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HOUSE BILL 1384

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Moscoso, Liiias, Clibborn, Billig, Ryu, Kenney, Stanford, and Reykdal; by request of Department of Transportation

Read first time 01/20/11. Referred to Committee on Transportation.

1 AN ACT Relating to public improvement contracts involving certain  
2 federally funded transportation projects; and reenacting and amending  
3 RCW 60.28.011.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 60.28.011 and 2009 c 432 s 5 and 2009 c 219 s 6 are  
6 each reenacted and amended to read as follows:

7 (1)(a) Except as provided in (b) of this subsection, public  
8 improvement contracts shall provide, and public bodies shall reserve,  
9 a contract retainage not to exceed five percent of the moneys earned by  
10 the contractor as a trust fund for the protection and payment of:  
11 ((+a)) (i) The claims of any person arising under the contract; and  
12 ((+b)) (ii) the state with respect to taxes imposed pursuant to Titles  
13 50, 51, and 82 RCW which may be due from such contractor.

14 (b) Public improvement contracts involving the construction,  
15 alteration, repair, or improvement of any highway, road, or street  
16 funded in whole or in part by federal transportation funds shall rely  
17 upon the contract bond as referred to in chapter 39.08 RCW for the  
18 protection and payment of: (i) The claims of any person or persons

1 arising under the contract to the extent such claims are provided for  
2 in RCW 39.08.010; and (ii) the state with respect to taxes imposed  
3 pursuant to Titles 50, 51, and 82 RCW which may be due.

4 (2) Every person performing labor or furnishing supplies toward the  
5 completion of a public improvement contract shall have a lien upon  
6 moneys reserved by a public body under the provisions of a public  
7 improvement contract. However, the notice of the lien of the claimant  
8 shall be given within forty-five days of completion of the contract  
9 work, and in the manner provided in RCW 39.08.030.

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

13 (a) After completion of all contract work other than landscaping,  
14 the contractor may request that the public body release and pay in full  
15 the amounts retained during the performance of the contract, and sixty  
16 days thereafter the public body must release and pay in full the  
17 amounts retained (other than continuing retention of five percent of  
18 the moneys earned for landscaping) subject to the provisions of  
19 chapters 39.12 and 60.28 RCW.

20 (b) Sixty days after completion of all contract work the public  
21 body must release and pay in full the amounts retained during the  
22 performance of the contract subject to the provisions of chapters 39.12  
23 and 60.28 RCW.

24 (4) The moneys reserved by a public body under the provisions of a  
25 public improvement contract, at the option of the contractor, shall be:

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

27 (b) Deposited by the public body in an interest bearing account in  
28 a bank, mutual savings bank, or savings and loan association. Interest  
29 on moneys reserved by a public body under the provision of a public  
30 improvement contract shall be paid to the contractor;

31 (c) Placed in escrow with a bank or trust company by the public  
32 body. When the moneys reserved are placed in escrow, the public body  
33 shall issue a check representing the sum of the moneys reserved payable  
34 to the bank or trust company and the contractor jointly. This check  
35 shall be converted into bonds and securities chosen by the contractor  
36 and approved by the public body and the bonds and securities shall be  
37 held in escrow. Interest on the bonds and securities shall be paid to  
38 the contractor as the interest accrues.

1 (5) The contractor or subcontractor may withhold payment of not  
2 more than five percent from the moneys earned by any subcontractor or  
3 sub-subcontractor or supplier contracted with by the contractor to  
4 provide labor, materials, or equipment to the public project. Whenever  
5 the contractor or subcontractor reserves funds earned by a  
6 subcontractor or sub-subcontractor or supplier, the contractor or  
7 subcontractor shall pay interest to the subcontractor or sub-  
8 subcontractor or supplier at a rate equal to that received by the  
9 contractor or subcontractor from reserved funds.

10 (6) A contractor may submit a bond for all or any portion of the  
11 contract retainage in a form acceptable to the public body and from a  
12 bonding company meeting standards established by the public body. The  
13 public body shall accept a bond meeting these requirements unless the  
14 public body can demonstrate good cause for refusing to accept it. This  
15 bond and any proceeds therefrom are subject to all claims and liens and  
16 in the same manner and priority as set forth for retained percentages  
17 in this chapter. The public body shall release the bonded portion of  
18 the retained funds to the contractor within thirty days of accepting  
19 the bond from the contractor. Whenever a public body accepts a bond in  
20 lieu of retained funds from a contractor, the contractor shall accept  
21 like bonds from any subcontractors or suppliers from which the  
22 contractor has retained funds. The contractor shall then release the  
23 funds retained from the subcontractor or supplier to the subcontractor  
24 or supplier within thirty days of accepting the bond from the  
25 subcontractor or supplier.

26 (7) If the public body administering a contract, after a  
27 substantial portion of the work has been completed, finds that an  
28 unreasonable delay will occur in the completion of the remaining  
29 portion of the contract for any reason not the result of a breach  
30 thereof, it may, if the contractor agrees, delete from the contract the  
31 remaining work and accept as final the improvement at the stage of  
32 completion then attained and make payment in proportion to the amount  
33 of the work accomplished and in this case any amounts retained and  
34 accumulated under this section shall be held for a period of sixty days  
35 following the completion. In the event that the work is terminated  
36 before final completion as provided in this section, the public body  
37 may thereafter enter into a new contract with the same contractor to  
38 perform the remaining work or improvement for an amount equal to or

1 less than the cost of the remaining work as was provided for in the  
2 original contract without advertisement or bid. The provisions of this  
3 chapter are exclusive and shall supersede all provisions and  
4 regulations in conflict herewith.

5 (8) Whenever the department of transportation has contracted for  
6 the construction of two or more ferry vessels, sixty days after  
7 completion of all contract work on each ferry vessel, the department  
8 must release and pay in full the amounts retained in connection with  
9 the construction of the vessel subject to the provisions of RCW  
10 60.28.021 and chapter 39.12 RCW. However, the department of  
11 transportation may at its discretion condition the release of funds  
12 retained in connection with the completed ferry upon the contractor  
13 delivering a good and sufficient bond with two or more sureties, or  
14 with a surety company, in the amount of the retained funds to be  
15 released to the contractor, conditioned that no taxes shall be  
16 certified or claims filed for work on the ferry after a period of sixty  
17 days following completion of the ferry; and if taxes are certified or  
18 claims filed, recovery may be had on the bond by the department of  
19 revenue, the employment security department, the department of labor  
20 and industries, and the material suppliers and laborers filing claims.

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

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

29 (11) This subsection applies only to a public body that has  
30 contracted for the construction of a facility using the general  
31 contractor/construction manager procedure, as defined under RCW  
32 39.10.210. If the work performed by a subcontractor on the project has  
33 been completed within the first half of the time provided in the  
34 general contractor/construction manager contract for completing the  
35 work, the public body may accept the completion of the subcontract.  
36 The public body must give public notice of this acceptance. After a  
37 forty-five day period for giving notice of liens, and compliance with  
38 the retainage release procedures in RCW 60.28.021, the public body may

1 release that portion of the retained funds associated with the  
2 subcontract. Claims against the retained funds after the forty-five  
3 day period are not valid.

4 (12) Unless the context clearly requires otherwise, the definitions  
5 in this subsection apply throughout this section.

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

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

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

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

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