
SENATE BILL 5945

State of Washington 60th Legislature 2007 Regular Session

By Senators Kline, Jacobsen, Delvin and Hobbs

Read first time 02/08/2007. Referred to Committee on Labor,
Commerce, Research & Development.

1 AN ACT Relating to materialpersons; and amending RCW 28B.07.020,
2 39.04.155, 39.08.010, 39.08.030, 47.28.030, 60.28.010, 60.28.011,
3 60.28.020, 60.28.021, 85.28.130, and 85.28.140.

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

5 **Sec. 1.** RCW 28B.07.020 and 1985 c 370 s 47 are each amended to
6 read as follows:

7 As used in this chapter, the following words and terms shall have
8 the following meanings, unless the context otherwise requires:

9 (1) "Authority" means the Washington higher education facilities
10 authority created under RCW 28B.07.030 or any board, body, commission,
11 department or officer succeeding to the principal functions of the
12 authority or to whom the powers conferred upon the authority shall be
13 given by law.

14 (2) "Bonds" means bonds, notes, commercial paper, certificates of
15 indebtedness, or other evidences of indebtedness of the authority
16 issued under this chapter.

17 (3) "Bond resolution" means any resolution of the authority,
18 adopted under this chapter, authorizing the issuance and sale of bonds.

1 (4) "Higher education institution" means a private, nonprofit
2 educational institution, the main campus of which is permanently
3 situated in the state, which is open to residents of the state, which
4 neither restricts entry on racial or religious grounds, which provides
5 programs of education beyond high school leading at least to the
6 baccalaureate degree, and which is accredited by the Northwest
7 Association of Schools and Colleges or by an accrediting association
8 recognized by the higher education coordinating board.

9 (5) "Participant" means a higher education institution which, under
10 this chapter, undertakes the financing of a project or projects or
11 undertakes the refunding or refinancing of obligations, mortgages, or
12 advances previously incurred for a project or projects.

13 (6) "Project" means any land or any improvement, including, but not
14 limited to, buildings, structures, fixtures, utilities, machinery,
15 excavations, paving, and landscaping, and any interest in such land or
16 improvements, and any personal property pertaining or useful to such
17 land and improvements, which are necessary, useful, or convenient for
18 the operation of a higher education institution, including but not
19 limited to, the following: Dormitories or other multi-unit housing
20 facilities for students, faculty, officers, or employees; dining halls;
21 student unions; administration buildings; academic buildings;
22 libraries; laboratories; research facilities; computer facilities;
23 classrooms; athletic facilities; health care facilities; maintenance,
24 storage, or utility facilities; parking facilities; or any combination
25 thereof, or any other structures, facilities, or equipment so related.

26 (7) "Project cost" means any cost related to the acquisition,
27 construction, improvement, alteration, or rehabilitation by a
28 participant or the authority of any project and the financing of the
29 project through the authority, including, but not limited to, the
30 following costs paid or incurred: Costs of acquisition of land or
31 interests in land and any improvement; costs of contractors, builders,
32 laborers, (~~materialmen~~) materialpersons, and suppliers of tools and
33 equipment; costs of surety and performance bonds; fees and
34 disbursements of architects, surveyors, engineers, feasibility
35 consultants, accountants, attorneys, financial consultants, and other
36 professionals; interest on bonds issued by the authority during any
37 period of construction; principal of and interest on interim financing
38 of any project; debt service reserve funds; depreciation funds, costs

1 of the initial start-up operation of any project; fees for title
2 insurance, document recording, or filing; fees of trustees and the
3 authority; taxes and other governmental charges levied or assessed on
4 any project; and any other similar costs. Except as specifically set
5 forth in this definition, the term "project cost" does not include
6 books, fuel, supplies, and similar items which are required to be
7 treated as a current expense under generally accepted accounting
8 principles.

9 (8) "Trust indenture" means any agreement, trust indenture, or
10 other similar instrument by and between the authority and one or more
11 corporate trustees.

