and supersede all provisions
4 and 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 60.28.021 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 may be
16 certified or claims filed for work on the ferry after a period of
17 sixty days following completion of the ferry; and if taxes are
18 certified or claims filed, recovery may be had on the bond by the
19 department of revenue, the employment security department, the
20 department of labor and industries, and the material suppliers and
21 laborers filing claims.

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

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

30 (11) This subsection applies only to a public body that has
31 contracted for the construction of a facility using the general
32 contractor/construction manager procedure, as defined under RCW
33 39.10.210. If the work performed by a subcontractor on the project
34 has been completed within the first half of the time provided in the
35 general contractor/construction manager contract for completing the
36 work, the public body may accept the completion of the subcontract.
37 The public body must give public notice of this acceptance. After a
38 forty-five day period for giving notice of liens, and compliance with
39 the retainage release procedures in RCW 60.28.021, the public body
40 may release that portion of the retained funds associated with the

1 subcontract. Claims against the retained funds after the forty-five
2 day period are not valid.

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

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

8 (b) "Person" means a person or persons, mechanic, subcontractor,
9 or materialperson who performs labor or provides materials for a
10 public improvement contract, and any other person who supplies the
11 person with provisions or supplies for the carrying on of a public
12 improvement 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 39.10.210.

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