

# Retainage Law in the 50 States

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## Acknowledgments

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A sincere thank you to the many construction law attorneys who contributed to this publication of *Retainage Law in the 50 States*. We appreciate the efforts of these attorneys in providing this important reference. A listing of those attorneys appears in the appendix. We would also like to recognize the contributions of Kegler, Brown, Hill & Ritter summer associates Peter Berg, Jamie Davis, Danielle Starks and Mark Thompson to this publication.

## About ASA and FASA

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The American Subcontractors Association amplifies the voice of and leads trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, integrity and membership diversity.



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## Preface

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In construction contracts, **retainage** is a sum of money earned by a contractor or subcontractor for satisfactory work, but withheld until the contract, or a certain portion of the contract, is complete. Retainage is generally withheld as an assurance for the timely completion and quality of a contractor or subcontractor's work. It is calculated as a percentage of the total contract price.

In some states, retainage has become a typical practice in both public and private construction contracts. The mandatory or permissive nature of retainage varies from state to state. In many states, the withheld funds are to be held in escrow, to be paid back to the contractor or subcontractor with interest. Many states also permit contractors and/or subcontractors to substitute securities in lieu of retainage. The majority of states permit contracting agencies or owners to reduce or even eliminate the rate of retainage once a certain portion of the contract is complete.

Retainage laws have been the subject of great debate. While most subcontractors oppose the practice, some owners and general contractors believe the practice is necessary. Though retainage arguably serves as a type of "insurance" for owners and general contractors, it can have the unfortunate effect of requiring contractors and subcontracts to complete work without full payment, in essence "financing the job," and making it difficult to timely pay their own creditors. In some cases, contractors and subcontractors are burdened with sizable retainage receivables long after the contract has been performed. These hardships often give contractors, and most frequently subcontractors, no choice but to add the "hidden" cost of retainage to their bid numbers which only increases the ultimate cost to owners. As a result, some owners have recognized this reality and reduced or eliminated retainage. The past few years have demonstrated a trend in which some states have recognized the problem and reduced the maximum rate of retainage permitted, and in some cases, eliminated it entirely.

This publication is designed as a summary of the retainage laws in the 50 states. It is not a comprehensive legal compilation of the statutes in the states. *It does not contain legal advice.* Because individual circumstances may vary significantly and state laws are continually changing, readers should consult their local attorneys for specific advice. For easy reference, a list of contributing attorneys appears as an appendix to this publication.

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## Retainage Law in the 50 States

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### ALABAMA

House: 334-242-7600

Senate: 334-242-7800

Legislative Reference Service: 334-242-7560

Legislative Web site: <http://www.legislature.state.al.us/>

#### *Public*

Retainage may not exceed 5 percent. After 50 percent of the contract is complete, no retainage may be withheld. Upon completion and acceptance of each division of the contract, full payment of the amount retained is to be made, unless such division is an integral component of the project. A contractor may elect to substitute securities in lieu of retainage. ALA. CODE § 39-2-12.

#### *Private*

The percentage of retainage withheld between a contractor and subcontractor shall not exceed the retainage withheld by the owner. Any percent of retainage on payments made by a contractor to the subcontractor that exceed the percentage of retainage on payments made by the owner to the contractor shall be subject to interest, to be paid by the contractor to the subcontractor at the rate of 1 percent per month. This provision is also applicable to subcontractor-subcontractor contracts. ALA. CODE § 8-29-3.

### ALASKA

House: 907-465-3725

Senate: 907-465-3701

Legislative Information Office: 907-465-4648

Legislative Web site: <http://w3.legis.state.ak.us/index.php>

#### *Public*

There are no statutes specifying the rate of retainage. However, there are statutes regarding the timing of payment to contractors and subcontractors. On public construction contracts, the public body shall pay to the general contractor interest at a rate of 10 percent. The interest accrues from the date of approval of pay request until the day the contractor is paid. ALASKA STAT. §§ 36.90.210, 36.90.250, 45.45.010.

### ARIZONA

House Information Desk: 602-926-4221

Senate Information Desk: 602-926-3559

Legislative Web site: <http://www.azleg.gov/>

#### *Public*

The rate of retainage is 10 percent of the amount of each pay estimate. When 50 percent of the work is complete, one-half of the retainage is released. Thereafter, if work is deemed satisfactory, no more than 5 percent may be withheld. In lieu of retainage, a contractor may deposit securities. Upon final payment, the contractor is entitled to all interest earned on the

deposited securities. When a contractor substitutes securities, a subcontractor is also entitled to substitute securities. Upon completion and acceptance of each separate building, public work, or division of the contract, payment may be made in full. ARIZ. REV. STAT. § 34-221(C).

For construction-manager-at-risk services, design-build services, and job-order construction contracts, the maximum rate of retainage is 10 percent of the amount of each pay estimate. When the contract is 50 percent complete, one-half of the amount retained, including any securities substituted, shall be paid upon the contractor's request, provided the contractor's progress is satisfactory. After the contract is 50 percent complete, no more than 5 percent may be retained, provided the contractor is proceeding acceptably. If, at any time, the owner determines satisfactory progress is not being made, 10 percent shall be retained. A contractor may substitute securities in lieu of retainage. Upon completion and acceptance of each separate building or division of the contract, payment may be made in full. ARIZ. REV. STAT. § 34-609.

*Private*

Owners may withhold a "reasonable amount of retention." ARIZ. REV. STAT. § 32-1129.01(D). Owners are also permitted to withhold an amount sufficient to pay the direct expenses the owner reasonably expects to incur to correct any items set forth in the statute such as defective work, damage, or reasonable evidence that the contract cannot be completed. For a full list of statutory items *see* ARIZ. REV. STAT. § 32-1129.01(D)-(E). At a subcontractor's request, owners must notify subcontractors of progress payments and final payment within five days. ARIZ. REV. STAT. § 32-1129.01(R).

**ARKANSAS**

House: 501-682-7771; 501-682-6211

Senate: 501-682-2902

Legislative Web site: <http://www.arkleg.state.ar.us/>

*Public*

Generally, the rate of retainage is 10 percent. Once 50 percent of the project is complete, no additional funds may be withheld. If completion is based upon partial occupancy, any retention proceeds withheld shall be partially released within 30 days, proportionate to the value of the project. Monies are to be paid to the contractor within 30 days of the contract being substantially complete. Retainage is not deducted from the part of a progress payment that includes the cost of materials or equipment stored on the job site. ARK. CODE ANN. § 22-9-604. A contractor may substitute securities in lieu of retainage. ARK. CODE ANN. § 22-9-501.

**CALIFORNIA**

Chief Clerk of the Assembly: 916-319-2856

Secretary of the Senate: 916-445-4251

Bill Status: 916-445-2323

Legislative Web site: <http://www.leginfo.ca.gov/>

*Public*

Until final completion and acceptance of the project, the rate of retainage shall not be less than 5 percent. However, any time after 95 percent of the work is complete, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the

unfinished work. CAL. PUB. CONT. CODE § 10261. A contractor may substitute securities in lieu of retainage or request that payments be made into an escrow account. CAL. PUB. CONT. CODE § 10263.

*Private*

Retainage must be released within 45 days of the "date of completion," as defined by statute. If a dispute arises, the owner may retain 150 percent of the disputed amount. CAL. CIV. CODE §§ 8812.

**COLORADO**

House: 303-866-2904

Senate: 303-866-2316

Bill Room (in session only): 303-866-3055

House Legislative Council (between sessions): 303-866-2904

Senate Legislative Council (between sessions): 303-866-2316

Legislative Web site: <http://www.leg.state.co.us/>

*Public*

For contracts exceeding \$150,000, the maximum rate of retainage is 10 percent. Once 50 percent of the work is complete and progress is deemed satisfactory, the public entity shall not withhold additional funds. Upon written request by the contractor, the public entity may authorize final payment to the contractor or subcontractors who have completed their work, if the entity finds satisfactory progress is being made. COLO. REV. STAT. § 24-91-103. The contractor is permitted to substitute securities in lieu of retainage and is entitled to all interest that accrues. COLO. REV. STAT. §§ 24-91-105, -108.

