

2 SHB 1736 - S COMM AMD
3 By Committee on Commerce & Labor

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.76 RCW
8 to read as follows:

9 (1) Except as provided in RCW 39.76.020, every state agency,
10 county, city, town, school district, board, commission, or any other
11 public body shall pay interest at the highest rate allowed under RCW
12 19.52.025, on amounts due on written contracts for public works,
13 personal services, goods and services, equipment, and travel, whenever
14 the public body fails to make timely payment.

15 (2) For purposes of this section, payment shall be timely if:

16 (a) Except under (b), (c), or (d) of this subsection, a check or
17 warrant is mailed or is available on the date specified for the amount
18 specified in the applicable contract documents but not later than
19 thirty days of receipt of a properly completed invoice or receipt of
20 goods or services, whichever is later.

21 (b) On written contracts for public works, when part or all of a
22 payment is going to be withheld for unsatisfactory performance or if
23 the payment request made does not comply with the requirements of the
24 contract, the public body shall notify the prime contractor in writing
25 within eight working days after receipt of the payment request stating
26 specifically why part or all of the payment is being withheld and what
27 remedial actions must be taken by the prime contractor to receive the
28 withheld amount.

1 (c) If the notification by the public body required by (b) of this
2 subsection does not comply with the notice contents required under (b)
3 of this subsection, the public body shall pay the interest under
4 subsection (1) of this section from the ninth working day after receipt
5 of the initial payment request until the contractor receives notice
6 that does comply with the notice contents required under (b) of this
7 subsection.

8 (d) If part or all of a payment is withheld under (b) of this
9 subsection, the public body shall pay the withheld amount within thirty
10 calendar days after the prime contractor satisfactorily completes the
11 remedial actions identified in the notice. If the withheld amount is
12 not paid within the thirty calendar days, the public body shall pay
13 interest under subsection (1) of this section from the thirty-first
14 calendar day until the date paid."

15 "NEW SECTION. Sec. 2. (1) Contracts for public improvements or
16 work, other than for professional services, by the state, or any
17 county, city, town, school district, commission, district, board, or
18 other public body, herein referred to as "public body", shall provide,
19 and there shall be reserved by the public body from the moneys earned
20 by the contractor on estimates during the progress of the improvement
21 or work, a sum not to exceed five percent of the moneys earned, this
22 sum to be retained by the state, county, city, town, district, board,
23 or other public body, as a trust fund for the protection and payment of
24 any person or persons, mechanic, subcontractor or materialman who
25 performs any labor upon such a contract or the doing of the work, and
26 all persons who supply such a person or persons or subcontractors with
27 provisions and supplies for the carrying on of the work, and the state
28 with respect to taxes imposed pursuant to Title 82 RCW which may be due
29 from the contractor. A public body may not, for any purpose, reserve

1 or retain from the moneys earned by a contractor under a public
2 improvement contract any sum exceeding the five percent amount
3 permitted in this subsection. Every person performing labor or
4 furnishing supplies toward the completion of the improvement or work
5 has a lien upon the moneys so reserved: PROVIDED, That the notice of
6 the lien of the claimant is given within forty-five days of completion
7 of all of the contract work other than landscaping, and in the manner
8 provided in RCW 39.08.030: PROVIDED FURTHER, That if the board,
9 council, commission, trustees, officer, or body acting for the state,
10 county, or municipality or other public body:

11 (a) At any time after fifty percent of the original contract work
12 has been completed, finds that satisfactory progress is being made, may
13 make any of the partial payments which would otherwise be subsequently
14 made in full; but in no event may the amount to be retained be reduced
15 to less than five percent of the amount of the moneys earned by the
16 contractor;

17 (b) After completion of all contract work other than landscaping,
18 the contractor may request that the public body release and pay in full
19 the amounts retained during the performance of the contract, and sixty
20 days thereafter the public body must release and pay in full the
21 amounts retained (other than continuing retention of five percent of
22 the moneys earned for landscaping) subject to the provisions of RCW
23 60.28.020, 60.28.050, and chapter 39.12 RCW; and

24 (c) Sixty days after completion of all contract work the public
25 body must release and pay in full the amounts retained during the
26 performance of the contract subject to the provisions of RCW 60.28.020,
27 60.28.050, and chapter 39.12 RCW.

