

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1420

Chapter 113, Laws of 2013

63rd Legislature
2013 Regular Session

TRANSPORTATION IMPROVEMENT PROJECTS--PUBLIC CONTRACTS

EFFECTIVE DATE: 07/28/13 - Except section 4, which becomes
effective 06/30/16

Passed by the House March 9, 2013
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2013
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 1, 2013, 2:17 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1420** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 1, 2013

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1420

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Finance (originally sponsored by Representatives Lias, Orcutt, Clibborn, and Fey)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to public contracts for transportation improvement
2 projects; amending RCW 60.28.011, 39.08.030, 39.08.030, 39.12.040,
3 47.04.082, and 47.28.140; reenacting and amending RCW 39.08.010; adding
4 a new section to chapter 47.28 RCW; providing an effective date; and
5 providing an expiration date.

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

7 **Sec. 1.** RCW 60.28.011 and 2011 c 231 s 2 are each amended to read
8 as follows:

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

17 (b) Public improvement contracts ~~((involving the construction,~~
18 ~~alteration, repair, or improvement of any highway, road, or street))~~
19 funded in whole or in part by federal transportation funds ~~((shall))~~

1 must rely upon the contract bond as referred to in chapter 39.08 RCW
2 for the protection and payment of: (i) The claims of any person or
3 persons arising under the contract to the extent such claims are
4 provided for in RCW 39.08.010; and (ii) the state with respect to taxes
5 (~~imposed pursuant to~~), increases, and penalties incurred on the
6 public improvement project under Titles 50, 51, and 82 RCW which may be
7 due. The contract bond must remain in full force and effect until, at
8 a minimum, all claims filed in compliance with chapter 39.08 RCW are
9 resolved.

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

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

19 (a) After completion of all contract work other than landscaping,
20 the contractor may request that the public body release and pay in full
21 the amounts retained during the performance of the contract, and sixty
22 days thereafter the public body must release and pay in full the
23 amounts retained (other than continuing retention of five percent of
24 the moneys earned for landscaping) subject to the provisions of
25 chapters 39.12 and 60.28 RCW.

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

30 (4) The moneys reserved by a public body under the provisions of a
31 public improvement contract, at the option of the contractor, (~~shall~~)
32 must be:

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

34 (b) Deposited by the public body in an interest bearing account in
35 a bank, mutual savings bank, or savings and loan association. Interest
36 on moneys reserved by a public body under the provision of a public
37 improvement contract (~~shall~~) must be paid to the contractor;

1 (c) Placed in escrow with a bank or trust company by the public
2 body. When the moneys reserved are placed in escrow, the public body
3 (~~shall~~) must issue a check representing the sum of the moneys
4 reserved payable to the bank or trust company and the contractor
5 jointly. This check (~~shall~~) must be converted into bonds and
6 securities chosen by the contractor and approved by the public body and
7 the bonds and securities (~~shall~~) must be held in escrow. Interest on
8 the bonds and securities (~~shall~~) must be paid to the contractor as
9 the interest accrues.

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

19 (6) A contractor may submit a bond for all or any portion of the
20 contract retainage in a form acceptable to the public body and from a
21 bonding company meeting standards established by the public body. The
22 public body (~~shall~~) must accept a bond meeting these requirements
23 unless the public body can demonstrate good cause for refusing to
24 accept it. This bond and any proceeds therefrom are subject to all
25 claims and liens and in the same manner and priority as set forth for
26 retained percentages in this chapter. The public body (~~shall~~) must
27 release the bonded portion of the retained funds to the contractor
28 within thirty days of accepting the bond from the contractor. Whenever
29 a public body accepts a bond in lieu of retained funds from a
30 contractor, the contractor (~~shall~~) must accept like bonds from any
31 subcontractors or suppliers from which the contractor has retained
32 funds. The contractor (~~shall~~) must then release the funds retained
33 from the subcontractor or supplier to the subcontractor or supplier
34 within thirty days of accepting the bond from the subcontractor or
35 supplier.

