

FIFTY STATE REVIEW OF RETAINAGE LAWS

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ALABAMA:

Public:

Retainage cannot exceed 5% of any partial payment. ALA. CODE § 39-2-12(c) (2005). However, after 50% of the project has been completed, no further retainage can be withheld. *Id.* The retainage shall be held until the completion of the project (unless a escrow arrangement or deposit arrangement is utilized). *Id.* (For more on escrow or deposit arrangements, *see* ALA. CODE §§ 39-2-12(e), (f), and (g)). Line item release is possible upon completion and acceptance of each separate building or division of the contract, unless such division is an integral part of the contract. ALA. CODE § 39-2-12(d); *see also* § 39-2-12(i) discussing payment procedures and accrual of interest. The contractor may elect to substitute securities in lieu of retainage, e.g., bonds or notes of U.S. or Alabama, or certificates of deposit. ALA. CODE § 39-2-12(g).

Private:

As between a contractor and a subcontractor, the percentage of retainage shall not exceed the percentage of retainage on payments made by the owner to the contractor. ALA. CODE § 8-29-3(f) (2005). Any percentage of retainage by the contractor to the subcontractor that exceeds the percentage of retainage between the owner and the contractor shall be subject to interest at the rate of 1% per month. *Id.* Similarly, as between two subcontractors, the percentage of retainage shall not exceed the percentage of retainage between the contractor and the subcontractor. ALA. CODE § 8-29-3(g) (2005). Any percentage of retainage on payments made by one subcontractor to another that exceeds the percentage of retainage on payments made by the contractor to the subcontractor shall be subject to interest at the rate of 1% per month.

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ALASKA:

Public:

There are no state laws defining retainage rates. However, there are extensive regulations regarding the timing of payment to contractors and subcontractors. On public construction contracts, the state or political subdivision of the state shall pay to the general contractor interest at a rate of 10.5%. The interest accrues from the date of approval or a pay request until the day the contractor is paid. ALASKA STAT. §§ 36.90.210, 36.90.250, 45.45.010 (interest statute).

A prime contractor is required to pay its subcontractors all retainage due within eight working days after final payment is received from the owner. ALASKA STAT. § 36.90.210(1).

ARIZONA:

Public:

The state shall retain 10% of the amount of each progress payment. ARIZ. REV. STAT. § 34-221.C.2. The contractor may substitute certain securities in lieu of retainage. ARIZ. REV. STAT. § 34-221.C.5. The contractor is entitled to all interest earned by such securities as it accrues. *Id.* When the work is 50% complete, the state shall pay 50% of the retained amount (or substituted securities) to the contractor provided that the contractor is making satisfactory progress and there is no reason for a greater amount to be retained and reduce the retainage rate to 5% or less, provided that the contractor is making satisfactory progress. ARIZ. REV. STAT. § 34-221.C.3. If the state determines that satisfactory progress is not being made, then it will return to 10% retention. *Id.* Line item release is possible upon completion and acceptance of each separate building or division of the contract. ARIZ. REV. STAT. § 34-221.C.4.

In contracts for construction-manager-at-risk, design-build, and job-order-contracting construction services, the owner shall retain 10% of the amount of each progress payment. ARIZ. REV. STAT. § 34-607.B.2. The contractor may substitute certain securities in lieu of retainage. ARIZ. REV. STAT. § 34-607.B.5. The contractor is entitled to all interest earned by such securities as it accrues. *Id.* When the work is 50% complete, the state shall pay 50% of the retained amount (or substituted securities) to the contractor provided that the contractor is making satisfactory progress and there is no reason for a greater amount to be retained and reduce the retainage rate to 5% or less, provided that the contractor is making satisfactory progress. ARIZ. REV. STAT. § 34-607.B.3. If the state determines that satisfactory progress is not being made, then it will return to 10% retention. *Id.* Line item release is possible upon completion and acceptance of each separate building or division of the contract. ARIZ. REV. STAT. § 34-607.B.4.