28 (2) The moneys reserved under the provisions of subsection (1) of
29 this section, at the option of the contractor, shall be:

1 (a) Retained in a fund by the public body until forty-five days
2 following completion of all contract work;

3 (b) Deposited by the public body in an interest bearing account in
4 a bank, mutual savings bank, or savings and loan association, not
5 subject to withdrawal until forty-five days following completion of the
6 improvement or work as completed, or until agreed to by both parties.
7 Interest on the account shall be paid to the contractor; or

8 (c) Placed in escrow with a bank or trust company by the public
9 body until forty-five days following completion of the improvement.
10 When the moneys reserved are placed in escrow, the public body shall
11 issue a check representing the sum of the moneys reserved payable to
12 the bank or trust company and the contractor jointly. This check shall
13 be converted into bonds and securities chosen by the contractor and
14 approved by the public body and the bonds and securities shall be held
15 in escrow. Interest on the bonds and securities shall be paid to the
16 contractor as the interest accrues.

17 (3) The contractor or subcontractor may withhold payment of not
18 more than five percent from the moneys earned by any subcontractor or
19 sub-subcontractor or supplier contracted with by the contractor to
20 provide labor, materials, or equipment to the public project. Whenever
21 the contractor or subcontractor reserves funds earned by a
22 subcontractor or sub-subcontractor or supplier, the contractor or
23 subcontractor shall pay interest to the subcontractor or sub-
24 subcontractor or supplier at a rate equal to that received by the
25 contractor or subcontractor from reserved funds.

26 (4) With the consent of the public body the contractor may submit
27 a bond for all or any portion of the amount of funds retained by the
28 public body in a form acceptable to the public body. This bond and any
29 proceeds therefrom are subject to all claims and liens and in the same
30 manner and priority as set forth for retained percentages in this

1 chapter. The public body shall release the bonded portion of the
2 retained funds to the contractor within thirty days of accepting the
3 bond from the contractor. Whenever a public body accepts a bond in
4 lieu of retained funds from a contractor, the contractor shall accept
5 like bonds from any subcontractors or suppliers from which the
6 contractor has retained funds. The contractor shall then release the
7 funds retained from the subcontractor or supplier to the subcontractor
8 or supplier within thirty days of accepting the bond from the
9 subcontractor or supplier.

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

27 (6) Whenever the department of transportation has contracted for
28 the construction of two or more ferry vessels, sixty days after
29 completion of all contract work on each ferry vessel, the department
30 must release and pay in full the amounts retained in connection with

1 the construction of the vessel subject to the provisions of RCW
2 60.28.020 and chapter 39.12 RCW: PROVIDED, That the department of
3 transportation may at its discretion condition the release of funds
4 retained in connection with the completed ferry upon the contractor
5 delivering a good and sufficient bond with two or more sureties, or
6 with a surety company, in the amount of the retained funds to be
7 released to the contractor, conditioned that no taxes shall be
8 certified or claims filed for work on the ferry after a period of
9 forty-five days following completion of the ferry; and if taxes are
10 certified or claims filed, recovery may be had on the bond by the
11 department of revenue and the materialmen and laborers filing claims.

12 (7) Contracts on projects funded in whole or in part by farmers
13 home administration and subject to farmers home administration
14 regulations are not subject to subsections (1) through (6) of this
15 section."