36 (7) If the public body administering a contract, after a
37 substantial portion of the work has been completed, finds that an
38 unreasonable delay will occur in the completion of the remaining

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

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

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

35 (10) Contracts on projects funded in whole or in part by farmers
36 home administration and subject to farmers home administration
37 regulations are not subject to subsections (1) through (9) of this
38 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 has
5 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 may
11 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) (~~Unless the context clearly requires otherwise,~~) The
15 definitions in this subsection apply throughout this section unless the
16 context clearly requires otherwise.

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

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

29 **Sec. 2.** RCW 39.08.010 and 2007 c 218 s 88 and 2007 c 210 s 3 are
30 each reenacted and amended to read as follows:

31 (1)(a) Whenever any board, council, commission, trustees, or body
32 acting for the state or any county or municipality or any public body
33 (~~shall~~) must contract with any person or corporation to do any work
34 for the state, county, or municipality, or other public body, city,
35 town, or district, such board, council, commission, trustees, or body
36 (~~shall~~) must require the person or persons with whom such contract is

1 made to make, execute, and deliver to such board, council, commission,
2 trustees, or body a good and sufficient bond, with a surety company as
3 surety, conditioned that such person or persons (~~shall~~) must:

4 (i) Faithfully perform all the provisions of such contract (~~and~~);

5 (ii) Pay all laborers, mechanics, and subcontractors and material
6 suppliers, and all persons who supply such person or persons, or
7 subcontractors, with provisions and supplies for the carrying on of
8 such work(~~, which~~); and

9 (iii) Pay the taxes, increases, and penalties incurred on the
10 project under Titles 50, 51, and 82 RCW on: (A) Projects referred to
11 in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is
12 conditioned on the payment of such taxes, increases, and penalties.

13 (b) The bond, in cases of cities and towns, (~~shall~~) must be filed
14 with the clerk or comptroller thereof, and any person or persons
15 performing such services or furnishing material to any subcontractor
16 (~~shall have~~) has the same right under the provisions of such bond as
17 if such work, services, or material was furnished to the original
18 contractor(~~:- PROVIDED, HOWEVER, That~~)).

19 (2) The provisions of RCW 39.08.010 through 39.08.030 (~~shall~~) do
20 not apply to any money loaned or advanced to any such contractor,
21 subcontractor, or other person in the performance of any such work(~~:-~~
22 PROVIDED FURTHER, That)).

23 (3) On contracts of thirty-five thousand dollars or less, at the
24 option of the contractor the respective public entity may, in lieu of
25 the bond, retain fifty percent of the contract amount for a period of
26 thirty days after date of final acceptance, or until receipt of all
27 necessary releases from the department of revenue, the employment
28 security department, and the department of labor and industries and
29 settlement of any liens filed under chapter 60.28 RCW, whichever is
30 later(~~:- PROVIDED FURTHER, That~~)).

31 (4) For contracts of one hundred thousand dollars or less, the
32 public entity may accept a full payment and performance bond from an
33 individual surety or sureties(~~:- AND PROVIDED FURTHER, That~~)).

34 (5) The surety must agree to be bound by the laws of the state of
35 Washington and subjected to the jurisdiction of the state of
36 Washington.

1 **Sec. 3.** RCW 39.08.030 and 2009 c 473 s 1 are each amended to read
2 as follows:

