

CHAPTER 236.

[H. B. 695.]

PUBLIC IMPROVEMENTS—CONTRACTS—LIENS.

AN ACT relating to contracts for public improvements; amending sections 1 and 2, chapter 166, Laws of 1921 and RCW 60.28.010 and 60.28.020; amending section 3, chapter 166, Laws of 1921 as last amended by section 1, chapter 241, Laws of 1927 and RCW 60.28.030; amending chapter 166, Laws of 1921 by adding thereto three new sections to be known as sections 4, 5, and 6; repealing section 27, chapter 228, Laws of 1949 and RCW 82.32.250, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 1, chapter 166, Laws of 1921 and RCW 60.28.010 are each amended to read as follows:

Amendment.

Contracts for public improvements or work by the state, or any county, city, town, district, board, or other public body, shall provide, and there shall be reserved from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to fifteen percent of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82, RCW which may be due from such contractor. Said fund shall be retained for a period of thirty days following the final acceptance of said improvement or work as completed, and every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said

Contracts for public improvements shall provide reserve fund equal to fifteen per cent of estimate.

Fund retained thirty days following final acceptance.

Lien.

Notice of
lien given.

fund so reserved, provided such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 through 39.08.060 as now existing and in accordance with any amendments that may hereafter be made thereto:

Contract price
exceeding two
hundred thou-
sand dollars.

Provided, however, That where in any improvement or work the contract price shall exceed two hundred thousand dollars, but ten percent shall be reserved on estimates in excess of said sum or where the aggregate of previous estimates equals or exceeds said amount. The provisions of this act shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

Supersede.

Amendment.

SEC. 2. Section 2, chapter 166, Laws of 1921 and RCW 60.28.020 are each amended to read as follows:

Reserve return
to contractor.

After the expiration of the thirty day period, and after receipt of the tax commission's certificate, the reserve in excess of a sum sufficient to discharge the taxes certified as due or to become due by the tax commission, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, shall be paid to the contractor.

Amendment.

SEC. 3. Section 3, chapter 166, Laws of 1921 as last amended by section 1, chapter 241, Laws of 1927 and RCW 60.28.030 are each amended to read as follows:

Action to fore-
close lien; time
of filing.

Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: *Provided,* That the

Enforcement
of lien.

public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this act. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund.

Answer of public body.

Failure to bring action to foreclose.

Construal of four month limitation.

SEC. 4. Chapter 166, Laws of 1921 is amended by adding thereto a new section to be known as section 4.

New section.

The amount of all taxes, increases and penalties due or to become due under Title 82, RCW from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is five thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, and the amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

Priority of liens.

Amendment.

SEC. 5. Chapter 166, Laws of 1921 is amended by adding thereto a new section to be known as section 5.

Notification to tax commission upon final acceptance of contract.

Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the tax commission of the completion of said contract. Such officer shall not make any payment from the retained percentage fund to any person, until he has received from the tax commission a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the commission's opinion, readily collectible without recourse to the state's lien on the retained percentage.

Certificate from tax commission before payment.

New section.

SEC. 6. Chapter 166, Laws of 1921 is amended by adding thereto a new section to be known as section 6.

Tax commission may request payment in accordance with priority under act.

If within thirty days after receipt of notice by the tax commission of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the tax commission may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the tax commission in accordance with the priority provided by this act. The disbursing officer shall within ten days after receipt of such certificate and request pay to the tax commission the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien

upon the retained percentage withheld by the disbursing officer, shall pay to the tax commission the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the tax commission for the balance of all taxes, increases or penalties shown to be due by the certificate of the tax commission. If the contractor owes no taxes imposed pursuant to Title 82, RCW, the tax commission shall so certify to the disbursing officer. No taxes owed.

SEC. 7. Section 27, chapter 228, Laws of 1949 and RCW 82.32.250 are each hereby repealed. Repeal.

SEC. 8. If any section, provision or part of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this act as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. Invalidity.

SEC. 9. This act is necessary for the immediate support of state government and its existing public institutions, and shall take effect immediately. Effect immediately.

Passed the House March 1, 1955.

Passed the Senate March 7, 1955.

Approved by the Governor March 17, 1955.