12 **Sec. 2.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read
13 as follows:

14 (1) This section provides uniform small works roster provisions to
15 award contracts for construction, building, renovation, remodeling,
16 alteration, repair, or improvement of real property that may be used by
17 state agencies and by any local government that is expressly authorized
18 to use these provisions. These provisions may be used in lieu of other
19 procedures to award contracts for such work with an estimated cost of
20 two hundred thousand dollars or less. The small works roster process
21 includes the limited public works process authorized under subsection
22 (3) of this section and any local government authorized to award
23 contracts using the small works roster process under this section may
24 award contracts using the limited public works process under subsection
25 (3) of this section.

26 (2)(a) A state agency or authorized local government may create a
27 single general small works roster, or may create a small works roster
28 for different specialties or categories of anticipated work. Where
29 applicable, small works rosters may make distinctions between
30 contractors based upon different geographic areas served by the
31 contractor. The small works roster or rosters shall consist of all
32 responsible contractors who have requested to be on the list, and where
33 required by law are properly licensed or registered to perform such
34 work in this state. A state agency or local government establishing a
35 small works roster or rosters may require eligible contractors desiring
36 to be placed on a roster or rosters to keep current records of any
37 applicable licenses, certifications, registrations, bonding, insurance,

1 or other appropriate matters on file with the state agency or local
2 government as a condition of being placed on a roster or rosters. At
3 least once a year, the state agency or local government shall publish
4 in a newspaper of general circulation within the jurisdiction a notice
5 of the existence of the roster or rosters and solicit the names of
6 contractors for such roster or rosters. In addition, responsible
7 contractors shall be added to an appropriate roster or rosters at any
8 time they submit a written request and necessary records. Master
9 contracts may be required to be signed that become effective when a
10 specific award is made using a small works roster.

11 (b) A state agency establishing a small works roster or rosters
12 shall adopt rules implementing this subsection. A local government
13 establishing a small works roster or rosters shall adopt an ordinance
14 or resolution implementing this subsection. Procedures included in
15 rules adopted by the department of general administration in
16 implementing this subsection must be included in any rules providing
17 for a small works roster or rosters that is adopted by another state
18 agency, if the authority for that state agency to engage in these
19 activities has been delegated to it by the department of general
20 administration under chapter 43.19 RCW. An interlocal contract or
21 agreement between two or more state agencies or local governments
22 establishing a small works roster or rosters to be used by the parties
23 to the agreement or contract must clearly identify the lead entity that
24 is responsible for implementing the provisions of this subsection.

25 (c) Procedures shall be established for securing telephone,
26 written, or electronic quotations from contractors on the appropriate
27 small works roster to assure that a competitive price is established
28 and to award contracts to the lowest responsible bidder, as defined in
29 RCW 43.19.1911. Invitations for quotations shall include an estimate
30 of the scope and nature of the work to be performed as well as
31 materials and equipment to be furnished. However, detailed plans and
32 specifications need not be included in the invitation. This subsection
33 does not eliminate other requirements for architectural or engineering
34 approvals as to quality and compliance with building codes. Quotations
35 may be invited from all appropriate contractors on the appropriate
36 small works roster. As an alternative, quotations may be invited from
37 at least five contractors on the appropriate small works roster who
38 have indicated the capability of performing the kind of work being

1 contracted, in a manner that will equitably distribute the opportunity
2 among the contractors on the appropriate roster. However, if the
3 estimated cost of the work is from one hundred thousand dollars to two
4 hundred thousand dollars, a state agency or local government, other
5 than a port district, that chooses to solicit bids from less than all
6 the appropriate contractors on the appropriate small works roster must
7 also notify the remaining contractors on the appropriate small works
8 roster that quotations on the work are being sought. The government
9 has the sole option of determining whether this notice to the remaining
10 contractors is made by: (i) Publishing notice in a legal newspaper in
11 general circulation in the area where the work is to be done; (ii)
12 mailing a notice to these contractors; or (iii) sending a notice to
13 these contractors by facsimile or other electronic means. For purposes
14 of this subsection (2)(c), "equitably distribute" means that a state
15 agency or local government soliciting bids may not favor certain
16 contractors on the appropriate small works roster over other
17 contractors on the appropriate small works roster who perform similar
18 services.

19 (d) A contract awarded from a small works roster under this section
20 need not be advertised.

21 (e) Immediately after an award is made, the bid quotations obtained
22 shall be recorded, open to public inspection, and available by
23 telephone inquiry.

