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SENATE BILL 5222

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State of Washington

65th Legislature

2017 Regular Session

By Senators Hasegawa, Baumgartner, Takko, O'Ban, Conway, Zeiger, Bailey, and King

1 AN ACT Relating to requiring prime contractors to bond the  
2 subcontractor's portion of retainage upon request; and amending RCW  
3 60.28.011.

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

5 **Sec. 1.** RCW 60.28.011 and 2015 c 280 s 1 are each amended to  
6 read as follows:

7 (1)(a) Except as provided in (b) of this subsection, public  
8 improvement contracts must provide, and public bodies must reserve, a  
9 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: (i)  
11 The claims of any person arising under the contract; and (ii) the  
12 state with respect to taxes, increases, and penalties imposed  
13 pursuant to Titles 50, 51, and 82 RCW which may be due from such  
14 contractor.

15 (b) Public improvement contracts funded in whole or in part by  
16 federal transportation funds must rely upon the contract bond as  
17 referred to in chapter 39.08 RCW for the protection and payment of:  
18 (i) The claims of any person or persons arising under the contract to  
19 the extent such claims are provided for in RCW 39.08.010; and (ii)  
20 the state with respect to taxes, increases, and penalties incurred on  
21 the public improvement project under Titles 50, 51, and 82 RCW which

1 may be due. The contract bond must remain in full force and effect  
2 until, at a minimum, all claims filed in compliance with chapter  
3 39.08 RCW are resolved.

4 (2) Every person performing labor or furnishing supplies toward  
5 the completion of a public improvement contract has 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 must 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  
12 on 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  
15 full the amounts retained during the performance of the contract, and  
16 sixty days thereafter the public body must release and pay in full  
17 the amounts retained (other than continuing retention of five percent  
18 of the moneys earned for landscaping) subject to the provisions of  
19 chapter((§)) 39.12 ((and 60.28)) RCW and this chapter.

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 chapter((§))  
23 39.12 ((and 60.28)) RCW and this chapter.

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

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

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

32 (c) Placed in escrow with a bank or trust company by the public  
33 body. When the moneys reserved are placed in escrow, the public body  
34 must issue a check representing the sum of the moneys reserved  
35 payable to the bank or trust company and the contractor jointly. This  
36 check must be converted into bonds and securities chosen by the  
37 contractor and approved by the public body and the bonds and  
38 securities must be held in escrow. Interest on the bonds and  
39 securities must be paid to 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.  
5 Whenever the contractor or subcontractor reserves funds earned by a  
6 subcontractor or sub-subcontractor or supplier, the contractor or  
7 subcontractor must 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  
12 an authorized surety insurer. The public body may require that the  
13 authorized surety have a minimum A.M. Best financial strength rating  
14 so long as that minimum rating does not exceed A-. The public body  
15 must comply with the provisions of RCW 48.28.010. (~~This~~) At any  
16 time prior to final formal acceptance of the project, a subcontractor  
17 may request the contractor to submit a bond to the public owner for  
18 that portion of the contractor's retainage pertaining to the  
19 subcontractor in a form acceptable to the public body and from a  
20 bonding company meeting standards established by the public body.  
21 Within thirty days of receipt of the request, the contractor shall  
22 provide and the public body shall accept a bond meeting these  
23 requirements unless the public body can demonstrate good cause for  
24 refusing to accept it or the subcontractor refuses to pay the  
25 subcontractor's portion of the bond premium and to provide the  
26 contractor with a like bond. The contractor's bond and any proceeds  
27 therefrom are subject to all claims and liens and in the same manner  
28 and priority as set forth for retained percentages in this chapter.  
29 The public body must release the bonded portion of the retained funds  
30 to the contractor within thirty days of accepting the bond from the  
31 contractor. Whenever a public body accepts a bond in lieu of retained  
32 funds from a contractor, the contractor must accept like bonds from  
33 any subcontractors or suppliers from which the contractor has  
34 retained funds. The contractor must then release the funds retained  
35 from the subcontractor or supplier to the subcontractor or supplier  
36 within thirty days of accepting the bond from the subcontractor or  
37 supplier.

38 (7) If the public body administering a contract, after a  
39 substantial portion of the work has been completed, finds that an  
40 unreasonable delay will occur in the completion of the remaining

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

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

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

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

1           (11) This subsection applies only to a public body that has  
2 contracted for the construction of a facility using the general  
3 contractor/construction manager procedure, as defined under RCW  
4 39.10.210. If the work performed by a subcontractor on the project  
5 has been completed within the first half of the time provided in the  
6 general contractor/construction manager contract for completing the  
7 work, the public body may accept the completion of the subcontract.  
8 The public body must give public notice of this acceptance. After a  
9 forty-five day period for giving notice of liens, and compliance with  
10 the retainage release procedures in RCW 60.28.021, the public body  
11 may release that portion of the retained funds associated with the  
12 subcontract. Claims against the retained funds after the forty-five  
13 day period are not valid.

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

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

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

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

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

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