**CONNECTICUT**

General Assembly: 860-240-0100

Legislative Web site: <http://www.cga.ct.gov>

*Public*

For contracts awarded by the Department of Works or any other state agency, except the Department of Transportation, the maximum rate of retainage is 10 percent. CONN. GEN. STAT. § 49-41b(1).

For contracts awarded by the Department of Transportation, the public body shall not withhold more than 2.5 percent of a periodic or final payment. Additionally, a contractor shall not withhold more than 2.5 percent from a subcontractor. CONN. GEN. STAT. § 49-41b(2).

For contracts awarded by municipalities, the maximum rate of retainage is 5 percent. Additionally, a contractor shall not withhold more than 5 percent from a subcontractor. CONN. GEN. STAT. § 49-41b(3).

The contractor or subcontractor may substitute securities in lieu of retainage. CONN. GEN. STAT. § 3-112a.

*Private*

The maximum rate of retainage is 5 percent of the estimated amount of the progress payment for the life of the construction project. CONN. GEN. STAT. § 42-158k. An escrow account shall be established for all retainage. CONN. GEN. STAT. § 42-158p.

**DELAWARE**

House Receptionist: (D) 302-744-4351, (R) 302-744-4171  
Senate Receptionist: (D) 302-744-4286, (R) 302-744-4048  
Legislative Research: 302-739-4114, 800-282-8545  
Legislative Web site: <http://legis.delaware.gov/>

*Public*

Retainage shall not exceed 5 percent of the value of the work completed by the contractor. Upon completion, the public entity may release 60 percent of the retainage amount. The balance is released when the contractor submits all required reports, all subcontractors are paid by the contractor, and the agency authorizes release. DEL. CODE ANN. tit. 29, § 6962(5)(a)(1). With agency approval, the contractor may substitute securities. DEL. CODE ANN. tit. 29, § 6962(5)(c).

In the event of a dispute between a contractor and subcontractor over the amount owed, the agency may withhold 150 percent of the amount withheld by the contractor in the contractor's dispute with the subcontractor. DEL. CODE ANN. tit. 29, § 6962(5)(a)(1)(B).

**DISTRICT OF COLUMBIA**

D.C. City Council: 202-724-8080  
Legislative Services: 202-724-8050  
Legislative Web site: <http://www.dccouncil.washington.dc.us>

*Public*

On all contracts, 10 percent retainage shall be withheld. When 50 percent of the work is complete, the Mayor has discretion to eliminate or reduce the retention. D.C. CODE § 2-203.01.

**FLORIDA**

House: 850-488-1157  
Legislative Information Services: 904-488-4871, 800-342-1827  
Legislative Web site: <http://www.leg.state.fl.us>

*Public*

The maximum rate of retainage is 10 percent. When 50 percent of the work is complete, the rate of retainage must be reduced to 5 percent. After 50 percent completion, as defined by statute, the contractor may elect to withhold retainage from the subcontractors at a rate higher than 5 percent based on the subcontractor's past performance, the likelihood that such performance will continue, and other available safeguards. FLA. STAT. ANN. § 255.078.

With the state's approval, a contractor may substitute securities in lieu of retainage. FLA. STAT. ANN. § 255.052.

For contracts with the Dept. of Transportation, the department may also withhold up to 10 percent retainage if the contractor fails to timely complete or falls behind in work progress. See FLA. STAT. ANN. §§ 337.175; 337.015.

## **GEORGIA**

Clerk of the House: 404-656-5015

Secretary of the Senate: 404-656-5040, 800-282-5803

Legislative Web site: <http://www.legis.state.ga.us>

### *Public*

The maximum rate of retainage is 10 percent on all progress payments. When 50 percent of the contract is complete, retainage ceases if the work is satisfactory. If the work is unsatisfactory or has fallen behind schedule, retainage may resume at the previous level. GA. CODE ANN. §§13-10-80(b)(2)(A).

At substantial completion, the public entity shall release the retainage within 30 days after receiving the contractor's invoice. The owner may withhold an amount equal to 200 percent of the value of each incomplete item, to be released upon the completion of each item. GA. CODE ANN. §§13-10-80(b)(2)(C).

A subcontractor is entitled to the same percentage of retainage as the contractor. If the contractor's retainage is reduced or if the contractor receives full payment of the withheld amount, it must reduce the subcontractor's retention, but only if 50 percent of the subcontractor's work has been completed. GA. CODE ANN. §§13-10-80(b)(2)(C), -81.

The Department of Transportation is permitted to withhold retainage if the appropriate clauses are included within the contract. GA. CODE ANN. § 32-2-75.

## **HAWAII**

Senate: 808-586-6719

Bill Status: 808-587-0478

Legislative Web site: <http://www.capitol.hawaii.gov>

### *Public*

The rate of retainage may not exceed 5 percent of the amount due. All funds are to be held by a procurement officer. After the project is 50 percent complete, no funds may be retained if progress is satisfactory. If progress is unsatisfactory, however, the procurement officer may continue to withhold funds. The contractor may substitute securities in lieu of retainage. HAW. REV. STAT. § 103-32.1.

## **IDAHO**

General Legislature: 208-334-2475

Legislative Web site: <http://www.legislature.idaho.gov>

### *Public*

If a public body requires a performance or payment bond in excess of 50 percent for the total contract amount, the rate of retainage may not exceed 5 percent of the money owed to the contractor. Retention must be released to the contractor 30 days after the acceptance of the portion of the project on which the funds were retained. Contractors may not withhold more than 5 percent retainage from subcontractors and shall release retention to subcontractors within 30 days of the completion of the subcontract. IDAHO CODE § 54-1926.

For the construction of projects involving irrigation and drainage, 10 percent retainage is required until final completion. IDAHO CODE § 42-2944.

### *Private*

Retainage withheld from the contractor or subcontractor may not exceed 5 percent unless there is no performance bond. Residential construction of one to four units occupied or to be occupied by the owner is exempted from the statute. IDAHO CODE § 29-115.

*See also* IDAHO CODE § 67-2302 (interest for late payment on retainage).

## **ILLINOIS**

House: 217-782-8223

Senate: 217-782-4517

Bill Status: 217-782-3944

Legislative Web site: <http://www.ilga.gov>

### *Private*

None.

### *Public*

The Illinois Code does not specify a general maximum or mandatory rate of retainage for public projects. However, the Illinois Code sections concerning highway construction do include certain retainage provisions.

For any contracts for the construction of highways, retainage shall be withheld as required by the Standard Specifications for Road and Bridge Construction. 605 ILL. COMP. STAT. 5/4-103. However, the current version of the Standard Specifications for Road and Bridge Construction, adopted January 1, 2012, does not specify a required retainage amount.

With respect to highways, when subcontractors' retainage exceeds \$20,000, upon mutual agreement by the contractor and subcontractor retention may be deposited under a trust agreement with an Illinois financial institution. The subcontractor is to receive any interest on the deposited amount. 605 ILL. COMP. STAT. 5/4-104.

At the request of the contractor and with agency approval, contractor's retainage funds may be deposited under a trust agreement with an Illinois financial institution. The contractor is to receive any interest on the deposited amount. 605 ILL. COMP. STAT. 5/4-103.

## **INDIANA**

### *Public*

State projects other than universities (with some exceptions):

For contracts over \$1,000,000, the state may elect one of two options. It may withhold a maximum of 6 percent until the work is 50 percent complete or it may withhold a maximum of 3 percent until the work is substantially complete. If, upon substantial completion, there are incomplete minor items, the division may withhold an amount equal to 200 percent of the value of each unfinished item. IND. CODE § 4-13.6-7-3. This provision may also be applied to contracts for less than \$1,000,000. IND. CODE § 4-13.6-7-1.

