

# Retainage Laws in the 50 States 2018

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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.



The Foundation of the American Subcontractors Association, Inc., a section 501(c)(3) organization under the U.S. Internal Revenue Code, is the educational arm of ASA. FASA is an independent entity devoted to development of quality educational information, providing financial support to develop manuals, videos-on-demand, webinars, and other materials.

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A sincere thank you to the many construction law attorneys who contributed to this publication of Retainage Laws in the 50 States 2018. 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 associate Shana Marks to this publication.

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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 held until the contract, or a certain portion of the contract, is complete. Retainage generally is held 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 or a progress payment.

In most states, retainage is a typical practice in both public and private construction contracts. The mandatory or permissive nature of retainage varies from state to state. In a few states, the retained funds may be held in escrow, to be paid back to the contractor or subcontractor with interest. Some states also permit contractors and subcontractors to substitute securities in lieu of retainage. Other states require contracting agencies or owners to reduce the rate or even eliminate 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 prime contractors believe the practice is necessary. Though retainage arguably serves as a type of "insurance" for owners and prime contractors, it can have the unfortunate effect of requiring contractors and subcontractors 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 reduced the maximum rate of retainage permitted.

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 Laws in the 50 States 2018

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### ALABAMA

#### *Public*

For public projects in Alabama, the maximum retainage that may be withheld is five percent for the first half of the project, and then zero percent thereafter. However, no retainage may be held for contracts with “Alabama Department of Transportation for the construction or maintenance of public highways, bridges, or roads.” Contractors are allowed to post certain statutorily defined securities in lieu of having retainage withheld for public projects. *See* Ala. Code § 39-2-12

#### *Private*

For private projects in Alabama, retainage is capped at 10 percent “of the estimated amount of work properly done and the value of materials stored on the site or suitably stored and insured off-site” until the job is 50 percent complete, after which no additional retainage may be withheld. *See* Ala. Code § 8-29-3. If an owner withholds more than is allowed by the statute, it is liable to the contractor for interest on the excess amount withheld at a rate of 1% per month, or 12% per annum. *Id.* Additionally, a contractor may not withhold a higher percentage of retainage from its subcontractors than the owner withholds from that contractor. *See* Ala. Code § 8-29-3(f). Similarly, a subcontractor may not withhold a higher percentage of retainage from its sub-subcontractors than the contractor withholds from that subcontractor. *See* Ala. Code § 8-29-3(g)

### ALASKA

#### *Public*

Prime contract agreements on public works projects must include the following provisions: (1) a clause that requires the prime contractor to pay all retainage due under the subcontract within either 8 working days after the public owner makes final payment, or within expiration of a notice period under AS § 36.25.020(b), whichever occurs later; and (2) interest on withheld retainage at the statutory amount set forth in AS § 45.45.010(a) (currently 10.5%). Alaska Stat. § 36.90.210(a).

Subcontractors on public works must include clauses in their subcontractor agreements obligating them to pay all retainage due under the subcontract within 8 working days after the subcontractor receives its share of the retainage from the prime contractor or a different subcontractor, and to pay interest on the retainage withheld at the statutory rate set forth in AS § 45.45.010(a) (currently 10.5%). Alaska Stat. § 36.90.210(b).

Interest on retainage accrues from the date of approval of a pay request until the date of payment to the contractor. Alaska Stat. § 36.90.250(a).

#### *Private*

None.

## ARIZONA

### *Public*

The rate of retainage is 10 percent of the amount of each pay estimate. When 50 percent of the work is completed, one-half of the retainage is released. Thereafter, if work is deemed satisfactory, no more than 5 percent may be retained. 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 completed, 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 hold a "reasonable amount of retention." ARIZ. REV. STAT. § 32-1129.01(D). Owners also are permitted to hold 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).

Per ARIZ. REV. STAT. § 32-1129.01(H), on substantial completion of the work, as that term is defined in § 32-1129, a contractor shall submit a billing or estimate for release of retention. Unless the owner opts out of this requirement, the billing or estimate for release of retention shall be deemed certified and approved within fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent issues a written statement stating in reasonable detail the owner's reasons for not certifying or approving all or a portion of the billing or estimate. The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to any person designated by the owner for receipt or for certification and approval of the billing or estimate.

Refer to ARIZ. REV. STAT. § 32-1129 for more information.

## **ARKANSAS**

### *Public*

Generally, the rate of retainage for a contractor required to provide a performance and payment bond is 5 percent. A public agency may forego retaining from progress payments if: the construction contract is 50-percent complete; the contractor has provided the work in a satisfactory manner; and the design professional and public agency agree with and approve that work is fifty-percent complete and the contractor has performed in a satisfactory manner. However, a public agency may retain throughout the project.

