
HOUSE BILL 2535

State of Washington 56th Legislature 2000 Regular Session

By Representatives Miloscia, D. Schmidt, Ogden, Veloria and Haigh

Read first time 01/17/2000. Referred to Committee on State Government.

1 AN ACT Relating to payment of retained percentages on public
2 improvement contracts using the general contractor/construction manager
3 method; and amending RCW 60.28.011.

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

5 **Sec. 1.** RCW 60.28.011 and 1994 c 101 s 1 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

30 (5) The contractor or subcontractor may withhold payment of not
31 more than five percent from the moneys earned by any subcontractor or
32 sub-subcontractor or supplier contracted with by the contractor to
33 provide labor, materials, or equipment to the public project. Whenever
34 the contractor or subcontractor reserves funds earned by a
35 subcontractor or sub-subcontractor or supplier, the contractor or
36 subcontractor shall pay interest to the subcontractor or sub-
37 subcontractor or supplier at a rate equal to that received by the
38 contractor or subcontractor from reserved funds.

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

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

34 (8) Whenever the department of transportation has contracted for
35 the construction of two or more ferry vessels, sixty days after
36 completion of all contract work on each ferry vessel, the department
37 must release and pay in full the amounts retained in connection with
38 the construction of the vessel subject to the provisions of RCW
39 60.28.020 and chapter 39.12 RCW. However, the department of

1 transportation may at its discretion condition the release of funds
2 retained in connection with the completed ferry upon the contractor
3 delivering a good and sufficient bond with two or more sureties, or
4 with a surety company, in the amount of the retained funds to be
5 released to the contractor, conditioned that no taxes shall be
6 certified or claims filed for work on the ferry after a period of sixty
7 days following completion of the ferry; and if taxes are certified or
8 claims filed, recovery may be had on the bond by the department of
9 revenue and the materialmen and laborers filing claims.

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

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

18 (11) This subsection applies only to a public body that has
19 contracted for the construction of a facility using the general
20 contractor/construction manager procedure, as defined under RCW
21 39.10.060. If the work performed by a subcontractor on the project has
22 been completed within the first half of the time provided in the
23 general contractor/construction manager contract for completing the
24 work, the public body may accept the completion of the subcontract.
25 The public body must give public notice of this acceptance. After a
26 forty-five day period for giving notice of liens, and compliance with
27 the retainage release procedures in RCW 60.28.021, the public body may
28 release that portion of the retained funds associated with the
29 subcontract. Claims against the retained funds after the forty-five
30 day period are not valid.

31 (12) Unless the context clearly requires otherwise, the definitions
32 in this subsection apply throughout this section.

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

35 (b) "Person" means a person or persons, mechanic, subcontractor, or
36 materialperson who performs labor or provides materials for a public
37 improvement contract, and any other person who supplies the person with
38 provisions or supplies for the carrying on of a public improvement
39 contract.

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

3 (d) "Public improvement contract" means a contract for public
4 improvements or work, other than for professional services.

--- END ---