Certain types of state projects (including universities) and local government and school projects: Generally, the agency or unit may elect one of two options with regard to retainage. for contracts over \$200,000: It may hold between 6 percent and 10 percent of the value of the work until the project is 50 percent complete. Upon 50 percent completion, no additional funds may be withheld. Alternatively, it may retain a maximum of 5 percent, but not less than 3 percent, of the value of the work, until the project is complete. IND. CODE § 5-16-5.5-3.5; 36-1-12-14. If there are minor incomplete items, the agency or unit may withhold an amount equal to 200 percent of the value of those items. IND. CODE § 5-16-5.5-6; 36-1-12-14. The Indiana stadium and building authority created by IND. CODE § 5-1-17-6 may opt for greater retainage if it does not require a performance bond. IND. CODE § 36-1-12-14.

State highway projects: No particular retainage percentage is required by statute.

## **IOWA**

House: 515-281-3221

Senate: 515-281-3371

Bill Status: 515-281-5129

Legislative Web site: <https://www.legis.iowa.gov/index.aspx>

### *Public*

The maximum rate of retainage is 5 percent of the estimated labor performed and material delivered. A contractor may retain from a subcontractor either 5 percent or an amount specified in the contract, whichever is smaller. IOWA CODE § 573.12.

For statutory provisions involving improvements to academic institutions *see* IOWA CODE § 262.34.

## **KANSAS**

Legislative Administrative Services: 785-296-2391

Legislative Website: <http://www.kslegislature.org>

### *Public*

Retainage is capped at 5% unless the owner or contractor determines a higher rate, not to exceed 10%, is required to ensure performance. K.S.A. 16-1904(a).

Owners and contractors may withhold up to 150% of the value of incomplete work due to the fault of the contractor or subcontractor, as the case may be. Once remedied, the funds shall be released within 45 days. K.S.A. 16-1904(d) and (e).

Contractors and subcontractors may request an alternate security. If so, the owner or contractor selects the form of the security, e.g., letter of credit, certificate of deposit, cash bond, K.S.A. 16-1904 (f) and (g), but not a payment or performance bond, though presumably a retainage bond.

Retainage shall be released within 30 days after substantial completion except for the portion attributable to punch list work. K.S.A. 16-1904(h).

Failure to timely release retainage results in interest due at the rate of 18% per annum. K.S.A. 16-1904(i).

Subcontractors may be entitled to early release of retainage if it is determined that release is without risk or additional cost to the owner or contractor. K.S.A. 16-1904(j).

For road/bridge projects, retainage is capped at 10%. K.S.A. 68-411. (Note: K.S.A. 16-1904 does NOT apply to road/bridge projects.)

Yet another statute allows contractors who have contracts with owners of more than \$1,000,000 to request their retainage to be placed in an escrow account or provide substitute security, e.g., U.S. or Kansas notes and bonds, certificates of deposit. K.S.A. 75-6909.

### *Private*

Retainage is capped at 10% for all tiers. K.S.A. 16-1804(a).

A general contractor has to pay its subcontractors' retainage within 7 business days of receipt of payment from the owner if there is no dispute and if pay applications are in order. K.S.A. 16-1803(f). A failure to timely pay retainage entitles the subcontractor to receive interest at the rate of 18% per annum starting on the first business day after the due date. K.S.A. 16-1804(j).

## **KENTUCKY**

Senate: 502-564-3120

Legislative Web site: <http://www.lrc.state.ky.us>

### *Public and Private*

Until 50 percent of the contract is complete, the maximum rate of retainage is 10 percent. When more than 50 percent of the project is complete, the rate of retainage shall reduce to 5 percent. KY. REV. STAT. ANN. §§ 371.410(1). When the work is substantially complete, the contractor may withhold 200 percent of the estimated cost of the balance of any contractor's or subcontractor's contractually obligated, yet incomplete, work. KY. REV. STAT. ANN. §§ 371.410(2). *See also* KY. REV. STAT. ANN. §§ 176.090 *et. seq.*

## **LOUISIANA**

House: 225-342-6945

Senate: 225-342-2040

Legislative Web site: <http://www.legis.state.la.us>

### *Public*

For projects less than \$500,000, the maximum rate of retainage is 10 percent. For projects exceeding \$500,000, the maximum rate of retainage is 5 percent of the contract price. Retainage may be held until 45 days after formal acceptance of the work. LA. REV. STAT. ANN. § 38:2248.

With the consent of the surety, the contractor may substitute securities in lieu of retention. LA. REV. STAT. ANN. § 38: 2249.

For contracts with the Department of Transportation, for projects less than \$500,000, the maximum rate of retainage is 10 percent. For projects exceeding \$500,000, the maximum rate of retainage is 5 percent. Retainage is held until forty-five days after formal acceptance of the work. The department shall not withhold retainage if the contractor furnishes a retainage bond equal to 10 percent of the contract amount for projects less than \$500,000 or 5 percent of a contract exceeding \$500,000. LA. REV. STAT. ANN. § 48:256.1.

### *Private*

For projects over \$50,000, retainage funds must be placed in an interest-bearing escrow account by the owner. This provision does not apply to single/double family residences, or for the construction/improvement of various types of industrial facilities involved in the production of, *inter alia*, electric power, wood products, paper or petroleum LA. REV. STAT. ANN. § 9:4815.

## **MAINE**

House: 207-287-1400

Senate: 207-287-1540

Bill Status: 207-287-1692

Legislative Web site: <http://janus.state.me.us>

### *Public*

The public entity shall withhold 5 percent of the amount due to the contractor. However, upon substantial completion of the work, the state may reduce the retainage. The contractor may substitute securities in lieu of retainage. ME. REV. STAT. ANN. tit. 5, § 1746.

### *Private*

Contractors are required to pay subcontractors and suppliers the full amount due within seven days after receipt of retainage. Contractors may withhold retainage from subcontractors and suppliers even in the absence of retainage being withheld from the contractor. ME. REV. STAT. ANN. tit. 10, § 1116.

## **MARYLAND**

State General Assembly Operator: 410-841-3000

Legislative Information Desk: 410-946-5400

Legislative Web site: <http://mlis.state.md.us>

### *Public*

For contracts entered into before July 1, 2013, when a contractor has furnished 100 percent payment and performance security, the maximum rate of retainage is 10 percent. When the project is 50 percent complete, the public body may retain no more than 5 percent, unless it is able to demonstrate a need to retain more. A July 2013 amendment provides that, for public contracts entered into after July 1, 2013, the maximum retainage on a 100 percent bonded project is 5 percent, regardless of the percentage complete. The public body is entitled to withhold any amount the unit believes necessary to protect the state's interest. MD. CODE ANN. STATE FIN. & PROC. § 17-110.

Contractors and subcontractors may withhold retainage only in the same percentage that has been withheld by the government. However, a contractor or subcontractor may withhold additional amounts if it determines that its subcontractor's or sub-subcontractor's performance provides reasonable grounds for withholding more. MD. CODE ANN. STATE FIN. & PROC. § 17-110.

Additionally, a procurement unit and the Maryland Transportation Authority may withhold any amount the entity believes necessary to protect the state's interests. Retained funds may be placed in an interest-bearing account. MD. CODE ANN. STATE FIN. & PROC. §§ 13-225(b), 15-108.

## **MASSACHUSETTS**

House: 617-722-2000

Senate: 617-722-1455

Legislative Web site: <http://www.mass.gov/legis>

### *Public*

On all projects, the rate of retainage may not exceed 5 percent of the approved amount of a periodic payment. The awarding authority may also retain an amount based on its estimate of the fair value of its claims against the contractor.

Not later than 65 days after each subcontractor (as defined by statute) substantially completes its work, the subcontractor is entitled to receive its full subcontract balance, less the estimated cost of completing and correcting any unsatisfactory work, and the awarding authority is to pay such amount to the general contractor. Upon achieving substantial completion of a building contract, the general contractor is entitled to its full balance, less the authority's estimated cost of completion/correction. Upon the general contractor's substantial completion of other public works (roads, bridges, etc.), the awarding authority may also hold 1 percent retainage, pending completion of the entire work

The penalty for the awarding authority's nonpayment is that the wrongfully withheld amounts will earn interest at 3 percent above the rediscount rate charged by the Federal Reserve Bank of Boston. MASS. GEN. LAWS c. 30 §§ 39F, G and K.