24 (3) In lieu of awarding contracts under subsection (2) of this
25 section, a state agency or authorized local government may award a
26 contract for work, construction, alteration, repair, or improvement
27 (~~(project [projects])~~) projects estimated to cost less than thirty-five
28 thousand dollars using the limited public works process provided under
29 this subsection. Public works projects awarded under this subsection
30 are exempt from the other requirements of the small works roster
31 process provided under subsection (2) of this section and are exempt
32 from the requirement that contracts be awarded after advertisement as
33 provided under RCW 39.04.010.

34 For limited public works projects, a state agency or authorized
35 local government shall solicit electronic or written quotations from a
36 minimum of three contractors from the appropriate small works roster
37 and shall award the contract to the lowest responsible bidder as
38 defined under RCW 43.19.1911. After an award is made, the quotations

1 shall be open to public inspection and available by electronic request.
2 A state agency or authorized local government shall attempt to
3 distribute opportunities for limited public works projects equitably
4 among contractors willing to perform in the geographic area of the
5 work. A state agency or authorized local government shall maintain a
6 list of the contractors contacted and the contracts awarded during the
7 previous twenty-four months under the limited public works process,
8 including the name of the contractor, the contractor's registration
9 number, the amount of the contract, a brief description of the type of
10 work performed, and the date the contract was awarded. For limited
11 public works projects, a state agency or authorized local government
12 may waive the payment and performance bond requirements of chapter
13 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby
14 assuming the liability for the contractor's nonpayment of laborers,
15 mechanics, subcontractors, (~~materialmen~~) materialpersons, suppliers,
16 and taxes imposed under Title 82 RCW that may be due from the
17 contractor for the limited public works project, however the state
18 agency or authorized local government shall have the right of recovery
19 against the contractor for any payments made on the contractor's
20 behalf.

21 (4) The breaking of any project into units or accomplishing any
22 projects by phases is prohibited if it is done for the purpose of
23 avoiding the maximum dollar amount of a contract that may be let using
24 the small works roster process or limited public works process.

25 (5) As used in this section, "state agency" means the department of
26 general administration, the state parks and recreation commission, the
27 department of natural resources, the department of fish and wildlife,
28 the department of transportation, any institution of higher education
29 as defined under RCW 28B.10.016, and any other state agency delegated
30 authority by the department of general administration to engage in
31 construction, building, renovation, remodeling, alteration,
32 improvement, or repair activities.

33 **Sec. 3.** RCW 39.08.010 and 1989 c 145 s 1 are each amended to read
34 as follows:

35 Whenever any board, council, commission, trustees, or body acting
36 for the state or any county or municipality or any public body shall
37 contract with any person or corporation to do any work for the state,

1 county, or municipality, or other public body, city, town, or district,
2 such board, council, commission, trustees, or body shall require the
3 person or persons with whom such contract is made to make, execute, and
4 deliver to such board, council, commission, trustees, or body a good
5 and sufficient bond, with a surety company as surety, conditioned that
6 such person or persons shall faithfully perform all the provisions of
7 such contract and pay all laborers, mechanics, and subcontractors and
8 (~~materialmen~~) materialpersons, and all persons who supply such person
9 or persons, or subcontractors, with provisions and supplies for the
10 carrying on of such work, which bond in cases of cities and towns shall
11 be filed with the clerk or comptroller thereof, and any person or
12 persons performing such services or furnishing material to any
13 subcontractor shall have the same right under the provisions of such
14 bond as if such work, services or material was furnished to the
15 original contractor: PROVIDED, HOWEVER, That the provisions of RCW
16 39.08.010 through 39.08.030 shall not apply to any money loaned or
17 advanced to any such contractor, subcontractor or other person in the
18 performance of any such work: PROVIDED FURTHER, That on contracts of
19 twenty-five thousand dollars or less, at the option of the contractor
20 the respective public entity may, in lieu of the bond, retain fifty
21 percent of the contract amount for a period of thirty days after date
22 of final acceptance, or until receipt of all necessary releases from
23 the department of revenue and the department of labor and industries
24 and settlement of any liens filed under chapter 60.28 RCW, whichever is
25 later: PROVIDED FURTHER, That for contracts of one hundred thousand
26 dollars or less, the public entity may accept a full payment and
27 performance bond from an individual surety or sureties: AND PROVIDED
28 FURTHER, That the surety must agree to be bound by the laws of the
29 state of Washington and subjected to the jurisdiction of the state of
30 Washington.

