

ESHB 1538 - S COMM AMD

By Committee on Commerce, Labor & Sports

NOT ADOPTED 04/12/2017

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 60.28.011 and 2015 c 280 s 1 are each amended to  
4 read as follows:

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

13 (b) Public improvement contracts funded in whole or in part by  
14 federal transportation funds must rely upon the contract bond as  
15 referred to in chapter 39.08 RCW for the protection and payment of:  
16 (i) The claims of any person or persons arising under the contract to  
17 the extent such claims are provided for in RCW 39.08.010; and (ii)  
18 the state with respect to taxes, increases, and penalties incurred on  
19 the public improvement project under Titles 50, 51, and 82 RCW which  
20 may be due. The contract bond must remain in full force and effect  
21 until, at a minimum, all claims filed in compliance with chapter  
22 39.08 RCW are resolved.

23 (2) Every person performing labor or furnishing supplies toward  
24 the completion of a public improvement contract has a lien upon  
25 moneys reserved by a public body under the provisions of a public  
26 improvement contract. However, the notice of the lien of the claimant  
27 must be given within forty-five days of completion of the contract  
28 work, and in the manner provided in RCW 39.08.030.

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

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

8 (b) Sixty days after completion of all contract work the public  
9 body must release and pay in full the amounts retained during the  
10 performance of the contract subject to the provisions of chapter((§))  
11 39.12 ((and ~~60.28~~)) RCW and this chapter.

12 (4) The moneys reserved by a public body under the provisions of  
13 a public improvement contract, at the option of the contractor, must  
14 be:

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

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

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

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

37 (6) A contractor may submit a bond for all or any portion of the  
38 contract retainage in a form acceptable to the public body and from  
39 an authorized surety insurer. The public body may require that the  
40 authorized surety have a minimum A.M. Best financial strength rating

1 so long as that minimum rating does not exceed A-. The public body  
2 must comply with the provisions of RCW 48.28.010. (~~This~~) At any  
3 time prior to final formal acceptance of the project, a subcontractor  
4 may request the contractor to submit a bond to the public owner for  
5 that portion of the contractor's retainage pertaining to the  
6 subcontractor in a form acceptable to the public body and from a  
7 bonding company meeting standards established by the public body.  
8 Within thirty days of receipt of the request, the contractor shall  
9 provide and the public body shall accept a bond meeting these  
10 requirements unless the public body can demonstrate good cause for  
11 refusing to accept it or the subcontractor refuses to pay the  
12 subcontractor's portion of the bond premium and to provide the  
13 contractor with a like bond. The contractor's bond and any proceeds  
14 therefrom are subject to all claims and liens and in the same manner  
15 and priority as set forth for retained percentages in this chapter.  
16 The public body must release the bonded portion of the retained funds  
17 to the contractor within thirty days of accepting the bond from the  
18 contractor. Whenever a public body accepts a bond in lieu of retained  
19 funds from a contractor, the contractor must accept like bonds from  
20 any subcontractors or suppliers from which the contractor has  
21 retained funds. The contractor must then release the funds retained  
22 from the subcontractor or supplier to the subcontractor or supplier  
23 within thirty days of accepting the bond from the subcontractor or  
24 supplier.

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

1 provisions of this chapter are exclusive and supersede all provisions  
2 and 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 60.28.021 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 may be  
14 certified or claims filed for work on the ferry after a period of  
15 sixty days following completion of the ferry; and if taxes are  
16 certified or claims filed, recovery may be had on the bond by the  
17 department of revenue, the employment security department, the  
18 department of labor and industries, and the material suppliers and  
19 laborers filing claims.

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

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

28 (11) This subsection applies only to a public body that has  
29 contracted for the construction of a facility using the general  
30 contractor/construction manager procedure, as defined under RCW  
31 39.10.210. If the work performed by a subcontractor on the project  
32 has been completed within the first half of the time provided in the  
33 general contractor/construction manager contract for completing the  
34 work, the public body may accept the completion of the subcontract.  
35 The public body must give public notice of this acceptance. After a  
36 forty-five day period for giving notice of liens, and compliance with  
37 the retainage release procedures in RCW 60.28.021, the public body  
38 may release that portion of the retained funds associated with the  
39 subcontract. Claims against the retained funds after the forty-five  
40 day period are not valid.

1 (12) The definitions in this subsection apply throughout this  
2 section unless the context clearly requires otherwise.

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

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

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

13 (d) "Public improvement contract" means a contract for public  
14 improvements or work, other than for professional services, or a work  
15 order as defined in RCW 39.10.210."

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16 On page 1, line 2 of the title, after "request;" strike the  
17 remainder of the title and insert "and amending RCW 60.28.011."

EFFECT: Removes provision allowing the contractor to charge the subcontractor any fees or costs related to the retainage bond requested by the subcontractor. Removes provision exempting the contractor from providing a bond for the subcontractor's retainage if the bond is not commercially available.

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