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**SUBSTITUTE HOUSE BILL 2659**

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**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.