

taxpayer who has registered in any city or town where the taxpayer maintains an office or terminal, or in the case of a taxpayer who has paid a license fee or tax based on such gross receipts to any city or town levying same which may reasonably be construed to be the principal market of the taxpayer but in which he maintains no office or terminal.

NEW SECTION. Sec. 4. This act applies to motor carriers of freight for hire only. Nothing in this act applies to a person engaged in the business of making sales at retail or wholesale or of providing storage services for tangible personal property.

Passed the House February 15, 1982,

Passed the Senate March 7, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.

CHAPTER 170

[Substitute House Bill No. 931]

PUBLIC WORKS CONTRACTS—RETAINED PERCENTAGE—BOND— NOTICE OF COMPLETION—FUNDS RELEASE

AN ACT Relating to public works; amending section 14, chapter 260, Laws of 1981 and RCW 60.28.010; amending section 5, chapter 236, Laws of 1955 as last amended by section 3, chapter 38, Laws of 1970 ex. sess. and RCW 60.28.050; amending section 3, chapter 62, Laws of 1973 1st ex. sess. and RCW 60.28.080; and repealing section 1, chapter 91, Laws of 1957, section 26, chapter 26, Laws of 1967 ex. sess., section 2, chapter 151, Laws of 1969 ex. sess. and RCW 60.28.070.

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

Section 1. Section 14, chapter 260, Laws of 1981 and RCW 60.28.010 are each amended to read as follows:

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum (~~equal to ten percent of the first one hundred thousand dollars and~~) not to exceed five percent (~~for all amounts over one hundred thousand dollars 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. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall

have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed; ((or))

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

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

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract(~~(, other than a contract governed by the provisions of RCW 60.28.070, as amended)~~), after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

~~((4))~~ (6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

Sec. 2. Section 5, chapter 236, Laws of 1955 as last amended by section 3, chapter 38, Laws of 1970 ex. sess. and RCW 60.28.050 are each amended to read as follows:

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 department of revenue of the completion of ~~((said contract))~~ contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue 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 department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

Sec. 3. Section 3, chapter 62, Laws of 1973 1st ex. sess. and RCW 60.28.080 are each amended to read as follows:

(1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract ~~((or order funds reserved paid to the contractor))~~ as provided by RCW 60.28.010(3) ~~((and 60.28.070 respectively))~~, the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973.

NEW SECTION. Sec. 4. Section 1, chapter 91, Laws of 1957, section 26, chapter 26, Laws of 1967 ex. sess., section 2, chapter 151, Laws of 1969 ex. sess. and RCW 60.28.070 are each repealed.

Passed the House March 10, 1982.

Passed the Senate March 9, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.

CHAPTER 171

[Substitute House Bill No. 15]

CONTROLLED SUBSTANCES—FORFEITURE, SEIZURE OF PROPERTY— IMITATION CONTROLLED SUBSTANCES

AN ACT Relating to controlled substances; reenacting and amending section 69.50.505, chapter 308, Laws of 1971 ex. sess. as last amended by section 3, chapter 48, Laws of 1981 and by section 32, chapter 67, Laws of 1981 and RCW 69.50.505; adding a new chapter to Title 69 RCW; prescribing penalties; and providing an effective date.

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

Section 1. Section 69.50.505, chapter 308, Laws of 1971 ex. sess. as last amended by section 3, chapter 48, Laws of 1981 and by section 32, chapter 67, Laws of 1981 and RCW 69.50.505 are each reenacted and amended to read as follows:

(a) The following are subject to seizure and forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraphs (1) or (2), but:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;