Procurement of Construction Services – 10% of all construction contracts shall be retained by the state. ARIZ. REV. STAT. § 41-2576.A (2005). Securities may be substituted in lieu of retainage. *Id.* The contractor is entitled to all interest from such

substitute securities. *Id.* When the contract is 50% completed one half of the retained amount (or substituted securities) shall be paid to the contractor if the contractor is making satisfactory progress and there is no reason for a greater amount to be retained. ARIZ. REV. STAT. § 41-2576.B. All retainage (or substituted securities) shall be returned with 60 days after final completion and acceptance of the work under the contract. ARIZ. REV. STAT. § 41-2576.C. Line item release is possible upon completion and acceptance of each separate building or division of the contract. ARIZ. REV. STAT. § 41-2577.A.

For retention in contracts with the Transportation Department, see ARIZ. REV. STAT. § 28-6924.

Private:

Construction contracts may permit owners to withhold a “reasonable amount for retention.” Contractors are required to pay subcontractors and suppliers within seven days of each payment received from the owner for “the full amount received for such subcontractor’s work” less “a reasonable amount for retention that does not exceed the actual percentage retained by the owner.” Owners are required to notify subcontractors of progress payments and final payment within five days of a written request by the subcontractor. ARIZ. REV. STAT. §§ 32-1129.01, 32-1129.02.

ARKANSAS:

Public:

Generally, the rate of retainage is 10%. Once 50% of the project has been completed, no further funds are retained. Retained funds are held in an escrow account and paid to the contractor with 30 days after the contract is substantially 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.

CALIFORNIA:

Public:

The rate of retainage shall not be less than 5% until the final completion and acceptance of the project. CAL. PUB. CONT. CODE § 10261. However, at any time after 95% of the project has been completed, the state may reduce the retained funds to not less than 125% of the value of the work yet to be completed. The contractor can elect to substitute securities in lieu of retainage. CAL. PUB. CONT. CODE § 10263(a). Alternatively, the contractor can request that the owner make payment of retentions into an escrow account. CAL. PUB. CONT. CODE § 10263(b). The contractor can direct the investment of the payments into securities and the contractor shall receive the interest earned from the investments. *Id.*; *see also* CAL. PUB. CONT. CODE § 22300.

Private:

Requires retainage to be released within 45 days of the “date of completion” defined as the date on which a certificate of occupancy is issued or a notice of completion is given. In the event of dispute, the owner may retain 150% of the disputed amount. CAL. CIV. CODE §§ 3260, 3262.5.

COLORADO:

Public:

On any contract exceeding \$150,000, the retainage rate is not more than 10% until 50% of the project is completed. COLO. REV. STAT. § 24-91-103(1). At that point, the public entity will pay the remaining installments without retaining additional funds so long as the work is progressing satisfactorily. *Id.* The withheld funds shall be returned when the project is completed and finally accepted. *Id.* The contractor can elect to substitute securities in lieu of retainage. COLO. REV. STAT. § 29-91-105. The contractor is entitled to all interest or income from those securities. COLO. REV. STAT. § 29-91-108.

CONNECTICUT:

Public:

The Department of Public Works or other state agencies shall retain no more than 10% from any payment to a contractor. CONN. GEN. STAT. § 49-41b(1)(A). Moreover, the contractor shall not withhold from a subcontractor more than the owner withholds from the contractor. CONN. GEN. STAT. § 49-41b(1)(B). The state shall establish an early release program with respect to periodic payments made by contractors to subcontractors. *Id.*

The Department of Transportation shall not withhold more than 2.5% from any payment to a contractor. CONN. GEN. STAT. § 49-41b(2)(A). Moreover, the contractor shall not withhold more than 2.5% from any payment to a subcontractor. CONN. GEN. STAT. § 49-41b(2)(B).

Municipalities shall not withhold more than 5% from any payment to a contractor. CONN. GEN. STAT. § 49-41b(3)(A). Moreover, the contractor shall not withhold more than 5% from any payment to a subcontractor. CONN. GEN. STAT. § 49-41b(3)(B).

The contractor or subcontractor may substitute securities for retention in any contract with the state. CONN. GEN. STAT. § 3-112a.

Private:

No construction contract can provide for a retainage rate greater than 7.5% for the life of the project. CONN. GEN. STAT. § 42-158k. An escrow account shall be established

for all retainage. CONN. GEN. STAT. § 42-158p. The account shall be terminated and the contractor paid in full upon substantial or final completion of the project. CONN. GEN. STAT. § 42-158p(d). The owner shall be responsible for all expenses related to the escrow account. CONN. GEN. STAT. § 42-158p(e). Contractors and subcontractors can substitute securities for retainage. CONN. GEN. STAT. § 42-158p(h). *See* CONN. GEN. STAT. § 42-158j (dealing with prompt payment).

