
SUBSTITUTE HOUSE BILL 2659

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Local Government (originally sponsored by Representatives Cooper, Haugen, Ferguson, Rayburn, Wynne, Zellinsky, Horn, Bray and Wood)

Read first time 02/07/92.

1 AN ACT Relating to the retained percentage from a public works
2 contract held in trust for labor and material liens and for the
3 protection of the owner; and amending RCW 60.28.010.

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

5 **Sec. 1.** RCW 60.28.010 and 1986 c 181 s 6 are each amended to read
6 as follows:

7 (~~1) ((Contracts for public improvements or work, other than for~~
8 ~~professional services, by the state, or any county, city, town,~~
9 ~~district, board, or other public body, herein referred to as "public~~
10 ~~body", shall provide, and there shall be reserved by the public body~~
11 ~~from the moneys earned by the contractor on estimates during the~~
12 ~~progress of the improvement or work, a sum not to exceed five percent,~~
13 ~~said sum to be retained by the state, county, city, town, district,~~
14 ~~board, or other public body,)) Public improvement contracts shall~~

1 provide, and public bodies shall reserve, a contract retainage as a
2 trust fund for the protection and payment of: (a) The claims of any
3 person ((or persons, mechanic, subcontractor or materialman who shall
4 perform any labor upon such contract or the doing of said work, and all
5 persons who shall supply such person or persons or subcontractors with
6 provisions and supplies for the carrying on of such work, and)) arising
7 under the contract; and (b) the state with respect to taxes imposed
8 pursuant to Title 82 RCW which may be due from such contractor.

9 (2) Every person performing labor or furnishing supplies toward the
10 completion of ((said improvement or work)) a public improvement
11 contract shall have a lien upon ((said moneys so reserved)) moneys
12 reserved by a public body under the provisions of a public improvement
13 contract: PROVIDED, That such notice of the lien of such claimant
14 shall be given ((in the manner and within the time)) as provided in RCW
15 39.08.030 ((as now existing and in accordance with any amendments that
16 may hereafter be made thereto: PROVIDED FURTHER, That the board,
17 council, commission, trustees, officer or body acting for the state,
18 county or municipality or other public body; (a))).

19 (3) At any time after fifty percent of the original contract work
20 has been completed, a public body may make partial payments not to
21 exceed ninety-five percent of the amount of the moneys earned by the
22 contractor if it finds that satisfactory progress is being made((, may
23 make any of the partial payments which would otherwise be subsequently
24 made in full; but in no event shall the amount to be retained be
25 reduced to less than five percent of the amount of the moneys earned by
26 the contractor)): PROVIDED, That the contractor may request ((that))
27 the contract retainage be reduced to one hundred percent of the value
28 of the work remaining on the project((; and (b))). Thirty days after
29 completion and acceptance of all contract work other than landscaping,
30 a public body may release and pay in full the amounts retained during

1 the performance of the contract (other than continuing retention of
2 five percent of the moneys earned for landscaping) subject to the
3 provisions of RCW 60.28.020.

4 ~~((2))~~ (4) The moneys reserved ~~((under the provisions of~~
5 ~~subsection (1) of this section,))~~ by a public body under the provisions
6 of a public improvement contract, at the option of the contractor,
7 shall be:

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

11 (b) Deposited by the public body in an interest bearing account in
12 a bank, mutual savings bank, or savings and loan association, not
13 subject to withdrawal until after the final acceptance of said
14 improvement or work as completed, or until agreed to by both parties:
15 PROVIDED, That interest on ~~((such account))~~ moneys reserved by a public
16 body under the provision of a public improvement contract shall be paid
17 to the contractor;

18 (c) Placed in escrow with a bank or trust company by the public
19 body until thirty days following the final acceptance of said
20 improvement or work as completed. When the moneys reserved are to be
21 placed in escrow, the public body shall issue a check representing the
22 sum of the moneys reserved payable to the bank or trust company and the
23 contractor jointly. Such check shall be converted into bonds and
24 securities chosen by the contractor and approved by the public body and
25 such bonds and securities shall be held in escrow. Interest on such
26 bonds and securities shall be paid to the contractor as the said
27 interest accrues.

28 ~~((3))~~ (5) The contractor or subcontractor may withhold payment of
29 not more than five percent from the moneys earned by any subcontractor
30 or 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 (~~(4)~~) (6) With the consent of the public body the contractor may
8 submit a bond for all or any portion of the (~~amount of funds retained~~
9 ~~by the public body~~) contract retainage in a form acceptable to the
10 public body. Such bond and any proceeds therefrom shall be made
11 subject to all claims and liens and in the same manner and priority as
12 set forth for retained percentages in this chapter. The public body
13 shall release the bonded portion of the retained funds to the
14 contractor within thirty days of accepting the bond from the
15 contractor. Whenever a public body accepts a bond in lieu of retained
16 funds from a contractor, the contractor shall accept like bonds from
17 any subcontractors or suppliers from which the contractor has retained
18 funds. The contractor shall then release the funds retained from the
19 subcontractor or supplier to the subcontractor or supplier within
20 thirty days of accepting the bond from the subcontractor or supplier.

21 (~~(5)~~) (7) If the public body administering a contract, after a
22 substantial portion of the work has been completed, finds that an
23 unreasonable delay will occur in the completion of the remaining
24 portion of the contract for any reason not the result of a breach
25 thereof, it may, if the contractor agrees, delete from the contract the
26 remaining work and accept as final the improvement at the stage of
27 completion then attained and make payment in proportion to the amount
28 of the work accomplished and in such case any amounts retained and
29 accumulated under this section shall be held for a period of thirty
30 days following such acceptance. In the event that the work shall have

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

8 ~~((+6+))~~ (8) Whenever the department of transportation has
9 contracted for the construction of two or more ferry vessels, thirty
10 days after completion and final acceptance of each ferry vessel, the
11 department may release and pay in full the amounts retained in
12 connection with the construction of such vessel subject to the
13 provisions of RCW 60.28.020: PROVIDED, That the department of
14 transportation may at its discretion condition the release of funds
15 retained in connection with the completed ferry upon the contractor
16 delivering a good and sufficient bond with two or more sureties, or
17 with a surety company, in the amount of the retained funds to be
18 released to the contractor, conditioned that no taxes shall be
19 certified or claims filed for work on such ferry after a period of
20 thirty days following final acceptance of such ferry; and if such taxes
21 are certified or claims filed, recovery may be had on such bond by the
22 department of revenue and the materialmen and laborers filing claims.

23 ~~((+7+))~~ (9) Except as provided in subsection (1) of this section,
24 reservation by a public body for any purpose from the moneys earned by
25 a contractor under a public improvement contract is prohibited.

26 (10) Contracts on projects funded in whole or in part by farmers
27 home administration and subject to farmers home administration
28 regulations shall not be subject to subsections (1) through ~~((+6+))~~ (9)
29 of this section.

1 (11) Unless the context clearly requires otherwise, the definitions
2 in this subsection apply throughout this section.

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

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

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

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