## **MICHIGAN**

House: 517-373-0135

Senate: 517-373-2400

Legislative Web site: <http://www.legislature.mi.gov>

### *Public*

The maximum rate of retainage may not exceed 10 percent of each progress payment. MICH. COMP. LAWS §125.1563(2)(a). If progress is satisfactory, the retainage may be reduced when 50 percent of the work is complete. If the public entity determines that the contractor's performance is acceptable, it may retain not more than 10 percent of the dollar value of work after the 50 percent level. MICH. COMP. LAWS §125.1563(2)(b). At no time may the amount of retained funds exceed the *pro rata* share of the public agency's matching requirement under the construction contract. MICH. COMP. LAWS 125.1563(3).

Retained funds must be placed in an interest-bearing account and paid to the contractor as part of the final payment. MICH. COMP. LAWS § 125.1563(3). However, a public agency need not deposit money in an interest-bearing account if the agency is to pay the contractor out of a specific state or federal grant and the contracting public agency has not yet received the grant money at the time of the retainage. MICH. COMP. LAWS 125.1563(3).

When a delay in completion is the result of the contractor, all interest earned on retained funds becomes the property of the awarding entity. MICH. COMP. LAWS § 125.1564. When 94 percent or more of the work under the contract is in place, and at the request of the original contractor, the public agency shall release the retainage, plus interest, to the original contractor. This is only to be done if the original contractor provides to the public agency an irrevocable letter of credit, in the amount of the retainage and interest, containing terms mutually acceptable to the contractor and the public agency. MICH. COMP. LAWS § 125.1563. *See also* MICH. COMP. LAWS § 125.1564.

## **MINNESOTA**

House: 651-296-2146

Senate: 651-296-0504

Legislative Web site: <http://www.leg.state.mn.us>

### *Public*

Retainage may not exceed 5 percent. If the work is satisfactory, the public agency may release or eliminate retainage. Contractors may substitute securities for retention. MINN. STAT. § 15.72-3.

### *Private*

Unless the contract provides otherwise, the owner may reserve retainage, not to exceed 5 percent, and may reduce or eliminate retainage if progress is satisfactory. This provision does not apply to construction or improvements for residential real estate or contracts for professional services such as architecture, geoscience, land surveying, or interior design. MINN. STAT. § 337.10.

## **MISSISSIPPI**

House: 601-359-3360

Bill Status Center (sessions only): 601-359-3719

Legislative Web site: <http://billstatus.ls.state.ms.us/>

### *Public*

Retainage may not exceed 5 percent. MISS. CODE ANN. § 31-5-33(1). On contracts valued in excess of \$250,000, retainage is 5 percent until the job is 50 percent complete. At that point, if the work is satisfactory, the rate reduces to 2.5 percent and half of the withheld funds are to be returned to the contractor to be disbursed to the appropriate subcontractors and suppliers. The contractor may not withhold more from a subcontractor than the state withholds from the contractor. MISS. CODE ANN. § 31-5-33(1). The contractor may substitute securities in lieu of retention. MISS. CODE ANN. § 31-5-15.

Section § 31-5-33 is not applicable to contracts held by the Mississippi Transportation Commission. MISS. CODE ANN. § 31-5-33(2).

For county contracts exceeding \$1,000, the county board of supervisors must retain between 2.5 percent and 10 percent. MISS. CODE ANN. § 19-13-15(1). For contracts exceeding \$750,000, except for bridge or public road contracts, 10 percent shall be retained until the work is 50 percent complete. Thereafter, 50 percent of the retainage shall be returned to the contractor and 5 percent retainage shall be withheld. MISS. CODE ANN. § 19-13-15(3).

Note: MISS. CODE ANN. § 31-5-33 and MISS. CODE ANN. § 19-13-15 appear to be in conflict since § 31-5-33 applies to any public contract with “any political subdivision” which would include county boards of supervisors.

## **MISSOURI**

House: 573-751-3659

Senate: 573-751-3824

Legislative Web site: <http://www.moga.state.mo.us>

### *Public*

The rate of retainage is 5 percent of the value of the contract unless the owner and the architect or engineers determine that a higher rate of retainage is required. The maximum rate of retainage, however, cannot exceed 10 percent. Before substantial completion and at the owner’s discretion and the contractor’s request, withheld funds may be released to subcontractors who have completed performance. The awarding authority may reduce or eliminate retainage if work is satisfactory. MO. REV. STAT. § 34.057.

### *Private*

Retainage is to be held by the owner in trust for the benefit of the general contractor, subcontractors or suppliers in proportion to their interests. Retainage is capped at 10 percent unless there is a default. MO. REV. STAT. § 436.303.

Contractors, subcontractors at any tier may provide substitute security in lieu of cash. MO. REV. STAT. § 436.306. There may be line-item release of retainage. MO. REV. STAT. § 436.321.

Within 30 days of substantial completion, as defined, all retainage or substitute security must be released less 150 percent of the value of the punch list. MO. REV. STAT. § 436.324.

## **MONTANA**

Legislative Service Division: 406-444-3064

Legislative Web site: <http://www.leg.mt.gov/css/Default.asp>

### *Public*

The maximum rate of retainage for public contracts is five (5) percent if the contractor is performing by the terms of the contract. A contractor may withhold no more retainage from subcontractors than is withheld from the contractor by the owner. MONT. CODE ANN. § 18-2-316.

### *Private*

Retainage may not exceed five (5) percent. A contractor may not withhold a higher retainage percentage from subcontractors than is being withheld from the contractor by the owner. Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the contract. MONT. CODE ANN. § 28-2-2110. This provision does not apply to residential projects with a total cost of less than \$400,000. MONT. CODE ANN. § 28-2-2107.

## **NEBRASKA**

Unicameral Information Office: 402-471-2788

Legislative Web site: <http://nebraskalegislature.gov/>

### *Public*

No statute currently provides for a maximum or mandatory rate of retainage.

For state highway system roads and bridges contracts, if the contractor has provided all required reports and has not been paid, the department shall pay to the contractor interest at a rate three (3) percentage points above the previous year's average annual Federal Reserve composite prime lending rate on the amount retained and on the final payment due the contractor, beginning sixty days after final completion of the work and running until the date when payment is tendered to the contractor. NEB. REV. STAT. § 39-1349.

### *Private*

When work has been performed pursuant to a contract, a party may only withhold payment for retainage in an amount not to exceed the amount specified in the contract, if applicable, until the work is substantially complete. NEB. REV. STAT. § 45-1204.

## **NEVADA**

General Legislative Information: 775-684-6827

Legislative Counsel Bureau: 775-684-6800

Legislative Web site: <http://leg.state.nv.us>

### *Public*

Not more than 95 percent of the amount of any progress payment may be paid by a public body until 50 percent of the work required by the contract has been performed. Once 50 percent of the work has been performed, if the public body determines that the performance is satisfactory, it may pay any of the remaining progress payments without withholding additional retainage and may pay any retainage amount previously withheld. If the public body determines progress is unsatisfactory and decides to withhold retainage from remaining progress payments, it may not withhold more than 2.5 percent of any such progress payment. The public body must pay the contractor, at the end of each quarter, interest for the quarter on the amount withheld at a rate equal to the rate quoted by at least three financial institutions. NEV. REV. STAT. § 338.515 (effective through June 30, 2015).

When a public agency occupies one or more buildings of a public work, the agency shall pay the contractor the proportional value of the occupied portion, including retainage and interest. NEV. REV. STAT. § 338.520.

A contractor or subcontractor may retain up to 5 percent of any partial payment due under a subcontract until half of the work is complete. Subsequent payments must equal that paid by the public body for the work performed by the subcontractor. If the contractor or subcontractor receives interest earned on the retainage, it shall, within 10 days, pay each subcontractor the interest which has accrued from the retainage. NEV. REV. STAT. § 338.555 (effective through June 30, 2015).