31 **Sec. 4.** RCW 39.08.030 and 2003 c 301 s 4 are each amended to read
32 as follows:

33 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal
34 to the full contract price agreed to be paid for such work or
35 improvement, except under subsection (2) of this section, and shall be
36 to the state of Washington, except as otherwise provided in RCW
37 39.08.100, and except in cases of cities and towns, in which cases such

1 municipalities may by general ordinance fix and determine the amount of
2 such bond and to whom such bond shall run: PROVIDED, The same shall
3 not be for a less amount than twenty-five percent of the contract price
4 of any such improvement, and may designate that the same shall be
5 payable to such city, and not to the state of Washington, and all such
6 persons mentioned in RCW 39.08.010 shall have a right of action in his,
7 her, or their own name or names on such bond for work done by such
8 laborers or mechanics, and for materials furnished or provisions and
9 goods supplied and furnished in the prosecution of such work, or the
10 making of such improvements: PROVIDED, That such persons shall not
11 have any right of action on such bond for any sum whatever, unless
12 within thirty days from and after the completion of the contract with
13 an acceptance of the work by the affirmative action of the board,
14 council, commission, trustees, officer, or body acting for the state,
15 county or municipality, or other public body, city, town or district,
16 the laborer, mechanic or subcontractor, or ((~~materialman~~))
17 materialperson, or person claiming to have supplied materials,
18 provisions or goods for the prosecution of such work, or the making of
19 such improvement, shall present to and file with such board, council,
20 commission, trustees or body acting for the state, county or
21 municipality, or other public body, city, town or district, a notice in
22 writing in substance as follows:

23 To (here insert the name of the state, county or
24 municipality or other public body, city, town or district):
25 Notice is hereby given that the undersigned (here insert
26 the name of the laborer, mechanic or subcontractor, or
27 ((~~materialman~~)) materialperson, or person claiming to have
28 furnished labor, materials or provisions for or upon such
29 contract or work) has a claim in the sum of dollars
30 (here insert the amount) against the bond taken from
31 (here insert the name of the principal and surety or sureties
32 upon such bond) for the work of (here insert a brief
33 mention or description of the work concerning which said
34 bond was taken).
35 (here to be signed)

36 Such notice shall be signed by the person or corporation making the
37 claim or giving the notice, and said notice, after being presented and

1 filed, shall be a public record open to inspection by any person, and
2 in any suit or action brought against such surety or sureties by any
3 such person or corporation to recover for any of the items hereinbefore
4 specified, the claimant shall be entitled to recover in addition to all
5 other costs, attorney's fees in such sum as the court shall adjudge
6 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
7 allowed in any suit or action brought or instituted before the
8 expiration of thirty days following the date of filing of the notice
9 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
10 itself of the provisions of RCW 39.08.010 through 39.08.030,
11 notwithstanding any charter provisions in conflict herewith: AND
12 PROVIDED FURTHER, That any city or town may impose any other or further
13 conditions and obligations in such bond as may be deemed necessary for
14 its proper protection in the fulfillment of the terms of the contract
15 secured thereby, and not in conflict herewith.

16 (2) Under the job order contracting procedure described in RCW
17 39.10.130, bonds will be in an amount not less than the dollar value of
18 all open work orders.

19 **Sec. 5.** RCW 47.28.030 and 1999 c 15 s 1 are each amended to read
20 as follows:

21 A state highway shall be constructed, altered, repaired, or
22 improved, and improvements located on property acquired for right of
23 way purposes may be repaired or renovated pending the use of such right
24 of way for highway purposes, by contract or state forces. The work or
25 portions thereof may be done by state forces when the estimated costs
26 thereof (~~(is [are])~~) are less than fifty thousand dollars and effective
27 July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of
28 performance of such work would jeopardize a state highway or constitute
29 a danger to the traveling public, the work may be done by state forces
30 when the estimated cost thereof is less than eighty thousand dollars
31 and effective July 1, 2005, one hundred thousand dollars. When the
32 department of transportation determines to do the work by state forces,
33 it shall enter a statement upon its records to that effect, stating the
34 reasons therefor. To enable a larger number of small businesses, and
35 minority, and women contractors to effectively compete for department
36 of transportation contracts, the department may adopt rules providing
37 for bids and award of contracts for the performance of work, or