In the case of a construction subcontract entered into between a contractor for a public agency and a subcontractor who is required by the contractor to furnish a performance and payment bond, the subcontractor shall be entitled to payment of ninety-five percent (95 percent) of the earned progress payments when due, with the contractor retaining five percent (5 percent) to assure performance of the subcontract. Upon approval of the contractor, if the subcontractor completes fifty percent (50 percent) of the construction subcontract, the contractor shall not retain any further moneys.

Monies are to be paid to the contractor within 30 days of the contract being completed. 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.

### *Private*

None.

## **CALIFORNIA**

### *Public*

Until final completion and acceptance of the project, the rate of retainage shall not be more than 5 percent. However, any time after 95 percent of the work is completed, the agency may reduce the funds retained 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 withhold 150 percent of the disputed amount. CAL. CIV. CODE §§ 8812.

## **COLORADO**

### *Public*

For contracts exceeding \$150,000, the maximum rate of retainage is 5 percent. 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.

*Private*

None.

**CONNECTICUT**

*Public*

For contracts awarded by the Department of Administrative Services or any other state agency, except the Department of Transportation, the public body shall not retain more than 7.5 percent of a periodic or final payment for the initial work, and 5 percent for any work done after 50 percent of the contract is completed. In addition, a contractor shall not retain from a subcontractor more than 7.5 percent for the initial work, and 5 percent for any work done after 50 percent of the contract is completed, or the amount withheld by the awarding authority from the contractor, whichever is less. CONN. GEN. STAT. § 49-41b(1).

For contracts awarded by the Department of Transportation, the public body shall not retain more than 2.5 percent of a periodic or final payment. In addition, a contractor shall not retain 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. In addition, a contractor shall not retain 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**

*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**

### *Public*

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

### *Private*

None.

## **FLORIDA**

### *Public*

The maximum rate of retainage is 10 percent. When 50 percent of the work is completed, the rate of retainage must be reduced to 5 percent. After 50 percent completion, as defined by statute, the contractor may elect to retain 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 Department of Transportation, the department may retain up to 10 percent if the contractor fails to timely complete or falls behind in work progress. *See* FLA. STAT. ANN. §§ 337.175; 337.015.

### *Private*

None.

## **GEORGIA**

### *Public*

The maximum rate of retainage is 10 percent on all progress payments. When 50 percent of the contract is completed, 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 retained



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 retain if the appropriate clauses are included within the contract. GA. CODE ANN. § 32-2-75.

*Private*

None.

## **HAWAII**

*Public*

The rate of retainage may not exceed 5 percent of the amount due. All funds are to be retained by a procurement officer. After the project is 50 percent completed, no funds may be retained if progress is satisfactory. If progress is unsatisfactory, however, the procurement officer may continue to retain funds. The contractor may substitute securities in lieu of retainage. HAW. REV. STAT. § 103-32.1(c)(1).

*Private*

None.

## **IDAHO**

*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 retain more than 5 percent 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*

On contracts on which a performance bond is provided, retainage from the contractor or subcontractor may not exceed 5 percent. 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**

*Public*

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

For any contracts for the construction of highways, retainage shall be retained 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.

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.

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.

*Private*

None.

**INDIANA**

*Public*

Most state projects: For contracts over \$1,000,000, the state may elect one of two options. It may retain a maximum of 6 percent until the work is 50 percent completed or it may retain 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 §§ 4-13.6-7-2 to 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 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 retain 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 retained. 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.

*Private*

None.

## **IOWA**

### *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.

### *Private*

None.

## **KANSAS**

### *Public*

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

Owners and contractors may withhold up to 150 percent 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 percent per annum. K.S.A. 16-1904(i). Subcontractors are entitled to collect costs and reasonable attorneys' fees on any action to enforce K.S.A. 16-1903, 16-1904, or 16-1905. K.S.A. 16-1906.

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 percent. K.S.A. 68-411. (Note: K.S.A. 16-1904 does NOT apply to road/bridge projects.)

Yet another statute allows contractors that 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 percent for all tiers. K.S.A. 16-1804(a).

A general contractor has to pay its subcontractor's retainage within seven 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). At least one case in Kansas has held that a general contractor may not "dispute" a payment owed under the statute even if the general contractor has counterclaims against the subcontractor for damages caused by delay, improper construction, or property damage caused by the subcontractor during construction. *Lindsey Masonry Co. v. Murray & Sons Constr. Co.*, 390 P.3d 56, 67 (Kan. Ct. App. 2017)

A failure to timely pay retainage entitles the subcontractor to receive interest at the rate of 18 percent per annum starting on the first business day after the due date. K.S.A. 16-1804(j). Subcontractors are entitled to collect costs and reasonable attorneys' fees on any action to enforce K.S.A. 16-1803, 16-1804, or 16-1805. K.S.A. 16-1803(g) and 16-1806.