DELAWARE:

Public:

Where retainage is withheld it shall not exceed 5% of the value of the work completed by the contractor. At completion, the owner may release 60% of the retainage. The balance is released when the contractor submits all required reports and the agency authorizes release. The contractor may, with agency approval, substitute securities in lieu of retainage. DEL. CODE ANN. tit. 29, § 6962.

See also DEL. CODE ANN. tit. 29, § 6516(f)(3).

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 1-1109.

FEDERAL GOVERNMENT

FED. 21 F.A.R. 32.103.

FLORIDA:

Public:

A local governmental agency may withhold 10% from any progress payment made to a contractor until the project is 50% complete. FLA. STAT. ch. 255.078(1); 218.735(8)(a). At that point, the contractor can submit a payment request for up to 50% of the withheld funds. FLA. STAT. ch. 255.078(4); 218.735(8)(d). The state shall comply with the request unless it has reason for not doing so (i.e. good faith dispute). *Id.* Moreover, at the midpoint, the state must reduce the retainage rate to 5%. FLA. STAT. ch. 255.078(2); 218.735(8)(b). Finally, at the midpoint, the contractor may elect to withhold funds from its subcontractors at a rate higher than 5%. FLA. STAT. ch. 255.078(3); 218.735(8)(c). The contractor may, with the state's permission, substitute certain securities for the retained amounts. FLA. STAT. ch. 255.052(1). The contractor is entitled to all interest on income derived from said securities. FLA. STAT. ch. 255.052(2).

The Department of Transportation is specifically entitled to retain 10% of payments due contractors. FLA. STAT. ch. 337.015, 337.175.

GEORGIA:

Public:

The rate of retainage is a maximum of 10% on all progress payments. Retainage ceases when 50% of the contract has been completed. If work is unsatisfactory or has fallen behind schedule, retainage may resume at the previous level. A subcontractor is entitled to the same percentage of retainage as the contractor. If the contractor's retainage is reduced, or if it receives full payment of the retained amount it must reduce subcontractor's retainage, but only if 50% of subcontractor's work has been completed. At substantial completion, the owner shall release the retainage within 30 days after a contractor's invoice. The owner may withhold an amount equal to 200% of the value of uncompleted work. Line item release of retainage to subcontractors is provided at the discretion of the owner with the contractor's approval. GA. CODE ANN. §§ 13-10-80, -81.

The Department of Transportation is allowed to insert retainage clauses in contracts with contractors. GA. CODE ANN. §§ 32-2-75; 32-2-76.

Private:

Owners may withhold a reasonable amount from the contractor as retainage, provided that the amount withheld does not exceed the retainage percentage set forth in the contract. GA. CODE ANN. § 13-11-5(a). Similarly, contractors may withhold a reasonable amount from the subcontractor for retainage, provided that the amount withheld does not exceed the retainage percentage set forth in the contract. GA. CODE ANN. § 13-11-5(a). Finally, within ten days of the contractor's receipt of retainage from the owner, he must, in turn, reduce each of the subcontractor's retainage provided that the subcontractors have completed 50% of their subcontracts and are proceeding in a satisfactory manner. GA. CODE ANN. § 13-11-6. If an owner fails to pay its contractor within 15 days of the due date or if a contractor fails to pay its subcontractor within ten days after receipt of payment from the owner, the offending party shall pay interest of 1% per month. GA. CODE ANN. § 13-11-7.

HAWAII:

Public:

The state may withhold no more than 5% from the total amount due to the contractor. HAW. REV. STAT. § 103-32.1(a)(1). Once 50% of the contract has been satisfactorily completed, no additional sums may be withheld. *Id.* However, if progress is not satisfactory, then the state may continue to withhold 5% of the amounts due to contractor as retainage. *Id.* The contractor may substitute a general obligation for the sums retained. HAW. REV. STAT. § 103-32.2. Where a subcontractor has provided the contractor evidence of a bond or other acceptable collateral, the retention amount withheld by the contractor from its subcontractor shall be the same percentage of retainage as between the owner and the contractor. HAW. REV. STAT. § 103-32.1(b).