16 "NEW SECTION. Sec. 3. After the expiration of the forty-five
17 day period, and after receipt of the department of revenue's
18 certificate, and the public body is satisfied that the taxes certified
19 as due or to become due by the department of revenue are discharged,
20 and the claims of materialmen and laborers who have filed their claims,
21 together with a sum sufficient to defray the cost of foreclosing the
22 liens of such claims, and to pay attorneys' fees, have been paid, the
23 public body may withhold from the remaining retained amounts for claims
24 the public body may have against the contractor and shall pay the
25 balance, if any, to the contractor the fund retained by it or release
26 to the contractor the securities and bonds held in escrow.

27 If such taxes have not been discharged or the claims, expenses, and
28 fees have not been paid, the public body shall either retain in its
29 fund, or in an interest bearing account, or retain in escrow, at the

1 option of the contractor, an amount equal to such unpaid taxes and
2 unpaid claims together with a sum sufficient to defray the costs and
3 attorney fees incurred in foreclosing the lien of such claims, and
4 shall pay, or release from escrow, the remainder to the contractor."

5 "NEW SECTION. Sec. 4. Upon completion of a contract, the
6 state, county or other municipal officer charged with the duty of
7 disbursing or authorizing disbursement or payment of such contracts
8 shall forthwith notify the department of revenue of the completion of
9 contracts over twenty thousand dollars. Such officer shall not make
10 any payment from the retained percentage fund or release any retained
11 percentage escrow account to any person, until he has received from the
12 department of revenue a certificate that all taxes, increases and
13 penalties due from the contractor, and all taxes due and to become due
14 with respect to such contract have been paid in full or that they are,
15 in the department's opinion, readily collectible without recourse to
16 the state's lien on the retained percentage."

17 "NEW SECTION. Sec. 5. A new section is added to chapter 39.04 RCW
18 to read as follows:

19 (1) When payment is received by a contractor or subcontractor for
20 work performed on a public work, the contractor or subcontractor shall
21 pay to any subcontractor not later than ten days after the receipt of
22 the payment, amounts allowed the contractor on account of the work
23 performed by the subcontractor, to the extent of each subcontractor's
24 interest therein.

25 (2) In the event of a good faith dispute over all or any portion of
26 the amount due on a payment from the state or a municipality to the
27 prime contractor, or from the prime contractor or subcontractor to a
28 subcontractor, then the state or the municipality, or the prime

1 contractor or subcontractor, may withhold no more than one hundred
2 fifty percent of the disputed amount. Those not a party to a dispute
3 are entitled to full and prompt payment of their portion of a draw,
4 progress payment, final payment, or released retainage.

5 (3) In addition to all other remedies, any person from whom funds
6 have been withheld in violation of this section shall be entitled to
7 receive from the person wrongfully withholding the funds, for every
8 month and portion thereof that payment including retainage is not made,
9 interest at the highest rate allowed under RCW 19.52.025. In any
10 action for the collection of funds wrongfully withheld, the prevailing
11 party shall be entitled to costs of suit and reasonable attorneys'
12 fees."

13 "NEW SECTION. Sec. 6. (1) It is against public policy for any
14 party to require any other party to waive any provision of this act.

15 (2) This act is to be liberally construed to provide security for
16 all parties intended to be protected by its provisions."

17 "NEW SECTION. Sec. 7. (1) Sections 1 through 6 of this act are
18 applicable to all public works contracts entered into on or after
19 September 1, 1992, relating to the construction of any work of
20 improvement.

21 (2) RCW 39.76.010, 60.28.010, 60.28.020, and 60.28.050 are
22 applicable to all public works contracts entered into prior to
23 September 1, 1992, relating to the construction of any work of
24 improvement."

25 "NEW SECTION. Sec. 8. Sections 2 through 4 of this act are
26 each added to chapter 60.28 RCW."

1 "NEW SECTION. **Sec. 9.** This act shall take effect September 1,
2 1992."

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6 On page 1, line 2 of the title, after "improvement" strike the
7 remainder of the title and insert "on public works projects; adding a
8 new section to chapter 39.76 RCW; adding new sections to chapter 60.28
9 RCW; adding a new section to chapter 39.04 RCW; creating new sections;
10 prescribing penalties; and providing an effective date."