1 furnishing equipment, materials, supplies, or operating services
2 whenever any work is to be performed and the engineer's estimate
3 indicates the cost of the work would not exceed eighty thousand dollars
4 and effective July 1, 2005, one hundred thousand dollars. The rules
5 adopted under this section:

6 (1) Shall provide for competitive bids to the extent that
7 competitive sources are available except when delay of performance
8 would jeopardize life or property or inconvenience the traveling
9 public; and

10 (2) Need not require the furnishing of a bid deposit nor a
11 performance bond, but if a performance bond is not required then
12 progress payments to the contractor may be required to be made based on
13 submittal of paid invoices to substantiate proof that disbursements
14 have been made to laborers, (~~materialmen~~) materialpersons, mechanics,
15 and subcontractors from the previous partial payment; and

16 (3) May establish prequalification standards and procedures as an
17 alternative to those set forth in RCW 47.28.070, but the
18 prequalification standards and procedures under RCW 47.28.070 shall
19 always be sufficient.

20 The department of transportation shall comply with such goals and
21 rules as may be adopted by the office of minority and women's business
22 enterprises to implement chapter 39.19 RCW with respect to contracts
23 entered into under this chapter. The department may adopt such rules
24 as may be necessary to comply with the rules adopted by the office of
25 minority and women's business enterprises under chapter 39.19 RCW.

26 **Sec. 6.** RCW 60.28.010 and 1986 c 181 s 6 are each amended to read
27 as follows:

28 (1) Contracts for public improvements or work, other than for
29 professional services, by the state, or any county, city, town,
30 district, board, or other public body, herein referred to as "public
31 body", shall provide, and there shall be reserved by the public body
32 from the moneys earned by the contractor on estimates during the
33 progress of the improvement or work, a sum not to exceed five percent,
34 said sum to be retained by the state, county, city, town, district,
35 board, or other public body, as a trust fund for the protection and
36 payment of any person or persons, mechanic, subcontractor or
37 (~~materialman~~) materialperson who shall perform any labor upon such

1 contract or the doing of said work, and all persons who shall supply
2 such person or persons or subcontractors with provisions and supplies
3 for the carrying on of such work, and the state with respect to taxes
4 imposed pursuant to Title 82 RCW which may be due from such contractor.
5 Every person performing labor or furnishing supplies toward the
6 completion of said improvement or work shall have a lien upon said
7 moneys so reserved: PROVIDED, That such notice of the lien of such
8 claimant shall be given in the manner and within the time provided in
9 RCW 39.08.030 as now existing and in accordance with any amendments
10 that may hereafter be made thereto: PROVIDED FURTHER, That the board,
11 council, commission, trustees, officer or body acting for the state,
12 county or municipality or other public body; (a) at any time after
13 fifty percent of the original contract work has been completed, if it
14 finds that satisfactory progress is being made, may make any of the
15 partial payments which would otherwise be subsequently made in full;
16 but in no event shall the amount to be retained be reduced to less than
17 five percent of the amount of the moneys earned by the contractor:
18 PROVIDED, That the contractor may request that retainage be reduced to
19 one hundred percent of the value of the work remaining on the project;
20 and (b) thirty days after completion and acceptance of all contract
21 work other than landscaping, may release and pay in full the amounts
22 retained during the performance of the contract (other than continuing
23 retention of five percent of the moneys earned for landscaping) subject
24 to the provisions of RCW 60.28.020.