## **KENTUCKY**

### *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). KY. REV. STAT. ANN. §§ 371.410(2). *See also* KY. REV. STAT. ANN. §§ 176.090 *et. seq.*

## **LOUISIANA**

### *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 45 days after formal acceptance of the work. The department shall not retain funds 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, retained 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**

### *Public*

The public entity shall retain 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 retain funds from subcontractors and suppliers even in the absence of retainage being held from the contractor. ME. REV. STAT. ANN. tit. 10, § 1116.

## **MARYLAND**

### *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. 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 not retain more than is retained 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.

In addition, a procurement unit and the Maryland Transportation Authority may retain 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.

### *Private*

For any contract \$250,000 or above for which performance and payment bonds are furnished, the maximum rate of retainage is 5 percent. Retainage from the contractor to the subcontractor may not exceed the percentage of retention from the owner to the contractor. This also applies to subcontractors and other subcontractors. The law does not prohibit withholding of any amount due from the owner to the contractor, contractor to subcontractor, or subcontractor to another subcontractor if the non-paying party reasonably determines that the contractor or subcontractor's performance under the contract provides reasonable grounds for withholding the additional amount.

## MASSACHUSETTS

### *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 withhold 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.

### *Private*

The Retainage Law applies to contracts governed by sections 2 and 4 of the mechanic's lien law (e.g., written prime contracts, subcontracts, sub-subcontracts, etc.) on private projects on which the prime contract is executed on or after November 6, 2014 and has an original value of at least \$3 million. The law does not apply to residential projects of 1-4 units.

Retainage may not exceed 5 percent of each progress payment. Unless the contract provides for an earlier submission, no later than 60 days after substantial completion (or in the case of a dispute, conclusion of dispute proceedings), the prime contractor and subcontractors (and any other "person" from whom funds are retained) may invoice for the payment of retainage. The retainage requisition must be in the form required by the applicable contract, and include a list of the items completed or corrected and deliverables submitted for which the retainage payment is sought. This list must be certified as made in good faith.

Retainage requisitions must be paid within 30 days of submission. However, the time period for payment at each tier of contract below the owner may be extended 7 days longer than the time period applicable to tier above. (e.g., prime contractor has 37 days to pay a retainage requisition; first tier subcontractor has 44 days to pay, etc.) Not more than the following amounts may be withheld from the payment of retainage: i.) for incomplete, incorrect or missing deliverables, either the value of such deliverables as mutually agreed upon in writing by the parties to the contract; or if there is no agreement, the reasonable value not to exceed more than 2.5 percent of the total adjusted contract price; ii.) for incomplete or defective work items, 150 percent of the reasonable cost to complete or correct the item; and iii.) for "claims", the reasonable value of the claims, plus costs and attorneys' fees if allowed in the contract. These sums may only be withheld if the person seeking payment has received, before the date payment is due, a detailed written list of the outstanding incomplete or incorrect work and deliverables, and the factual and contractual basis for the claims, along with the value attributable to each item, and such writing is certified as made in good faith.

Additional invoicing is permitted as items are completed, corrected and/or delivered, and claims are resolved, at least on a monthly basis.

In addition:

- Any rejection of an application for retainage is subject to the applicable dispute resolution procedures, which may be commenced within 30 days after the rejection.
- The prime contractor's retainage for self-performed work is payable to the same extent as a subcontractor's retainage is payable.
- As long as the prime contractor has not been declared in default of its contract, the owner may not withhold the retainage of a subcontractor for a claim that the owner asserts against the prime contractor that is not based on the performance or default of the subcontractor.
- Payment of retainage is subject to G.L. c. 149, sec. 29E(e), which prohibits pay-if-paid payment terms except in two limited circumstances.

Mass. G.L. c. 149, § 29F.

## **MICHIGAN**

### *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 original contractor and the public agency. MICH. COMP. LAWS § 125.1563. *See also* MICH. COMP. LAWS § 125.1564.

### *Private*

None.

## **MINNESOTA**

### *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 contracts for professional services such as architecture, geoscience, land surveying or interior design. MINN. STAT. § 337.10.

## **MISSISSIPPI**

### *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 retained funds are to be returned to the contractor to be disbursed to the appropriate subcontractors and suppliers. The contractor may not retain more from a subcontractor than the state retains 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 shall be retained. 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.