3 (1)(a) The bond mentioned in RCW 39.08.010 (~~shall~~) must be in an
4 amount equal to the full contract price agreed to be paid for such work
5 or improvement, except under subsections (2) and (3) of this section,
6 and (~~shall~~) must be to the state of Washington, except as otherwise
7 provided in RCW 39.08.100, and except in cases of cities and towns, in
8 which cases such municipalities may by general ordinance fix and
9 determine the amount of such bond and to whom such bond (~~shall run~~
10 ~~PROVIDED,~~) runs. However, the same (~~shall~~) may not be for a less
11 amount than twenty-five percent of the contract price of any such
12 improvement, and may designate that the same (~~shall be~~) is payable to
13 such city, and not to the state of Washington, and all such persons
14 mentioned in RCW 39.08.010 (~~shall~~) have a right of action in his,
15 her, or their own name or names on such bond for work done by such
16 laborers or mechanics, and for materials furnished or provisions and
17 goods supplied and furnished in the prosecution of such work, or the
18 making of such improvements, and the state has a right of action for
19 the collection of taxes, increases, and penalties specified in RCW
20 39.08.010: PROVIDED, That, except for the state with respect to claims
21 for taxes, increases, and penalties specified in RCW 39.08.010, such
22 persons (~~shall~~) do not have any right of action on such bond for any
23 sum whatever, unless within thirty days from and after the completion
24 of the contract with an acceptance of the work by the affirmative
25 action of the board, council, commission, trustees, officer, or body
26 acting for the state, county or municipality, or other public body,
27 city, town or district, the laborer, mechanic or subcontractor, or
28 material supplier, or person claiming to have supplied materials,
29 provisions or goods for the prosecution of such work, or the making of
30 such improvement, (~~shall~~) must present to and file with such board,
31 council, commission, trustees or body acting for the state, county or
32 municipality, or other public body, city, town or district, a notice in
33 writing in substance as follows:

34 To (here insert the name of the state, county or
35 municipality or other public body, city, town or district):

1 Notice is hereby given that the undersigned (here insert
2 the name of the laborer, mechanic or subcontractor, or
3 material supplier, or person claiming to have furnished
4 labor, materials or provisions for or upon such contract or
5 work) has a claim in the sum ofdollars (here insert
6 the amount) against the bond taken from(here insert
7 the name of the principal and surety or sureties upon such
8 bond) for the work of(here insert a brief mention or
9 description of the work concerning which said bond was
10 taken).

11 (here to be signed)

12 (b) Such notice (~~shall~~) must be signed by the person or
13 corporation making the claim or giving the notice, and (~~said~~) the
14 notice, after being presented and filed, (~~shall-be~~) is a public
15 record open to inspection by any person, and in any suit or action
16 brought against such surety or sureties by any such person or
17 corporation to recover for any of the items (~~hereinbefore~~) specified
18 in this section, the claimant (~~shall-be~~) is entitled to recover in
19 addition to all other costs, attorney's fees in such sum as the court
20 (~~shall~~) adjudges reasonable(~~:- PROVIDED, - HOWEVER, - That - no~~),
21 However, attorney's fees (~~shall-be~~) are not allowed in any suit or
22 action brought or instituted before the expiration of thirty days
23 following the date of filing of the notice (~~hereinbefore-mentioned-~~
24 ~~PROVIDED-FURTHER, -That~~) as provided in this section. However, any
25 city may avail itself of the provisions of RCW 39.08.010 through
26 39.08.030, notwithstanding any charter provisions in conflict
27 (~~herewith: -AND PROVIDED FURTHER, That~~) with this section. Moreover,
28 any city or town may impose any other or further conditions and
29 obligations in such bond as may be deemed necessary for its proper
30 protection in the fulfillment of the terms of the contract secured
31 thereby, and not in conflict (~~herewith~~) with this section. The
32 thirty-day notice requirement under this subsection does not apply to
33 claims made by the state for taxes, increases, and penalties specified
34 in RCW 39.08.010.

35 (2) Under the job order contracting procedure described in RCW
36 39.10.420, bonds will be in an amount not less than the dollar value of
37 all open work orders.