25 (2) The moneys reserved under the provisions of subsection (1) of
26 this section, at the option of the contractor, shall be:

27 (a) Retained in a fund by the public body until thirty days
28 following the final acceptance of said improvement or work as
29 completed;

30 (b) Deposited by the public body in an interest bearing account in
31 a bank, mutual savings bank, or savings and loan association, not
32 subject to withdrawal until after the final acceptance of said
33 improvement or work as completed, or until agreed to by both parties:
34 PROVIDED, That interest on such account shall be paid to the
35 contractor;

36 (c) Placed in escrow with a bank or trust company by the public
37 body until thirty days following the final acceptance of said
38 improvement or work as completed. When the moneys reserved are to be

1 placed in escrow, the public body shall issue a check representing the
2 sum of the moneys reserved payable to the bank or trust company and the
3 contractor jointly. Such check shall be converted into bonds and
4 securities chosen by the contractor and approved by the public body and
5 such bonds and securities shall be held in escrow. Interest on such
6 bonds and securities shall be paid to the contractor as the said
7 interest accrues.

8 (3) The contractor or subcontractor may withhold payment of not
9 more than five percent from the moneys earned by any subcontractor or
10 sub-subcontractor or supplier contracted with by the contractor to
11 provide labor, materials, or equipment to the public project. Whenever
12 the contractor or subcontractor reserves funds earned by a
13 subcontractor or sub-subcontractor or supplier, the contractor or
14 subcontractor shall pay interest to the subcontractor or sub-
15 subcontractor or supplier at a rate equal to that received by the
16 contractor or subcontractor from reserved funds.

17 (4) With the consent of the public body the contractor may submit
18 a bond for all or any portion of the amount of funds retained by the
19 public body in a form acceptable to the public body. Such bond and any
20 proceeds therefrom shall be made subject to all claims and liens and in
21 the same manner and priority as set forth for retained percentages in
22 this chapter. The public body shall release the bonded portion of the
23 retained funds to the contractor within thirty days of accepting the
24 bond from the contractor. Whenever a public body accepts a bond in
25 lieu of retained funds from a contractor, the contractor shall accept
26 like bonds from any subcontractors or suppliers from which the
27 contractor has retained funds. The contractor shall then release the
28 funds retained from the subcontractor or supplier to the subcontractor
29 or supplier within thirty days of accepting the bond from the
30 subcontractor or supplier.

31 (5) If the public body administering a contract, after a
32 substantial portion of the work has been completed, finds that an
33 unreasonable delay will occur in the completion of the remaining
34 portion of the contract for any reason not the result of a breach
35 thereof, it may, if the contractor agrees, delete from the contract the
36 remaining work and accept as final the improvement at the stage of
37 completion then attained and make payment in proportion to the amount
38 of the work accomplished and in such case any amounts retained and

1 accumulated under this section shall be held for a period of thirty
2 days following such acceptance. In the event that the work shall have
3 been terminated before final completion as provided in this section,
4 the public body may thereafter enter into a new contract with the same
5 contractor to perform the remaining work or improvement for an amount
6 equal to or less than the cost of the remaining work as was provided
7 for in the original contract without advertisement or bid. The
8 provisions of this chapter 60.28 RCW shall be deemed exclusive and
9 shall supersede all provisions and regulations in conflict herewith.

10 (6) Whenever the department of transportation has contracted for
11 the construction of two or more ferry vessels, thirty days after
12 completion and final acceptance of each ferry vessel, the department
13 may release and pay in full the amounts retained in connection with the
14 construction of such vessel subject to the provisions of RCW 60.28.020:
15 PROVIDED, That the department of transportation may at its discretion
16 condition the release of funds retained in connection with the
17 completed ferry upon the contractor delivering a good and sufficient
18 bond with two or more sureties, or with a surety company, in the amount
19 of the retained funds to be released to the contractor, conditioned
20 that no taxes shall be certified or claims filed for work on such ferry
21 after a period of thirty days following final acceptance of such ferry;
22 and if such taxes are certified or claims filed, recovery may be had on
23 such bond by the department of revenue and the ~~((materialmen))~~
24 materialpersons and laborers filing claims.

25 (7) Contracts on projects funded in whole or in part by farmers
26 home administration and subject to farmers home administration
27 regulations shall not be subject to subsections (1) through (6) of this
28 section.

29 **Sec. 7.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to read
30 as follows:

31 (1) Public improvement contracts shall provide, and public bodies
32 shall reserve, a contract retainage not to exceed five percent of the
33 moneys earned by the contractor as a trust fund for the protection and
34 payment of: (a) The claims of any person arising under the contract;
35 and (b) the state with respect to taxes imposed pursuant to Title 82
36 RCW which may be due from such contractor.