### *Private*

None.

## **MISSOURI**

### *Public*

The rate of retainage shall not exceed 5 percent of the value of the contract except for projects under \$50,000 without a bond where the rate cannot exceed 10 percent. Before substantial completion and at the owner’s discretion and the contractor’s request, retained funds



may be released to subcontractors who have completed performance. The awarding authority may reduce or eliminate retainage if work is satisfactory. Upon substantial completion, the owner must pay within 30 days at least 98 percent of the retainage withholding no more than 150 percent of the value of the punch list. 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 and subcontractors at any tier may substitute security in lieu of cash. MO. REV. STAT. § 436.306. There may be line-item release of retainage. MO. REV. STAT. § 436.321.

## **MONTANA**

*Public*

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

*Private*

Retainage may not exceed 5 percent. A contractor may not retain a higher retainage percentage from subcontractors than is being retained 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 or improvements to real property intended for residential purposes with a total cost of less than \$400,000. MONT. CODE ANN. § 28-2-2107.

## **NEBRASKA**

*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 3 percentage points above the previous year's average annual Federal Reserve composite prime lending rate, rounded to the nearest one-tenth of one percent, on the amount retained and on the final payment due the contractor, beginning 60 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 retain in an amount not to exceed the amount specified in the applicable contract, which shall not exceed a rate of 10 percent. If the scope of work is at least 50 percent complete, the work has been performed in accordance with the applicable contract, and the subcontractor provided satisfactory and reasonable assurances of continued performance and financial responsibility, no

more than 5 percent of any additional progress payment may be retained. NEB. REV. STAT. § 45-1204.

## **NEVADA**

### *Public*

Ninety-five percent of the amount of any progress payment must be paid and five percent withheld as retainage until fifty 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 retaining additional funds and may pay any funds previously retained. If the public body determines progress is unsatisfactory and decides to retain from remaining progress payments, it may not retain 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 retained at a rate equal to the rate quoted by at least three financial institutions. NEV. REV. STAT. § 338.515 (effective January 1, 2016).

When a public body occupies, partially occupies, or begins use of 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 progress payment due under a subcontract until half of the work is complete. After fifty percent of the subcontractor's work is complete, the contractor shall pay any additional progress payments due under the subcontract without withholding any retainage, if satisfactory progress is being made. If the contractor 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

### *Private*

Retainage may not exceed 5 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**

### *Public*

Although a public agency is permitted to retain, there are no statutes specifying the maximum rate that may be retained. 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.

### *Private*

None.

## **NEW JERSEY**

### *Public*

For highway work, 2 percent shall be retained. Upon substantial completion, 1 percent shall be retained. 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 retained. 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 retained. N.J. STAT. ANN. § 40A:11-16.3.

For Board of Education projects, 5 percent is retained if there is no performance bond. If there is a performance bond, then 2 percent is retained when the outstanding contract balance exceeds \$500,000 and 5 percent is retained 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.

### *Private*

None.

## **NEW MEXICO**

### *Public and Private*

Retainage is prohibited for the majority of private and public construction contracts. N.M. STAT. ANN. § 57-28-5. \*NOTE : Certain owners and contractors 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 usually is required to be either 5 or 10 percent of the contractors' or subcontractors' total contract value, so functionally is « retainage » just dressed up in another term. 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 5 percent may be retained. N.M. STAT. ANN. § 67-3-48.

## **NEW YORK**

### *Public*

*Contractor:* The public owner shall retain not more than 5 percent of each progress payment to the contractor except that the public owner may retain in excess of 5 percent but not more than 10 percent 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 5 percent of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of 5 percent but not more than 10 percent 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. A contractor or subcontractor may also retain as long as that amount does not exceed the amount retained 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**

#### *Public*

No funds may be retained 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 funds can be retained if the work is deemed "satisfactory." If performance is "unsatisfactory," funds may be retained 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.

#### *Private*

None.

## **NORTH DAKOTA**

#### *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 retained. At 95 percent completion, the state may pay 95 percent of the retained funds to the contractor. Retained 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**

### *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 funds may be retained. OHIO REV. CODE ANN. § 153.12.

On contracts in excess of \$15,000, from the date the contract is 50% complete 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)(b). 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**

### *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 retain on public contracts. OKLA. STAT. tit. 61, § 113.1.

### *Private*

None.

## **OREGON**

### *Public*

Partial payment is allowed and may be made on contracts for construction and home improvement. Or. Rev. Stat. §§ 279c.555; 701.420. 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. Or. Rev. Stat. § 279c.570(7). 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. Or. Rev. Stat. § 279c.570(7). Elimination or reduction of retainage is permitted only upon written application

by the contractor, which shall include written approval of the contractor's surety. Or. Rev. Stat. § 279c.570(7). 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.570(7).