1 (3)(a) On highway construction contracts administered by the
2 department of transportation with an estimated contract price of two
3 hundred fifty million dollars or more, the department may authorize
4 bonds in an amount less than the full contract price of the project.
5 If a bond less than the full contract price is authorized by the
6 department, the bond must be in the form of a performance bond and a
7 separate payment bond. The department (~~shall~~) must fix the amount of
8 the performance bond on a contract-by-contract basis to adequately
9 protect one hundred percent of the state's exposure to loss. The
10 amount of the performance bond must not be less than two hundred fifty
11 million dollars. The payment bond must be in an amount fixed by the
12 department but must not be less than the amount of the performance
13 bond. The secretary of transportation must approve each performance
14 bond and payment bond authorized to be less than the full contract
15 price of a project. Before the secretary may approve any bond
16 authorized to be less than the full contract price of a project, the
17 office of financial management (~~shall~~) must review and approve the
18 analysis supporting the amount of the bond set by the department to
19 ensure that one hundred percent of the state's exposure to loss is
20 adequately protected. All the requirements of this chapter apply
21 respectively to the individual performance and payment bonds. The
22 performance bond is solely for the protection of the department. The
23 payment bond is solely for: (i) The protection of laborers, mechanics,
24 subcontractors, and suppliers mentioned in RCW 39.08.010; and (ii) the
25 state, with respect to the taxes specified in RCW 39.08.010.

26 (b) The department (~~shall~~) must develop risk assessment
27 guidelines and gain approval of these guidelines from the office of
28 financial management before implementing (a) of this subsection. The
29 guidelines must include a clear process for how the department measures
30 the state's exposure to loss and how the performance bond amount,
31 determined under (a) of this subsection, adequately protects one
32 hundred percent of the state's exposure to loss.

33 (c) The department (~~shall~~) must report to the house of
34 representatives and senate transportation committees by December 1,
35 2012: Each project where the department authorized bonds that were
36 less than the full contract price; the difference between the project
37 amount and the bond requirements; the number of bidders on the project;

1 and other information that documents the effects of the reduced bond
2 amounts on the project.

3 (4) Where retainage is not withheld pursuant to RCW
4 60.28.011(1)(b), upon final acceptance of the public works project, the
5 state, county, municipality, or other public body must within thirty
6 days notify the department of revenue, the employment security
7 department, and the department of labor and industries of the
8 completion of contracts over thirty-five thousand dollars.

9 **Sec. 4.** RCW 39.08.030 and 2007 c 218 s 89 are each amended to read
10 as follows:

11 (1)(a) The bond mentioned in RCW 39.08.010 (~~shall~~) must be in an
12 amount equal to the full contract price agreed to be paid for such work
13 or improvement, except under subsection (2) of this section, and
14 (~~shall~~) must be to the state of Washington, except as otherwise
15 provided in RCW 39.08.100, and except in cases of cities and towns, in
16 which cases such municipalities may by general ordinance fix and
17 determine the amount of such bond and to whom such bond (~~shall run~~
18 ~~PROVIDED,~~) runs. However, the same (~~shall~~) may not be for a less
19 amount than twenty-five percent of the contract price of any such
20 improvement, and may designate that the same (~~shall~~) must be payable
21 to such city, and not to the state of Washington, and all such persons
22 mentioned in RCW 39.08.010 (~~shall~~) have a right of action in his,
23 her, or their own name or names on such bond for work done by such
24 laborers or mechanics, and for materials furnished or provisions and
25 goods supplied and furnished in the prosecution of such work, or the
26 making of such improvements, and the state has a right of action for
27 the collection of taxes, increases, and penalties specified in RCW
28 39.08.010: PROVIDED, That, except for the state with respect to claims
29 for taxes, increases, and penalties specified in RCW 39.08.010, such
30 persons (~~shall~~) do not have any right of action on such bond for any
31 sum whatever, unless within thirty days from and after the completion
32 of the contract with an acceptance of the work by the affirmative
33 action of the board, council, commission, trustees, officer, or body
34 acting for the state, county or municipality, or other public body,
35 city, town or district, the laborer, mechanic or subcontractor, or
36 material supplier, or person claiming to have supplied materials,
37 provisions or goods for the prosecution of such work, or the making of

