

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2535**

Chapter 185, Laws of 2000

56th Legislature  
2000 Regular Session

PUBLIC IMPROVEMENT CONTRACTS--RETAINED FUNDS

EFFECTIVE DATE: 6/8/00

Passed by the House February 10, 2000  
Yeas 96 Nays 0

CLYDE BALLARD  
**Speaker of the House of Representatives**

FRANK CHOPP  
**Speaker of the House of Representatives**

Passed by the Senate February 29, 2000  
Yeas 47 Nays 0

BRAD OWEN  
**President of the Senate**

Approved March 27, 2000

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2535** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN  
**Chief Clerk**

CYNTHIA ZEHNDER  
**Chief Clerk**

FILED

March 27, 2000 - 5:03 p.m.

**Secretary of State  
State of Washington**

---

HOUSE BILL 2535

---

Passed Legislature - 2000 Regular Session

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.

Passed the House February 10, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.