

WAC 392-344-147 Retained percentage law related requirements.

(1) State funding assistance is conditioned upon a school district's compliance with the cash, or bond in lieu of cash, retained percentage requirements of chapter 60.28 RCW and this section. A school district may elect to administer compliance with all requirements of chapter 60.28 RCW or, in part, designate the superintendent of public instruction as agent of the school district for purposes of administering retained percentage moneys reserved under RCW 60.28.011.

(2) Under RCW 60.28.011, a school district either:

(a) Must provide for the reservation of five percent of all moneys earned by a contractor either by the district, deposited by the district in an interest-bearing account or placed in escrow as provided in RCW 60.28.011(4); or

(b) Must accept a bond submitted by the contractor from any portion of the retainage in a form acceptable to the superintendent of public instruction and the school district and from a bonding company which meets the standards established at subsection (4)(b) of this section and by the school district, unless the school district can demonstrate good cause for refusing to accept the bond.

As a general rule, the superintendent of public instruction prefers and recommends the cash retainage option for reasons which include the security and ease of enforcement which the cash option affords.

(3) Cash retainage.

(a) If the school district reserves five percent of all moneys earned by the contractor in a retainage trust fund administered by the school district in accordance with RCW 60.28.011(1), moneys deposited in that trust fund (whether retained by the district, deposited by the district in an interest-bearing account, or placed in escrow), may be paid to the contractor without prior written consent by the superintendent of public instruction. The superintendent of public instruction shall make available to the school district model procedures and forms for setting up the trust fund selected by the contractor under RCW 60.28.011(4).

(b) At the request of the school district, the superintendent of public instruction may be designated as agent of the school district for cash retainage and will:

(i) Administer the retained percentage trust fund in accordance with RCW 60.28.011, inclusive of depositing, releasing and accounting for such moneys;

(ii) Establish and administer the retained percentage trust fund in accordance with the terms of chapter 60.28 RCW, and such terms as may be established by the superintendent of public instruction to ensure compliance with chapter 60.28 RCW, the security of trust fund moneys and efficient administration; and

(iii) Ensure that no moneys lawfully deposited in the retained percentage trust fund shall be paid to the contractor without the prior written consent of the superintendent of public instruction, except for the payment of interest earnings as may be required by law.

(4) If at the request of the contractor the bond in lieu of cash retained percentage option is implemented the following conditions apply:

(a) The bond shall be in terms and of a form approved and established by the superintendent of public instruction to ensure that the bond adequately addresses the purposes of chapter 60.28 RCW; and

(b) The bond shall be signed by a surety that is:

- (i) Registered with the Washington state insurance commissioner;
- and
- (ii) On the currently authorized insurance list published by the Washington state insurance commissioner.
- (c) Whatever additional requirements for the bonding company as may be established by the school district.
- (5) The release of retainage, whether cash or bond-in-lieu, shall be conditioned upon satisfactory compliance with the provisions of WAC 392-344-165.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-147, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-147, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-14-028, § 180-29-147, filed 6/28/94, effective 7/29/94.]