1 such improvement, (~~shall~~) must present to and file with such board,
2 council, commission, trustees or body acting for the state, county or
3 municipality, or other public body, city, town or district, a notice in
4 writing in substance as follows:

5 To (here insert the name of the state, county or
6 municipality or other public body, city, town or district):

7 Notice is hereby given that the undersigned (here insert
8 the name of the laborer, mechanic or subcontractor, or
9 material supplier, or person claiming to have furnished
10 labor, materials or provisions for or upon such contract or
11 work) has a claim in the sum ofdollars (here insert
12 the amount) against the bond taken from(here insert
13 the name of the principal and surety or sureties upon such
14 bond) for the work of(here insert a brief mention or
15 description of the work concerning which said bond was
16 taken).

17 (here to be signed)

18 (b) Such notice (~~shall~~) must be signed by the person or
19 corporation making the claim or giving the notice, and (~~said~~) the
20 notice, after being presented and filed, (~~shall-be~~) is a public
21 record open to inspection by any person, and in any suit or action
22 brought against such surety or sureties by any such person or
23 corporation to recover for any of the items (~~hereinbefore~~) specified
24 in this section, the claimant (~~shall-be~~) is entitled to recover in
25 addition to all other costs, attorney's fees in such sum as the court
26 (~~shall~~) adjudges reasonable(~~:- PROVIDED, - HOWEVER, - That - no~~),
27 However, attorney's fees (~~shall-be~~) are not allowed in any suit or
28 action brought or instituted before the expiration of thirty days
29 following the date of filing of the notice (~~hereinbefore-mentioned-~~
30 ~~PROVIDED-FURTHER, -That~~) as provided in this section. However, any
31 city may avail itself of the provisions of RCW 39.08.010 through
32 39.08.030, notwithstanding any charter provisions in conflict
33 (~~herewith: AND PROVIDED FURTHER, That~~) with this section. Moreover,
34 any city or town may impose any other or further conditions and
35 obligations in such bond as may be deemed necessary for its proper
36 protection in the fulfillment of the terms of the contract secured

1 thereby, and not in conflict (~~herewith~~) with this section. The
2 thirty-day notice requirement under this subsection does not apply to
3 claims made by the state for taxes, increases, and penalties specified
4 in RCW 39.08.010.

5 (2) Under the job order contracting procedure described in RCW
6 (~~39.10.130~~) 39.10.420, bonds will be in an amount not less than the
7 dollar value of all open work orders.

8 (3) Where retainage is not withheld pursuant to RCW
9 60.28.011(1)(b), upon final acceptance of the public works project, the
10 state, county, municipality, or other public body must within thirty
11 days notify the department of revenue, the employment security
12 department, and the department of labor and industries of the
13 completion of contracts over thirty-five thousand dollars.

14 **Sec. 5.** RCW 39.12.040 and 2012 c 129 s 1 are each amended to read
15 as follows:

16 (1)~~(a)~~ Except as provided in subsection (2) of this section, before
17 payment is made by or on behalf of the state, or any county,
18 municipality, or political subdivision created by its laws, of any sum
19 or sums due on account of a public works contract, it (~~shall be~~) is
20 the duty of the officer or person charged with the custody and
21 disbursement of public funds to require the contractor and each and
22 every subcontractor from the contractor or a subcontractor to submit to
23 such officer a "Statement of Intent to Pay Prevailing Wages". For a
24 contract in excess of ten thousand dollars, the statement of intent to
25 pay prevailing wages (~~shall~~) must include:

26 (~~(a)~~) (i) The contractor's registration certificate number; and
27 (~~(b)~~) (ii) The prevailing rate of wage for each classification of
28 workers entitled to prevailing wages under RCW 39.12.020 and the
29 estimated number of workers in each classification.