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(5).

The retainage held by a contracting agency must be included in the final payment of the contract price. The contracting agency must pay to the contractor interest at the rate of 1.5 percent per month on the final payment owed to the contractor, with interest to commence 30 days after the work under the contract has been completed and accepted, and to run until the contractor receives final payment. Or. Rev. Stat. § 279C.570(8).

#### *Private*

Retainage may not exceed 5 percent of the contract price of the work completed. Or. Rev. Stat. § 701.420(1). This provision is applicable to owners, contractors, and subcontractors. Or. Rev. Stat. § 701.420(1). Interest on retainage shall commence 30 days after the contractor or subcontractor has completed, and the owner has accepted, the work for which the final payment is due. Or. Rev. Stat. § 701.420(2). The interest shall run until the date when final payment is tendered to the contractor or subcontractor. Or. Rev. Stat. § 701.420(2). Securities may be substituted in lieu of retainage. *See* Or. Rev. Stat. § 701.435.

## **PENNSYLVANIA**

#### *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 additional funds may be retained. The Secretary of Transportation may waive or reduce retainage, if otherwise assured that the contract will be completed, and may release payment to further reduce retainage when the project is 95 percent complete. 36 PA. CONS. STAT. § 746.

#### *Private*

None.

## **RHODE ISLAND**

### *Public*

Upon substantial completion, retainage may not exceed five (5%) percent of any periodic payment or an amount otherwise agreed upon 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 contractor within ninety (90) days after final acceptance. Retainage shall be paid to any contractor or subcontract within ninety (90) days of the date of the work is accepted from the awarding authority, unless a dispute exists with respect to the work. Subsequently, such funds will be charged interest at 10 percent. R.I. GEN. LAWS § 37-12-10.

The preceding applies to municipalities and agencies only.

### *Private*

None.

## **SOUTH CAROLINA**

### *Public*

The maximum rate of retainage 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).

### *Private*

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 retain in excess of the percentage being retained by the owner from the contractor.

## **SOUTH DAKOTA**

### *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 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.

### *Private*

None.

## **TENNESSEE**

### *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 if the prime contract price exceeds \$500,000. 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 public contracts, provide a line of credit. TENN. CODE ANN. § 12-4-108(c), (d).

## **TEXAS**

### *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. In addition, 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 prime 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 retain funds for 30 days, revisions to § 53.057 of



the Texas Property Code, for perfecting a claim on retainage, complicate matters. Hence the owner may retain funds for significantly more than 30 days.

## **UTAH**

### *Public and Private*

The maximum rate of retainage is 5 percent of the total construction price. The percentage retained 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 retained monies must be 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**

### *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. Effective July 1, 2017, Retention is prohibited on payment due for materials delivered for a construction project, unless the materialman is also contracted to install the product they delivered.

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**

### *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.

### *Private*

None.

## **WASHINGTON**

### *Public*

A contract retainage not to exceed 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(1)(3)(4).

A contractor or subcontractor may not retain 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 § 60.28.011(5).

After completion of all contract work, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract; once requested, the public body must do so within 60 days. Wash. Rev. Code § 60.28.011(3). If the work performed by a subcontractor on a project has been completed within half the time provided in the general contract, the public body may accept completion of the subcontract, and must give public notice of this acceptance. After a 45 day period for giving notice of liens, the public body may release the subcontractor's portion of the retained funds. Claims against the retained funds are not valid after 45 days. Wash. Rev. Code § 60.28.011(11).

In lieu of retainage, a contractor may submit a bond for all or part of the contract retainage to the public body. If the public body accepts a bond in lieu of retainage from the contractor, the contractor must accept like bonds from its subcontractors. Wash. Rev. Code § 60.28.011(6). At any time prior to formal acceptance of the project, a subcontractor may request the contractor to submit a bond to the public body for the subcontractor's portion of the contractor's retainage. The contractor may withhold the subcontractor's portion of the bond premium. Within 30 days of receiving the request, the contractor must provide the bond unless the public body demonstrates good cause for refusing to accept it, the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium. Wash. Rev. Code § 60.28.011(6).

In contracts of \$150,000 or less, the public entity and contractor, general contractor, or construction manager may agree, in lieu of a bond, to retain 10 percent of the contract price for 30 days after date of final acceptance. Wash. Rev. Code § 39.08.010(3).

### *Private*

None.

## **WEST VIRGINIA**

### *Public and Private*

None.

## **WISCONSIN**

### *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**

### *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.

**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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