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

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

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

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

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

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

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

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

36 (5) The contractor or subcontractor may withhold payment of not
37 more than five percent from the moneys earned by any subcontractor or
38 sub-subcontractor or supplier contracted with by the contractor to

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

7 (6) A contractor may submit a bond for all or any portion of the
8 contract retainage in a form acceptable to the public body and from a
9 bonding company meeting standards established by the public body. The
10 public body shall accept a bond meeting these requirements unless the
11 public body can demonstrate good cause for refusing to accept it. This
12 bond and any proceeds therefrom are subject to all claims and liens and
13 in the same manner and priority as set forth for retained percentages
14 in this chapter. The public body shall release the bonded portion of
15 the retained funds to the contractor within thirty days of accepting
16 the bond from the contractor. Whenever a public body accepts a bond in
17 lieu of retained funds from a contractor, the contractor shall accept
18 like bonds from any subcontractors or suppliers from which the
19 contractor has retained funds. The contractor shall then release the
20 funds retained from the subcontractor or supplier to the subcontractor
21 or supplier within thirty days of accepting the bond from the
22 subcontractor or supplier.

23 (7) If the public body administering a contract, after a
24 substantial portion of the work has been completed, finds that an
25 unreasonable delay will occur in the completion of the remaining
26 portion of the contract for any reason not the result of a breach
27 thereof, it may, if the contractor agrees, delete from the contract the
28 remaining work and accept as final the improvement at the stage of
29 completion then attained and make payment in proportion to the amount
30 of the work accomplished and in this case any amounts retained and
31 accumulated under this section shall be held for a period of sixty days
32 following the completion. In the event that the work is terminated
33 before final completion as provided in this section, the public body
34 may thereafter enter into a new contract with the same contractor to
35 perform the remaining work or improvement for an amount equal to or
36 less than the cost of the remaining work as was provided for in the
37 original contract without advertisement or bid. The provisions of this

1 chapter are exclusive and shall supersede all provisions and
2 regulations in conflict herewith.

3 (8) Whenever the department of transportation has contracted for
4 the construction of two or more ferry vessels, sixty days after
5 completion of all contract work on each ferry vessel, the department
6 must release and pay in full the amounts retained in connection with
7 the construction of the vessel subject to the provisions of RCW
8 60.28.020 and chapter 39.12 RCW. However, the department of
9 transportation may at its discretion condition the release of funds
10 retained in connection with the completed ferry upon the contractor
11 delivering a good and sufficient bond with two or more sureties, or
12 with a surety company, in the amount of the retained funds to be
13 released to the contractor, conditioned that no taxes shall be
14 certified or claims filed for work on the ferry after a period of sixty
15 days following completion of the ferry; and if taxes are certified or
16 claims filed, recovery may be had on the bond by the department of
17 revenue and the ((materialmen)) materialpersons and laborers filing
18 claims.

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

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

27 (11) This subsection applies only to a public body that has
28 contracted for the construction of a facility using the general
29 contractor/construction manager procedure, as defined under RCW
30 39.10.061. If the work performed by a subcontractor on the project has
31 been completed within the first half of the time provided in the
32 general contractor/construction manager contract for completing the
33 work, the public body may accept the completion of the subcontract.
34 The public body must give public notice of this acceptance. After a
35 forty-five day period for giving notice of liens, and compliance with
36 the retainage release procedures in RCW 60.28.021, the public body may
37 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) Unless the context clearly requires otherwise, the definitions
4 in this subsection apply throughout this section.

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

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

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

14 (d) "Public improvement contract" means a contract for public
15 improvements or work, other than for professional services, or a work
16 order as defined in RCW 39.10.020.

17 **Sec. 8.** RCW 60.28.020 and 1975 1st ex.s. c 104 s 2 are each
18 amended to read as follows:

19 After the expiration of the thirty day period, and after receipt of
20 the department of revenue's certificate, and the public body is
21 satisfied that the taxes certified as due or to become due by the
22 department of revenue are discharged, and the claims of (~~materialmen~~)
23 materialpersons and laborers who have filed their claims, together with
24 a sum sufficient to defray the cost of foreclosing the liens of such
25 claims, and to pay attorneys' fees, have been paid, the public body
26 shall pay to the contractor the fund retained by it or release to the
27 contractor the securities and bonds held in escrow.