30 (b) Each statement of intent to pay prevailing wages must be
31 approved by the industrial statistician of the department of labor and
32 industries before it is submitted to the disbursing officer. Unless
33 otherwise authorized by the department of labor and industries, each
34 voucher claim submitted by a contractor for payment on a project
35 estimate (~~shall~~) must state that the prevailing wages have been paid
36 in accordance with the prefiled statement or statements of intent to
37 pay prevailing wages on file with the public agency. Following the

1 final acceptance of a public works project, it (~~shall be~~) is the duty
2 of the officer charged with the disbursement of public funds, to
3 require the contractor and each and every subcontractor from the
4 contractor or a subcontractor to submit to such officer an (([±]))
5 affidavit of wages paid(([±])) before the funds retained according to the
6 provisions of RCW 60.28.011 are released to the contractor. On a
7 public works project where no retainage is withheld pursuant to RCW
8 60.28.011(1)(b), the affidavit of wages paid must be submitted to the
9 state, county, municipality, or other public body charged with the duty
10 of disbursing or authorizing disbursement of public funds prior to
11 final acceptance of the public works project. If a subcontractor
12 performing work on a public works project fails to submit an
13 (([±]))affidavit of wages paid(([±])) form, the contractor or subcontractor
14 with whom the subcontractor had a contractual relationship for the
15 project may file the forms on behalf of the nonresponsive
16 subcontractor. Affidavit forms may only be filed on behalf of a
17 nonresponsive subcontractor who has ceased operations or failed to file
18 as required by this section. (~~Filings made on behalf of a~~
19 ~~subcontractor may not be accepted sooner than thirty one days after the~~
20 ~~acceptance date of the public works project and~~) The contractor filing
21 the affidavit must accept responsibility for payment of prevailing
22 wages unpaid by the subcontractor on the project pursuant to RCW
23 39.12.020 and 39.12.065. Intentionally filing a false affidavit on
24 behalf of a subcontractor subjects the filer to the same penalties as
25 are provided in RCW 39.12.050. Each affidavit of wages paid must be
26 certified by the industrial statistician of the department of labor and
27 industries before it is submitted to the disbursing officer.

28 (2) As an alternate to the procedures provided for in subsection
29 (1) of this section, for public works projects of two thousand five
30 hundred dollars or less and for projects where the limited public works
31 process under RCW 39.04.155(3) is followed:

32 (a) An awarding agency may authorize the contractor or
33 subcontractor to submit the statement of intent to pay prevailing wages
34 directly to the officer or person charged with the custody or
35 disbursement of public funds in the awarding agency without approval by
36 the industrial statistician of the department of labor and industries.
37 The awarding agency (~~shall~~) must retain such statement of intent to
38 pay prevailing wages for a period of not less than three years.

1 (b) Upon final acceptance of the public works project, the awarding
2 agency (~~shall~~) must require the contractor or subcontractor to submit
3 an affidavit of wages paid. Upon receipt of the affidavit of wages
4 paid, the awarding agency may pay the contractor or subcontractor in
5 full, including funds that would otherwise be retained according to the
6 provisions of RCW 60.28.011. Within thirty days of receipt of the
7 affidavit of wages paid, the awarding agency (~~shall~~) must submit the
8 affidavit of wages paid to the industrial statistician of the
9 department of labor and industries for approval.

10 (c) A statement of intent to pay prevailing wages and an affidavit
11 of wages paid (~~shall~~) must be on forms approved by the department of
12 labor and industries.

13 (d) In the event of a wage claim and a finding for the claimant by
14 the department of labor and industries where the awarding agency has
15 used the alternative process provided for in this subsection (2) (~~of~~
16 ~~this section~~), the awarding agency (~~shall~~) must pay the wages due
17 directly to the claimant. If the contractor or subcontractor did not
18 pay the wages stated in the affidavit of wages paid, the awarding
19 agency may take action at law to seek reimbursement from the contractor
20 or subcontractor of wages paid to the claimant, and may prohibit the
21 contractor or subcontractor from bidding on any public works contract
22 of the awarding agency for up to one year.