### *Private*

Retainage may not exceed 10 percent, though additional amounts may be withheld for value of work not performed but for which payment is sought, and for costs to repair deficient work. The same rules apply to subcontractors. NEV. REV. STAT. §§ 624.609, 624.624.

## **NEW HAMPSHIRE**

House: 603-271-3661

Senate: 603-271-2111

Legislative Web site: <http://www.gencourt.state.nh.us>

### *Public*

Although a public agency is permitted to withhold retainage, there are no statutes specifying the maximum rate that may be withheld. For contracts made by a state agency that exceed a total of \$500,000, with prior notification to the contracting agency of the state and the state treasurer, the contractor may substitute securities in lieu of retainage. N.H. REV. STAT. ANN. § 21-I:20.

## **NEW JERSEY**

Assembly: 609-292-5339

Senate: 609-292-5199

Legislative Information: 609-292-4840

Legislative Web site: <http://www.njleg.state.nj.us>

### *Public*

For highway work, 2 percent retainage shall be withheld. Upon substantial completion, 1 percent shall be withheld. If work is not progressing, as defined by the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, 4 percent may be withheld. The contractor may substitute securities in lieu of retainage. N.J. STAT. ANN. § 27:7-34.

For municipalities and counties, the rate of retainage is also 2 percent; upon substantial competition, 1 percent shall be withheld. N.J. STAT. ANN. § 40A:11-16.3.

For Board of Education projects, 5 percent retainage is held if there is no performance bond. If there is a performance bond, then 2 percent retainage is held when the outstanding contract balance exceeds \$500,000 and 5 percent is held when the outstanding contract balance is less than \$500,000. N.J. STAT. ANN. § 18A:18A-40.3.

*See also* N.J. STAT. ANN. § 2A:30A-2.

## **NEW MEXICO**

House: 505-986-4751

Senate: 505-986-4714

Legislative Council Service: 505-986-4600

Legislative Web site: <http://legis.state.nm.us/lcs>

### *Public and Private*

Retainage is prohibited for the majority of private and public construction contracts. N.M. STAT. ANN. § 57-28-5. The following retainage statutes have been repealed: §§ 13-4-27 to -30; 57-28-4, -6, -9, -10. The statute provides that "[w]hen making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amount owed for work performed." Certain owners and contractors have however grabbed on to the last part of that sentence and have modified their contracts to require that the schedule of values contain a line item for closeout after the work is substantially performed. The amount allocated to this closeout line item is usually required to be either 5 or 10 percent of the contractor or subcontractors total contract value. The claim is that the owner and contractor are not retaining funds, but rather that the contract amounts are not yet due to the contractor or subcontractor. No decision has addressed this approach to retainage.

For road contracts, however, 5 percent may be retained. N.M. STAT. ANN. § 67-3-48.

## **NEW YORK**

Assembly: 518-455-4100

Senate: 518-455-2800

Bill Status: 518-455-7545

Legislative Web site: <http://public.leginfo.state.ny.us>

### *Public*

*Contractor:* The public owner shall retain not more than five per centum of each progress payment to the contractor except that the public owner may retain in excess of five per centum but not more than ten per centum of each progress payment to the contractor provided that there are no requirements by the public owner for the contractor to provide a performance bond and a labor and material bond or both in the full amount of the contract. N.Y. STATE FINANCE LAW § 139-f(1); N.Y. GENERAL MUNICIPAL LAW § 106-b(1).

*Subcontractor:* The contractor shall not retain more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material payment bond, both in the full amount of the subcontract, at the request of the contractor. N.Y. STATE FINANCE LAW § 139-f(2); N.Y. GENERAL MUNICIPAL LAW § 106-b(2).

Thus, unless the contractor asks for a performance bond and a labor and material payment bond prior to entering into the subcontract (and presumably pays for the same), the contractor cannot retain more than 5 percent.

### *Private*

By mutual agreement of the parties, an owner may retain a reasonable amount of the contract sum as retainage. A contractor or subcontractor may also withhold retainage so long as that amount does not exceed the amount withheld by the owner. Retainage shall be released no later than 30 days after the final approval of the work under the contract. Late payments accrue interest at a rate of 1 percent per month. N.Y. GENERAL BUSINESS LAW § 756-C.

## **NORTH CAROLINA**

General Assembly: 919-733-7928

Legislative Services: 919-733-7044

Legislative Web site: <http://www.ncga.state.nc.us>

### *Public*

No retainage may be withheld on contracts that are less than \$100,000. N.C. GEN. STAT. §143-134.1(b1). For contracts exceeding \$100,000, the maximum rate of retainage is 5 percent of any periodic payment. When the project is 50 percent complete, as determined by the statute, no retainage can be withheld if the work is deemed "satisfactory." If performance is "unsatisfactory," retainage may be withheld at a maximum rate of 5 percent. N.C. GEN. STAT. §143-134.1(b1)(2). When the project is 50 percent complete, early finishing trades, which must be identified in the bid specifications, may seek 100 percent retainage payment contingent upon the approval of the project architect or engineer. N.C. GEN. STAT. §143-134.1.

For provisions concerning the Department of Transportation *see* N.C. GEN. STAT. §136-28.9.

## **NORTH DAKOTA**

Legislative Assembly: 701-328-3373

Legislative Council: 701-328-2916

Legislative Web site: <http://www.legis.nd.gov>

### *Public and Private*

The maximum rate of retainage is 10 percent of the contract estimate. When more than 50 percent of the work is done, no further funds may be withheld. At 95 percent completion, the state may pay 95 percent of the retained funds to the contractor. Withheld funds are deposited in a North Dakota financial institution with interest accruing to the contractor. N.D. CENT. CODE §§ 43-07-23, 40-22-37.

Contracts entered into with the Water District Board are governed by N.D. CENT. CODE § 61-35-103. Contracts entered into with the North Dakota Mill and Elevator Association are governed by N.D. CENT. CODE § 54-18-18. In both cases, the maximum rate of retainage remains 10 percent of the contract estimate.

## **OHIO**

Clerk of the Legislature: 614-466-3357

Legislative Information: 614-466-8842

Legislative Web site: <http://www.legislature.state.oh.us>

### *Public*

The maximum rate of retainage is 8 percent of the labor estimates prepared by the contractor and approved by the architect/engineer. When 50 percent of the project is complete, no retainage may be withheld. OHIO REV. CODE ANN. § 153.12.

Retained funds are to be placed in an escrow account with interest accruing to the contractor. Retainage and interest are paid to the contractor upon final completion and acceptance of the work. OHIO REV. CODE ANN. § 153.13. *See also* OHIO REV. CODE ANN. § 4113.61.

### *Private*

A contractor may reduce the amount paid by any retainage provision contained in a contract, invoice or purchase order between the contractor and the subcontractor and may withhold any amounts that may be necessary to resolve disputes. OHIO REV. CODE ANN. § 4113.61(A)(1). This section, does not apply to any construction of single-, two-, or three-family detached dwelling houses. OHIO REV. CODE ANN. § 4113.61(C).

## **OKLAHOMA**

House: 1-800- 522-8506

Senate: 405-524-0126

Bill Status – Senate: 405-521-5642

Legislative Web site: <http://www.okhouse.gov>

### *Public*

The rate of retainage may not exceed 5 percent of all partial payments. In a subcontract, the maximum rate of retainage is 5 percent. OKLA. STAT. tit. 61, § 226. A contractor may substitute securities in lieu of retainage. OKLA. STAT. tit. 61, § 113.2.

Neither the Department of Transportation nor the Turnpike Authority may withhold retainage on public contracts. OKLA. STAT. tit. 61, § 113.1.

