

SSB 6110 - H COMM AMD
By Committee on Capital Budget

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

3 "**Sec. 1.** RCW 60.28.011 and 2013 c 113 s 1 are each amended to read
4 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 state
10 with respect to taxes, increases, and penalties imposed pursuant to
11 Titles 50, 51, and 82 RCW which may be due from such contractor.

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

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

28 (3) The contractor at any time may request the contract retainage
29 be reduced to one hundred percent of the value of the work remaining on
30 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 full
3 the amounts retained during the performance of the contract, and sixty
4 days thereafter the public body must release and pay in full the
5 amounts retained (other than continuing retention of five percent of
6 the moneys earned for landscaping) subject to the provisions of
7 chapters 39.12 and 60.28 RCW.

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 chapters 39.12
11 and 60.28 RCW.

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

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

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

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

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

36 (6) A contractor may submit a bond for all or any portion of the
37 contract retainage in a form acceptable to the public body and from (~~a~~
38 ~~bonding company meeting standards established by the public body~~) an

1 authorized surety insurer with a financial strength rating from A.M.
2 Best Co. of "A-" or higher. The public body must (~~accept a bond~~
3 ~~meeting these requirements unless the public body can demonstrate good~~
4 ~~cause for refusing to accept it~~) comply with the provisions of RCW
5 48.28.010. This bond and any proceeds therefrom are subject to all
6 claims and liens and in the same manner and priority as set forth for
7 retained percentages in this chapter. The public body must release the
8 bonded portion of the retained funds to the contractor within thirty
9 days of accepting the bond from the contractor. Whenever a public body
10 accepts a bond in lieu of retained funds from a contractor, the
11 contractor must accept like bonds from any subcontractors or suppliers
12 from which the contractor has retained funds. The contractor must then
13 release the funds retained from the subcontractor or supplier to the
14 subcontractor or supplier within thirty days of accepting the bond from
15 the subcontractor or supplier.

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

33 (8) Whenever the department of transportation has contracted for
34 the construction of two or more ferry vessels, sixty days after
35 completion of all contract work on each ferry vessel, the department
36 must release and pay in full the amounts retained in connection with
37 the construction of the vessel subject to the provisions of RCW
38 60.28.021 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 may be certified
6 or claims filed for work on the ferry after a period of sixty days
7 following completion of the ferry; and if taxes are certified or claims
8 filed, recovery may be had on the bond by the department of revenue,
9 the employment security department, the department of labor and
10 industries, and the material suppliers and laborers filing claims.

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

15 (10) Contracts on projects funded in whole or in part by farmers
16 home administration and subject to farmers home administration
17 regulations are not subject to subsections (1) through (9) of this
18 section.

19 (11) This subsection applies only to a public body that has
20 contracted for the construction of a facility using the general
21 contractor/construction manager procedure, as defined under RCW
22 39.10.210. If the work performed by a subcontractor on the project has
23 been completed within the first half of the time provided in the
24 general contractor/construction manager contract for completing the
25 work, the public body may accept the completion of the subcontract.
26 The public body must give public notice of this acceptance. After a
27 forty-five day period for giving notice of liens, and compliance with
28 the retainage release procedures in RCW 60.28.021, the public body may
29 release that portion of the retained funds associated with the
30 subcontract. Claims against the retained funds after the forty-five
31 day period are not valid.

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

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

36 (b) "Person" means a person or persons, mechanic, subcontractor, or
37 materialperson who performs labor or provides materials for a public

1 improvement contract, and any other person who supplies the person with
2 provisions or supplies for the carrying on of a public improvement
3 contract.

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

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

9 Correct the title.

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