
ENGROSSED SUBSTITUTE HOUSE BILL 1538

State of Washington

65th Legislature

2017 Regular Session

By House Capital Budget (originally sponsored by Representatives Stambaugh, Doglio, Vick, Hayes, Sells, and Pike)

READ FIRST TIME 02/15/17.

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 2015 c 280 s 1 are each amended to
6 read as follows:

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

15 (b) Public improvement contracts funded in whole or in part by
16 federal transportation funds must rely upon the contract bond as
17 referred to in chapter 39.08 RCW for the protection and payment of:

18 (i) The claims of any person or persons arising under the contract to
19 the extent such claims are provided for in RCW 39.08.010; and (ii)
20 the state with respect to taxes, increases, and penalties incurred on
21 the public improvement project under Titles 50, 51, and 82 RCW which

1 may be due. The contract bond must remain in full force and effect
2 until, at a minimum, all claims filed in compliance with chapter
3 39.08 RCW are resolved.

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

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

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

20 (b) Sixty days after completion of all contract work the public
21 body must release and pay in full the amounts retained during the
22 performance of the contract subject to the provisions of chapter((§))
23 39.12 ((and ~~60.28~~)) RCW and this chapter.

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

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

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

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

1 (5) The contractor or subcontractor may withhold payment of not
2 more than five percent from the moneys earned by any subcontractor or
3 sub-subcontractor or supplier contracted with by the contractor to
4 provide labor, materials, or equipment to the public project.
5 Whenever the contractor or subcontractor reserves funds earned by a
6 subcontractor or sub-subcontractor or supplier, the contractor or
7 subcontractor must pay interest to the subcontractor or sub-
8 subcontractor or supplier at a rate equal to that received by the
9 contractor or subcontractor from reserved funds.

10 (6) A contractor may submit a bond for all or any portion of the
11 contract retainage in a form acceptable to the public body and from
12 an authorized surety insurer. The public body may require that the
13 authorized surety have a minimum A.M. Best financial strength rating
14 so long as that minimum rating does not exceed A-. The public body
15 must comply with the provisions of RCW 48.28.010. ((This)) At any
16 time prior to final formal acceptance of the project, a subcontractor
17 may request the contractor to submit a bond to the public owner for
18 that portion of the contractor's retainage pertaining to the
19 subcontractor in a form acceptable to the public body and from a
20 bonding company meeting standards established by the public body. The
21 contractor may withhold the subcontractor's portion of the bond
22 premium. Within thirty days of receipt of the request, the contractor
23 shall provide and the public body shall accept a bond meeting these
24 requirements unless the public body can demonstrate good cause for
25 refusing to accept it, the bond is not commercially available, or the
26 subcontractor refuses to pay the subcontractor's portion of the bond
27 premium and to provide the contractor with a like bond. The
28 contractor's bond and any proceeds therefrom are subject to all
29 claims and liens and in the same manner and priority as set forth for
30 retained percentages in this chapter. The public body must release
31 the bonded portion of the retained funds to the contractor within
32 thirty days of accepting the bond from the contractor. Whenever a
33 public body accepts a bond in lieu of retained funds from a
34 contractor, the contractor must accept like bonds from any
35 subcontractors or suppliers from which the contractor has retained
36 funds. The contractor must then release the funds retained from the
37 subcontractor or supplier to the subcontractor or supplier within
38 thirty days of accepting the bond from the subcontractor or supplier.

39 (7) If the public body administering a contract, after a
40 substantial portion of the work has been completed, finds that an

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

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

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

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

1 (11) This subsection applies only to a public body that has
2 contracted for the construction of a facility using the general
3 contractor/construction manager procedure, as defined under RCW
4 39.10.210. If the work performed by a subcontractor on the project
5 has been completed within the first half of the time provided in the
6 general contractor/construction manager contract for completing the
7 work, the public body may accept the completion of the subcontract.
8 The public body must give public notice of this acceptance. After a
9 forty-five day period for giving notice of liens, and compliance with
10 the retainage release procedures in RCW 60.28.021, the public body
11 may release that portion of the retained funds associated with the
12 subcontract. Claims against the retained funds after the forty-five
13 day period are not valid.

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

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

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

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

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

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