## **OREGON**

Assembly: 503-986-1187

Secretary of the Senate: 503-986-1851

Chief Clerk of the House: (503) 986-1870

Bill Status: 503-986-1180

Legislative Web site: <http://www.leg.state.or.us>

### *Public*

Retainage may not exceed 5 percent of a progress payment, except when the charter of the contracting agency provides for retainage higher than 5 percent. As work progresses, a public agency may reduce or eliminate the amount of retainage after 50 percent of the work under the contract is complete, if in the contracting agency's opinion, such work is satisfactory. Elimination or reduction of retainage is permitted only upon written application by the contractor, which shall include written approval of the contractor's surety. However, when the contract work is 97.5 percent complete, the contracting agency may, without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work not yet complete. OR. REV. STAT. §§ 279c.555, 560, 570.

At the option of the contractor, retainage may be held in a fund by the public body, deposited in an interest-bearing account in a bank, or placed in escrow with a bank or trust company. OR. REV. STAT. § 279c.560.

Interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier date. The rate of interest charged to the contracting agency on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the district that includes Oregon; the rate, however, may not exceed 30 percent. OR. REV. STAT. § 279c.570.

### *Private*

Retainage may not exceed 5 percent of a progress payment. This provision is applicable to owners, contractors, and subcontractors. OR. REV. STAT. § 701.420. Securities may be substituted in lieu of retainage. OR. REV. STAT. § 701.430.

## **PENNSYLVANIA**

House: 717-787-2372

Secretary of the Senate: 717-787-5920

Bill Status: 717-787-2342

Code Search: 717-783-1530

Legislative Web site: <http://www.legis.state.pa.us>

### *Public*

The rate of retainage may not exceed 10 percent. After 50 percent of the work is complete, the rate of retainage may not exceed 5 percent. At that point, if progress is satisfactory, one-half of the retained funds shall be returned to the contractor. 39 PA. CONS. STAT. § 3921.

For contracts with the Department of General Services, the maximum rate of retainage is 6 percent until half of the project is complete. Thereafter, retainage may not exceed 3 percent. 39 PA. CONS. STAT. § 3921.

For contracts involving state-aided public highway work, retainage is 5 percent until the project is 50 percent complete. Thereafter, no retainage is withheld. The Secretary of Transportation may waive or reduce retainage, if otherwise assured the contract will be completed, and may make payments to further reduce retainage when the project is 95 percent complete. 36 PA. CONS. STAT. § 746.

## **RHODE ISLAND**

House: 401-222-2466

Senate: 401-222-6655

Bill Status: 401-222-3580, 401-751-8833

Legislative Web site: <http://www.rilin.state.ri.us>

### *Public*

Upon substantial completion retainage may not exceed 5 percent of any periodic payment or an amount otherwise agreed on by the contracting parties. The same holds for a payment being made in one installment unless the work is disputed. The retained funds are to be paid to the contractor within 90 days after final acceptance. Subsequently, such funds will be charged interest at 10 percent. R.I. GEN. LAWS § 37-12-10.

## **SOUTH CAROLINA**

House: 803-734-2010

Senate: 803-212-6200

Legislative Web site: <http://www.scstatehouse.net>

### *Public*

The maximum rate of retainage that may be withheld in a contract or subcontract is 3.5 percent. The state releases these funds upon completion of each division of the work. The contractor is required to release retention to its subcontractors within 10 days after receiving payment from the state. S.C. CODE ANN. § 11-35-3030(4).

There are no statutes or cases directly affecting retainage on private work. However, the Prompt Pay Act, S.C. CODE § 29-6-10, *et seq.*, requires that the contractor release payment to subcontractors within seven days of receipt of payment from the owner. Thus, it is theoretically illegal for the contractor to withhold, long-term, retainage in excess of the percentage being withheld by the owner from the contractor.

## **SOUTH DAKOTA**

House: 605-773-3851

Senate: 605-773-3821

Legislative Research Council: 605-773-3251

Legislative Web site: <http://legis.state.sd.us>

### *Public*

Except as stated below, the rate of retainage is not defined by statute.

For county buildings and improvements, there is a graduated scale of retainage. For contracts that are less than \$50,000, retainage shall not be less than 12 percent. For projects up to \$250,000 retainage shall be not less than 12 percent on the first \$50,000, and 5 percent on the next \$200,000.

For projects exceeding \$250,000, retainage shall not be not less than 12 percent on the first \$50,000, 5 percent on the next \$200,000, and 2.5 percent on the remaining contract amount. S.D. CODIFIED LAWS § 7-25-10.

## **TENNESSEE**

House: 615-741-2901

Senate: 615-741-2730

Legislative Information System: 615-741-1552

Legislative Web site: <http://www.legislature.state.tn.us>

### *Public and Private*

The maximum rate of retainage is 5 percent on all public and private projects. TENN. CODE ANN. § 4-15-102. *See also* TENN. CODE ANN. §66-34-103(a).

Retained funds must be kept in an interest-bearing escrow account. TENN. CODE ANN. § 66-34-104. The funds must be released by the owner to the prime contractor within 90 days of completion or substantial completion of a project, whichever occurs first. Prime contractors are required to release retainage to subcontractors and suppliers within 10 days of payment of retainage to the general contractor by the owner. TENN. CODE ANN. § 66-34-103(b).

Contractors and subcontractors may substitute securities in lieu of retainage or, on private contracts, provide a line of credit. TENN. CODE ANN. § 12-4-108(c), (d).

## **TEXAS**

Speaker of the House: 512-463-1000

Secretary of the Senate: 512-463-0100

Legislative Reference Library: 512-463-1252

Legislative Web site: <http://www.capitol.state.tx.us>

### *Public*

The Texas Government Code does not specify a maximum rate of retainage. It does provide, however, that all contracts providing for retainage of more than 5 percent, except those under \$400,000 and certain specified public works contracts, shall have the retainage deposited in an interest-bearing account, of which the interest earned is paid to the contractor upon completion. TEX. GOV'T CODE ANN. §§ 2252.032 and 2252.033. Additionally, a claim for retainage is never valid for an amount greater than 10 percent or the amount specified on the contract, whichever is less. TEX. GOV'T CODE ANN. § 2253.076.

Under the Texas Transportation Code, the public entity may retain a maximum of 5 percent of the contract price. At the request of the Contractor and with approval of the public entity and the comptroller, the retained amount may be deposited under a trust agreement with a bank and the interest earned shall be paid to the contractor. TEX. TRANS. CODE ANN. § 223.010.

Under the Texas Water Code, retainage shall be 10 percent until final completion of the project. However, if satisfactory progress is being made, the board may eliminate retention when the project is 50 percent complete. At substantial completion, the board may release all or a portion of these monies. The contractor receives no interest on retainage held on the first 50 percent of the work, but does receive interest on any retainage held on the remaining 50 percent of the work. TEX. WATER CODE ANN. § 49.276.

### *Private*

For work for which a mechanic's lien may be claimed, the owner must retain 10 percent of either the contract price or the value of the work completed. TEX. PROP. CODE ANN. § 53.101. Although the statute only requires the owner to withhold retainage for 30 days, revisions to § 53.057 of the Texas Property Code, for perfecting a claim on retainage, complicate matters. Hence the owner may withhold for significantly more than 30 days.

## **UTAH**

House: 801-538-1029

Senate: 801-538-1035

Bills Status: 801-538-1588

Legislative Web site: <http://www.le.state.ut.us>

### *Public and Private*

The maximum rate of retainage is 5 percent of the total construction price. The percentage withheld between the contractor and the subcontractor, or between subcontractors, shall be the same as the awarding authority's retention if the retention percentage in the original construction contract between an awarding authority and the original contractor is less than 5 percent; or, after the original contract is executed but before completion of the construction contract, the retention percentage is reduced to less than 5 percent. UTAH CODE ANN. § 13-8-5(3).

Any withheld money must be retained in an interest-bearing account. The interest accrued is for the benefit of the contractor and subcontractors and shall be paid after the project is accepted by the owner. UTAH CODE ANN. § 13-8-5(4).