23 (e) Nothing in this section (~~shall~~) may be interpreted to allow
24 an awarding agency to subdivide any public works project of more than
25 two thousand five hundred dollars for the purpose of circumventing the
26 procedures required by subsection (1) of this section.

27 **Sec. 6.** RCW 47.04.082 and 1967 c 108 s 1 are each amended to read
28 as follows:

29 As used in (~~this act the term~~) chapter 108, Laws of 1967, "urban
30 public transportation system" (~~shall~~) means a system for the public
31 transportation of persons or property by buses, streetcars, trains,
32 electric trolley coaches, other public transit vehicles, or any
33 combination thereof operating in or through predominantly urban areas
34 and owned and operated by the state, any public agency, any city or
35 county or any municipal corporation of the state, including all
36 structures, facilities, vehicles and other property rights and interest
37 forming a part of such a system.

1 **Sec. 7.** RCW 47.28.140 and 1991 c 322 s 29 are each amended to read
2 as follows:

3 When in the opinion of the governing authorities representing the
4 department and any public agency, instrumentality, municipal
5 corporation, or political subdivision of the state of Washington, any
6 highway, road, ~~((or))~~ street, or urban public transportation system
7 will be benefited or improved by constructing, reconstructing,
8 locating, relocating, laying out, repairing, surveying, altering,
9 improving, or maintaining, or by the establishment adjacent to, under,
10 upon, within, or above any portion of any such highway, road, ~~((or))~~
11 street ~~((of an))~~, or urban public transportation system, by either the
12 department or any public agency, instrumentality, municipal
13 corporation, or political subdivision of the state, and it is in the
14 public interest to do so, the authorities may enter into cooperative
15 agreements wherein either agrees to perform the work and furnish the
16 materials necessary and pay the cost thereof, including necessary
17 engineering assistance, which costs and expenses ~~((shall))~~ must be
18 reimbursed by the party whose responsibility it was to do or perform
19 the work or improvement in the first instance. The work may be done by
20 either day labor or contract, and the cooperative agreement between the
21 parties ~~((shall))~~ must provide for the method of reimbursement. In the
22 case of some special benefit or improvement to a state highway derived
23 from any project that assists in preventing or minimizing flood damages
24 as defined in RCW 86.16.120 or from the construction of any public
25 works project, including any urban public transportation system, the
26 department may contribute to the cost thereof by making direct payment
27 to the particular state department, agency, instrumentality, municipal
28 corporation, or political subdivision on the basis of benefits
29 received, but such payment ~~((shall))~~ may be made only after a
30 cooperative agreement has been entered into for a specified amount or
31 on an actual cost basis prior to the commencement of the particular
32 public works project.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.28 RCW
34 to read as follows:

35 When the department plans to administer a contract to engineer or
36 construct a project; or oversee or perform work for another public
37 agency, instrumentality, municipal corporation, or political

1 subdivision; and the public agency, instrumentality, municipal
2 corporation, or political subdivision plans to administer a contract to
3 engineer or construct a project; or oversee or perform work, for the
4 department, the department may waive application of its indirect costs
5 by entering into a reciprocal agreement with the public agency,
6 instrumentality, municipal corporation, or political subdivision in
7 which each party agrees to waive indirect costs related to a project or
8 work that will be performed by the party for the other party's benefit.
9 The reciprocal agreement must specify the project or work to be
10 performed by each party and may be for a maximum term of ten years,
11 unless amended by the parties. Each party's obligation for
12 reimbursement of indirect costs under RCW 47.28.140, 39.34.130, and
13 43.09.210 is deemed to be satisfied by the execution of a reciprocal
14 agreement.

15 NEW SECTION. **Sec. 9.** Section 3 of this act expires June 30, 2016.

16 NEW SECTION. **Sec. 10.** Section 4 of this act takes effect June 30,
17 2016.

Passed by the House March 9, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 1, 2013.

Filed in Office of Secretary of State May 1, 2013.