

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1384**

62nd Legislature  
2011 Regular Session

Passed by the House March 5, 2011  
Yeas 98 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 9, 2011  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1384** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1384**

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Passed Legislature - 2011 Regular Session

**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Transportation (originally sponsored by Representatives Moscoso, Llias, Clibborn, Billig, Ryu, Kenney, Stanford, and Reykdal; by request of Department of Transportation)

READ FIRST TIME 02/25/11.

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

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

5       NEW SECTION.   **Sec. 1.**   The legislature recognizes that federal  
6       regulations include requirements that pertain to contracts funded by  
7       federal-aid highway funds. One such requirement is that states must  
8       ensure that prime contractors pay subcontractors in full by no later  
9       than thirty days after the subcontractor's work is satisfactorily  
10      completed. One option for meeting this requirement is to decline to  
11      hold retainage from prime contractors. The legislature also recognizes  
12      that retainage is currently used to ensure that claims against the  
13      contractor are resolved in a timely manner. The legislature intends  
14      that the contract bond provided by sureties on behalf of general  
15      contractors provides adequate security for claimants under the bond.

16      **Sec. 2.**   RCW 60.28.011 and 2009 c 432 s 5 and 2009 c 219 s 6 are  
17      each reenacted and amended to read as follows:

18      (1)(a) Except as provided in (b) of this subsection, public

1 improvement contracts shall provide, and public bodies shall reserve,  
2 a contract retainage not to exceed five percent of the moneys earned by  
3 the contractor as a trust fund for the protection and payment of:  
4 ~~((a))~~ (i) The claims of any person arising under the contract; and  
5 ~~((b))~~ (ii) the state with respect to taxes imposed pursuant to Titles  
6 50, 51, and 82 RCW which may be due from such contractor.

7 (b) Public improvement contracts involving the construction,  
8 alteration, repair, or improvement of any highway, road, or street  
9 funded in whole or in part by federal transportation funds shall rely  
10 upon the contract bond as referred to in chapter 39.08 RCW for the  
11 protection and payment of: (i) The claims of any person or persons  
12 arising under the contract to the extent such claims are provided for  
13 in RCW 39.08.010; and (ii) the state with respect to taxes imposed  
14 pursuant to Titles 50, 51, and 82 RCW which may be due. The contract  
15 bond must remain in full force and effect until, at a minimum, all  
16 claims filed in compliance with chapter 39.08 RCW are resolved.

17 (2) Every person performing labor or furnishing supplies toward the  
18 completion of a public improvement contract shall have a lien upon  
19 moneys reserved by a public body under the provisions of a public  
20 improvement contract. However, the notice of the lien of the claimant  
21 shall be given within forty-five days of completion of the contract  
22 work, and in the manner provided in RCW 39.08.030.

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

26 (a) After completion of all contract work other than landscaping,  
27 the contractor may request that the public body release and pay in full  
28 the amounts retained during the performance of the contract, and sixty  
29 days thereafter the public body must release and pay in full the  
30 amounts retained (other than continuing retention of five percent of  
31 the moneys earned for landscaping) subject to the provisions of  
32 chapters 39.12 and 60.28 RCW.

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

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

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

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

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

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

23 (6) A contractor may submit a bond for all or any portion of the  
24 contract retainage in a form acceptable to the public body and from a  
25 bonding company meeting standards established by the public body. The  
26 public body shall accept a bond meeting these requirements unless the  
27 public body can demonstrate good cause for refusing to accept it. This  
28 bond and any proceeds therefrom are subject to all claims and liens and  
29 in the same manner and priority as set forth for retained percentages  
30 in this chapter. The public body shall release the bonded portion of  
31 the retained funds to the contractor within thirty days of accepting  
32 the bond from the contractor. Whenever a public body accepts a bond in  
33 lieu of retained funds from a contractor, the contractor shall accept  
34 like bonds from any subcontractors or suppliers from which the  
35 contractor has retained funds. The contractor shall then release the  
36 funds retained from the subcontractor or supplier to the subcontractor  
37 or supplier within thirty days of accepting the bond from the  
38 subcontractor or supplier.

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

18 (8) Whenever the department of transportation has contracted for  
19 the construction of two or more ferry vessels, sixty days after  
20 completion of all contract work on each ferry vessel, the department  
21 must release and pay in full the amounts retained in connection with  
22 the construction of the vessel subject to the provisions of RCW  
23 60.28.021 and chapter 39.12 RCW. However, the department of  
24 transportation may at its discretion condition the release of funds  
25 retained in connection with the completed ferry upon the contractor  
26 delivering a good and sufficient bond with two or more sureties, or  
27 with a surety company, in the amount of the retained funds to be  
28 released to the contractor, conditioned that no taxes shall be  
29 certified or claims filed for work on the ferry after a period of sixty  
30 days following completion of the ferry; and if taxes are certified or  
31 claims filed, recovery may be had on the bond by the department of  
32 revenue, the employment security department, the department of labor  
33 and industries, and the material suppliers and laborers filing claims.

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

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

5 (11) This subsection applies only to a public body that has  
6 contracted for the construction of a facility using the general  
7 contractor/construction manager procedure, as defined under RCW  
8 39.10.210. If the work performed by a subcontractor on the project has  
9 been completed within the first half of the time provided in the  
10 general contractor/construction manager contract for completing the  
11 work, the public body may accept the completion of the subcontract.  
12 The public body must give public notice of this acceptance. After a  
13 forty-five day period for giving notice of liens, and compliance with  
14 the retainage release procedures in RCW 60.28.021, the public body may  
15 release that portion of the retained funds associated with the  
16 subcontract. Claims against the retained funds after the forty-five  
17 day period are not valid.

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

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

22 (b) "Person" means a person or persons, mechanic, subcontractor, or  
23 materialperson who performs labor or provides materials for a public  
24 improvement contract, and any other person who supplies the person with  
25 provisions or supplies for the carrying on of a public improvement  
26 contract.

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

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

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