## **VERMONT**

General Assembly: 802-828-2228

Legislative Council: 802-828-2231

Legislative Web site: <http://www.leg.state.vt.us>

### *Public and Private*

The rate of retainage is not specified by statute. Any amount retained must be released to the contractor within 30 days after complete acceptance of the work. Even in the absence of an owner's imposition of retention on a contractor, a contractor may impose retainage on its subcontractors. VT. STAT. ANN. tit. 9, § 4005.

## **VIRGINIA**

House: 804-698-1619

Senate: 804-698-7400

Legislative Information: 804-698-7410

Legislative Web site: <http://legis.state.va.us>

### *Public*

The maximum rate of retainage is 5 percent. This provision is applicable to both contractors and subcontractors. VA. CODE ANN. § 2.2-4333.

On public contracts exceeding \$200,000, a contractor may place the retained funds in an escrow account; this option must be exercised in the bid proposal. VA. CODE ANN. § 2.2-4334.

## **WASHINGTON**

House: 360-786-7750

Senate: 360-786-7550

Legislative Web site: <http://www.leg.wa.gov/legislature>

### *Public*

Retainage of 5 percent is required for maintenance of a trust fund, which is designed to pay claims arising under the contract. The contractor may request that retainage be reduced to 100 percent of the value of the uncompleted work. At the option of the contractor, the retainage may be held in a fund by the public body, deposited in an interest-bearing account, or placed in escrow. WASH. REV. CODE § 60.28.011.

A contractor or subcontractor may not withhold more than 5 percent from the monies earned by any subcontractor. Any funds retained by a contractor or subcontractor shall earn interest at the rate received by the contractor from the reserved funds. WASH. REV. CODE § 60.28.010(5).

Securities may be provided in lieu of retainage. If a public body accepts a bond in lieu of retainage from the contractor, the contractor must accept like bonds from its subcontractors. WASH. REV. CODE § 60.28.010.

In contracts of \$35,000 or less, the public body and contractor can agree, in lieu of a bond, for the public body to retain 50 percent of the contract price. WASH. REV. CODE § 39.08.010.

## **WEST VIRGINIA**

House: 304-340-3200

Senate Clerk: 304-357-7800

Legislative Web site: <http://www.legis.state.wv.us>

There are no retainage statutes in West Virginia.

## **WISCONSIN**

Assembly Chief Clerk: 608-266-1501

Senate Chief Clerk: 608-266-2517

Legislative Web site: <http://www.legis.state.wi.us>

### *Public*

The maximum rate of retainage is 5 percent. When 50 percent of the work is complete, no additional funds shall be retained. However, if progress is not satisfactory, additional funds may be retained at a rate no higher than 10 percent. WIS. STAT. § 16.855.

## **WYOMING**

House (in Session only): 307-777-7852

Senate (in Session only): 307-777-7711

Legislative Services Office: (307) 777-7881

Legislative Web site: <http://legisweb.state.wy.us>

### *Public*

The maximum rate of retainage is 10 percent. When 50 percent of the work is complete, the public body may eliminate retainage if satisfactory progress is being made. WYO. STAT. ANN. § 16-6-702.

For projects over \$25,000, all retained funds must be placed in an interest-bearing account. WYO. STAT. ANN. § 16-6-704.

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**These materials were prepared on behalf of the Foundation of the American Subcontractors Association, Inc., by its General Counsel, Don Gregory and Eric Travers of Kegler, Brown, Hill & Ritter.**

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## Retainage Law in the 50 States

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Alabama</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• May not exceed 5 percent</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	ALA. CODE § 39-2-12
	<i>Private</i>	<ul style="list-style-type: none"> <li>• Retainage withheld between a contractor and subcontractor shall not exceed the retainage withheld by the owner.</li> </ul>			ALA. CODE § 8-29-3
<b>Alaska</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Not specified</li> </ul>			ALASKA STAT. §§ 36.90.210, 36.90.250, 45.45.010
<b>Arizona</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent (required)</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced to 5 percent</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	ARIZ. REV. STAT. § 34-221(C)
	<i>Private</i>	<ul style="list-style-type: none"> <li>• A "reasonable amount of retainage"</li> </ul>			ARIZ. REV. STAT. § 32-1129.01
<b>Arkansas</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	ARK. CODE ANN. § 22-9-501 ARK. CODE ANN. § 22-9-604
<b>California</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Not less than 5 percent (required)</li> </ul>	<ul style="list-style-type: none"> <li>• At 95 percent completion, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	CAL. PUB. CONT. CODE § 10261 CAL. PUB. CONT. CODE § 10263
	<i>Private</i>	<ul style="list-style-type: none"> <li>• Not specified</li> </ul>			CAL. CIV. CODE §§ 3260, 3262.5
<b>Colorado</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent maximum (contracts exceeding \$150,000)</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	COLO. REV. STAT. §§ 24-91-103, -105, -108

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Connecticut</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent for the Dept. of Works</li> <li>• 2.5 percent for the Dept. of Transportation</li> <li>• 5 percent for municipalities</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	CONN. GEN. STAT. §§ 49-41b(1), (2), (3)
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5 percent maximum.</li> </ul>			CONN. GEN. STAT. §§ 42-158k, -158p
<b>Delaware</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent maximum.</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	DEL. CODE ANN. tit. 29, §§ 6962(5)(a)(1), (5)(c)
<b>District of Columbia</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent minimum.</li> </ul>	<ul style="list-style-type: none"> <li>• Mayor has discretion to reduce retainage.</li> </ul>		D.C. CODE § 2-203.01
<b>Florida</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent maximum.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced to 5 percent</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	FLA. STAT. ANN. § 255.078
<b>Georgia</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent</li> </ul>	<ul style="list-style-type: none"> <li>• No, so long as work is satisfactory.</li> </ul>		GA. CODE ANN. §§13-10-80(b)(2), -81 GA. CODE ANN. § 32-2-75
<b>Hawaii</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent maximum.</li> </ul>	<ul style="list-style-type: none"> <li>• No, so long as progress is satisfactory.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	HAW. REV. STAT. § 103.32.1
<b>Idaho</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent</li> </ul>			IDAHO CODE § 54-1926 IDAHO CODE § 42-2944
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5 percent maximum unless there is a performance bond.</li> </ul>			IDAHO CODE § 29-115
<b>Illinois</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• No maximum or minimum except for road construction.</li> <li>• 2 percent withheld by state, on road/bridge work.</li> <li>• 10 percent withheld by municipality on road/bridge work.</li> </ul>	<ul style="list-style-type: none"> <li>• For a municipality, reduction to 5 percent</li> </ul>		STANDARD SPECIFICATIONS FOR RD. AND BRIDGE CONSTR. 109.07(a)

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Indiana</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>Option 1) It may hold between 6 and 10 percent of the value of the work until the project is 50 percent complete</li> <li>Option 2) It may retain a maximum of 5 percent, but not less than 3 percent, of the value of the work, until the project is complete</li> </ul>	<ul style="list-style-type: none"> <li>1) Upon 50 percent completion, no additional funds may be withheld</li> </ul>		IND. CODE § 5-16-5.5-3.5 IND. CODE § 5-16-5.5-6 IND. CODE § 4-13.6-7-3 IND. CODE § 4-13.6-7-1
<b>Iowa</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>5 percent</li> </ul>			IOWA CODE § 573.12
<b>Kansas</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>Generally, not specified</li> <li>5 percent for state roads</li> </ul>		<ul style="list-style-type: none"> <li>Yes</li> </ul>	KAN. STAT. ANN. § 75-6909 KAN. STAT. ANN. § 68-411 KAN. STAT. ANN. §§16-1803, -1804
<b>Kentucky</b>					
	<i>Public and Private</i>	<ul style="list-style-type: none"> <li>10 percent</li> </ul>	<ul style="list-style-type: none"> <li>5 percent</li> </ul>		KY. REV. STAT. ANN. §§ 371.410(1), (2)
<b>Louisiana</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>For projects less than \$500,000, 10 percent</li> <li>For projects exceeding \$500,000, 5 percent</li> <li>For Dept. of Transp., for projects less than \$500K, 10 percent; for projects exceeding \$500K, 5 percent</li> </ul>		<ul style="list-style-type: none"> <li>Yes</li> </ul>	LA. REV. STAT. ANN. § 38:224 LA. REV. STAT. ANN. § 48:256
<b>Maine</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>5 percent</li> </ul>		<ul style="list-style-type: none"> <li>Yes</li> </ul>	ME. REV. STAT. ANN. tit. 5, § 1746
	<i>Private</i>	<ul style="list-style-type: none"> <li>Rate not specified</li> </ul>			ME. REV. STAT. ANN. tit. 10, § 1116
<b>Maryland</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>10 percent</li> </ul>	<ul style="list-style-type: none"> <li>5 percent</li> </ul>		MD. CODE ANN. STATE FIN. & PROC. § 17-110 MD. CODE ANN. STATE FIN. & PROC. §§ 13-225(b), 15-108