28 If such taxes have not been discharged or the claims, expenses, and
29 fees have not been paid, the public body shall either retain in its
30 fund, or in an interest bearing account, or retain in escrow, at the
31 option of the contractor, an amount equal to such unpaid taxes and
32 unpaid claims together with a sum sufficient to defray the costs and
33 attorney fees incurred in foreclosing the lien of such claims, and
34 shall pay, or release from escrow, the remainder to the contractor.

35 **Sec. 9.** RCW 60.28.021 and 1992 c 223 s 3 are each amended to read
36 as follows:

1 After the expiration of the forty-five day period for giving notice
2 of lien provided in RCW 60.28.011(2), and after receipt of the
3 department of revenue's certificate, and the public body is satisfied
4 that the taxes certified as due or to become due by the department of
5 revenue are discharged, and the claims of ((~~materialmen~~))
6 materialpersons and laborers who have filed their claims, together with
7 a sum sufficient to defray the cost of foreclosing the liens of such
8 claims, and to pay attorneys' fees, have been paid, the public body may
9 withhold from the remaining retained amounts for claims the public body
10 may have against the contractor and shall pay the balance, if any, to
11 the contractor the fund retained by it or release to the contractor the
12 securities and bonds held in escrow.

13 If such taxes have not been discharged or the claims, expenses, and
14 fees have not been paid, the public body shall either retain in its
15 fund, or in an interest bearing account, or retain in escrow, at the
16 option of the contractor, an amount equal to such unpaid taxes and
17 unpaid claims together with a sum sufficient to defray the costs and
18 attorney fees incurred in foreclosing the lien of such claims, and
19 shall pay, or release from escrow, the remainder to the contractor.

20 **Sec. 10.** RCW 85.28.130 and Code 1881 s 2517 are each amended to
21 read as follows:

22 Persons owning or desiring to improve contiguous tracts of tide
23 marsh or swampy lands exposed to the overflow of the tide and capable
24 of being made dry, may separate their respective tracts by a dike or
25 ditch, which shall make and designate their common boundary. In all
26 such cases said dike or ditch shall be constructed at the equal cost
27 and expense of the respective parties, and either party failing to pay
28 his or her contributive share of such expense shall be liable to the
29 party constructing the dike or ditch for such contributive share, or so
30 much thereof as may remain due and unpaid, to be recovered in a civil
31 action in a court of competent jurisdiction and the party constructing
32 such dike shall also be entitled to a lien upon the tract of the party
33 failing to pay his or her contributive share for the construction of
34 said dike, or so much thereof as shall be due, which lien shall be
35 secured and enforced as liens of ((~~materialmen~~)) materialpersons and
36 mechanics are now by law enforced.

1 **Sec. 11.** RCW 85.28.140 and Code 1881 s 2518 are each amended to
2 read as follows:

3 Any person or persons who may hereafter take a tract of tide land
4 or marsh and shall desire to adopt as his or her boundary line any dike
5 or ditch heretofore constructed upon and entirely within the boundary
6 line of a neighboring contiguous tract he or she may join on to said
7 tract and adopt said dike as his or her boundary by paying to the owner
8 of the tract upon which said dike is constructed one-half of the cost
9 and expense of the construction thereof, and any person so adopting the
10 dike or ditch of another without contributing his or her half share of
11 the cost or expense thereof shall be liable for his or her said half
12 share, which may be recovered in a civil action in any court of
13 competent jurisdiction, or the owner of the dike or ditch so used may
14 secure a lien upon the tract of land bounded by said dike for the
15 amount due for the use of said dike in accordance with the provisions
16 of the law securing a lien to ((~~materialmen~~)) materialpersons and
17 mechanics: PROVIDED ALWAYS, That when such dike has become the common
18 boundary ((~~of two adjacent tracts, it shall be and remain the common~~
19 ~~boundary~~)) of two adjacent tracts, it shall be and remain the common
20 boundary and the persons owning the said tracts shall be mutually
21 liable for the expense of keeping it in repair, share and share alike.

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