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Massachusetts</b>					
	<i>Public</i>	• 5 percent	• At substantial compl., contractor receives all but 1% of retainage		MASS. GEN. LAWS ch. 30 §§ 39G, K
<b>Michigan</b>					
	<i>Public</i>	• 10 percent maximum.	• Retainage may be reduced, but rate not specified		MICH. COMP. LAWS §§125.1563(2)(a), (b) MICH. COMP. LAWS 125.1563(3) MICH. COMP. LAWS § 125.1564
<b>Minnesota</b>					
	<i>Public</i>	• 5 percent maximum.		• Yes	MINN. STAT. § 15.72-3
	<i>Private</i>	• 5 percent			MINN. STAT. § 337.10
<b>Mississippi</b>					
	<i>Public</i>	• 5 percent, generally • 2.5 percent-10 percent, for county contracts • 10 percent for contracts exceeding \$750K	• For contracts exceeding \$250K, retainage reduces to 2.5 percent • Reduces to 5 percent for contracts exceeding \$750K	• Yes	MISS. CODE ANN. § 31-5-15 MISS. CODE ANN. §§ 31-5-33(1), (2)
<b>Missouri</b>					
	<i>Public</i>	• 5 percent, unless the parties agree otherwise, up to 10 percent maximum.			MO. REV. STAT. § 34.057
	<i>Private</i>	• 10 percent maximum unless there is a default.		• Yes	MO. REV. STAT. § 436.303, .306, .315
<b>Montana</b>					
	<i>Public</i>	• 5 percent			MONT. CODE ANN. § 18-1-301
	<i>Private</i>	• 5 percent			MONT. CODE ANN. § 28-2-2110
<b>Nebraska</b>					
	<i>Public</i>	• Not specified			NEB. REV. STAT. § 39-1349
<b>Nevada</b>					
	<i>Public</i>	• 5 percent	• May be eliminated		NEV. REV. STAT. §§ 338.515, .520, .555, .595
	<i>Private</i>	• 10 percent			NEV. REV. STAT. §§ 624.609, 624.624.
<b>New Hampshire</b>					
	<i>Public</i>	• Not specified		• Yes	N.H. Rev. Stat. Ann. § 21-I:20

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>New Jersey</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 2 percent, generally.</li> <li>• Board of Education projects: Special rules vary retainage on these projects from 2-5 percent.</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N.J. STAT. ANN. § 27:7-34; 40A:11-16.3; 18A:18A-40.3.
<b>New Mexico</b>					
	<i>Public and Private</i>	<ul style="list-style-type: none"> <li>• Generally, prohibited</li> <li>• 5 percent for road contracts</li> </ul>			N.M. STAT. ANN. § 57-28-5 N.M. STAT. ANN. § 67-3-48
<b>New York</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent, generally</li> <li>• 10 percent if no performance bond is required</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N.Y. STATE FIN. LAW §§ 139, 139f
	<i>Private</i>	<ul style="list-style-type: none"> <li>• A reasonable amount</li> </ul>			N.Y. GEN. BUSINESS LAW § 756-C
<b>North Carolina</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• None for contracts under 100K</li> <li>• 5 percent for contracts exceeding 100K</li> </ul>	<ul style="list-style-type: none"> <li>• For contracts exceeding 100K, none may be withheld</li> </ul>		N.C. GEN. STAT. §143-134.1
<b>North Dakota</b>					
	<i>Public and Private</i>	<ul style="list-style-type: none"> <li>• 10 percent</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>		N.D. CENT. CODE §§ 43-07-23, 40-22-37 N.D. CENT. CODE § 61-35-103
<b>Ohio</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 8 percent</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>		OHIO REV. CODE ANN. §§ 153.12, 13
<b>Oklahoma</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent</li> <li>• None on DOT or Turnpike Authority contracts.</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	OKLA. STAT. tit. 61, § 113.1, 2 OKLA. STAT. tit. 61, § 226
<b>Oregon</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent, unless the agency charter indicate otherwise</li> </ul>	<ul style="list-style-type: none"> <li>• May be reduced or eliminated</li> </ul>		OR. REV. STAT. §§ 279c.555, .560, .570
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5 percent</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	OR. REV. STAT. § 701.420 OR. REV. STAT. § 701.430
<b>Pennsylvania</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10 percent, generally</li> <li>• 6 percent for contracts with the Dept. of Gen. Services</li> </ul>	<ul style="list-style-type: none"> <li>• 5 percent</li> <li>• 3 percent for contracts with the Dept. of Gen. Svc.</li> </ul>		39 PA. CONS. STAT. § 3921 36 PA. CONS. STAT. § 746

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Rhode Island</b>					
	<i>Public</i>	• 5 percent			R.I. GEN. LAWS § 37-12-10
<b>South Carolina</b>					
	<i>Public</i>	• 3.5 percent			S.C. CODE ANN. § 11-35-3030(4)
<b>South Dakota</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Not specified</li> <li>• For county contracts &lt;\$50K, minimum retainage is 12%; for projects up to \$250K retainage shall be not less than 12 % on the first \$50K, 5 percent on the next \$200K; for projects exceeding \$250K, retainage shall not be not less than 12 % on the first \$50K, 5 percent on the next \$200K, and 2.5 % on the remaining contract amount</li> </ul>		• Yes	S.D. CODIFIED LAWS § 7-25-10 S.D. CODIFIED LAWS § 5-18-12 S.D. CODIFIED LAWS § 5-18-12.1
<b>Tennessee</b>					
	<i>Public and Private</i>	• 5 percent		• Yes	TENN. CODE ANN. § 4-15-102 TENN. CODE ANN. §§ 12-4-108(c), (d) TENN. CODE ANN. § 66-34-103 to 703
<b>Texas</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5 percent under Transportation Code</li> <li>• 5 percent under Water Code</li> </ul>	• May be eliminated		TEX. GOV'T CODE ANN. § 2252.032
	<i>Private</i>	• 10 percent of either the contract price or the value of the work			TEX. PROP. CODE ANN. § 53.101
<b>Utah</b>					
	<i>Public and Private</i>	• 5 percent			UTAH CODE ANN. § 13-8-5(3)
<b>Vermont</b>					
	<i>Public &amp; Private</i>	• Not specified			VT. STAT. ANN. tit. 9, § 4005
<b>Virginia</b>					
	<i>Public</i>	• 5 percent			VA. CODE ANN. § 2.2-4333

State		Rate of retainage	Retainage withheld upon 50 percent completion?	May securities be substituted in lieu of retainage?	Statute
<b>Washington</b>					
	<i>Public</i>	• 5 percent		• Yes	Wash. Rev. Code § 39.08.010 WASH. REV. CODE § 60.28.010 WASH. REV. CODE § 60.28.011
<b>West Virginia</b>					
	<i>Public and Private</i>	• No retainage statutes			
<b>Wisconsin</b>					
	<i>Public</i>	• 5 percent	• No		Wis. STAT. § 16.855
<b>Wyoming</b>					
	<i>Public</i>	• 10 percent	• May be eliminated		WYO. STAT. ANN. § 16-6-702 WYO. STAT. ANN. § 16-6-704