These same rules apply to subcontractors who subcontract work to other subcontractors. *Id.*; *See also* HAW. REV. STAT. § 103-10.5 (dealing with prompt payment).

IDAHO:

Public:

For any contract requiring a performance or payment bond in excess of 50% of the contract amount, the public body shall withhold not more than 5% as retainage. IDAHO CODE § 54-1926(3). Further, the public body shall release any retainage for those portions of the project completed and accepted within 30 days of such acceptance. *Id.* Contractors cannot withhold more than 5% from subcontractors as retainage. *Id.* The contractors shall release all retainage to the subcontractor within 30 days after the completion of the subcontract. *Id.* *See also* IDAHO CODE § 67-2302 (dealing with prompt payment).

For the construction of projects by drainage districts, 10% retainage is required until final completion. IDAHO CODE § 42-2944.

Private:

Retainage withheld by an owner from a contractor or by a contractor from a subcontractor shall not exceed 5%. IDAHO CODE § 29-115(2). This ceiling, however, does not apply in instances where the contractor (or subcontractor) does not provide a performance bond or where the contract is for a residential property with four or fewer units. *Id.* Within 35 days from the date on which the work is substantially complete, the retainage shall be reduced to the lesser of 150% of the estimated value of the work yet to be completed or the retainage then withheld by the owner. IDAHO CODE § 29-115(3). Within 35 days of final completion, the retention withheld by the owner shall be released. *Id.* However, in the event of a dispute, the owner may retain 150% of the estimated value of the issue in dispute. *Id.* Within ten days from the time that any portion of the retainage is received by the contractor, the contractor shall distribute the money to each of the subcontractors (unless the retainage was released for a specific subcontractor). IDAHO CODE § 29-115(4). However, where there is a bona fide dispute between the contractor and a subcontractor, the contractor may retain 150% of the estimated value of the issue in dispute. IDAHO CODE § 29-115(5).

ILLINOIS:

Public:

No retainage amounts are specified in the Illinois Highway Code. However, at the request of the contractor and with the Department of Transportation's approval, retention may be held under a trust agreement. Interest belongs to the contractor. 605 ILL. COMP. STAT. 5/4-103. Where retainage under a subcontract is expected to exceed \$20,000, the contractor may deposit the retainage of the subcontract under a trust

agreement. 605 ILL. COMP. STAT. 5/4-104. The subcontractor shall receive any interest on the amount deposited. *Id.*

INDIANA:

Public:

A state agency has two options for retainage. First, withhold no more than 10% of its payments to the contractor until the project is 50% complete. IND. CODE § 5-16-5.5-3.5(a)(1). At that point, the agency shall withhold no additional funds. *Id.* Alternatively, the agency may withhold no more than 5% of its payments to the subcontractor until the work is substantially completed. IND. CODE § 5-16-5.5-3.5(a)(2). If there are minor uncompleted items, the division may withhold an amount equal to 200% of the value of the work yet to be completed. IND. CODE §§ 5-16-5.5-3.5(b), 5-16-5.5-6. If the state retains funds from a contractor, or if a contractor retains funds from a subcontractor, such funds shall be placed in an escrow account. IND. CODE § 5-16-5.5-3.

Likewise, a “division” has two options. It can withhold no more than 6% until the project is 50% complete. IND. CODE § 4-13.6-7-3(a)(1). At that point, no further funds shall be retained. *Id.* Alternatively, the division may withhold no more than 3% until the project is substantially complete. IND. CODE § 4-13.6-7-3(a)(2). If there are minor uncompleted items, the division may withhold an amount equal to 400% of the value of the work. IND. CODE § 4-13.6-7-3(b). If the division retains funds from a contractor, or if a contractor retains funds from a subcontractor, such funds shall be placed in an escrow account. IND. CODE § 4-13.6-7-2. *See also* IND. CODE §§ 4-13.6-7-4, 4-13.6-7-9 (dealing with payment).

IOWA:

Public:

A public corporation may retain no more than 5% from any payment to a contractor. IOWA CODE § 573.12.1. The public corporation shall retain the funds for a period of 30 days after the completion and final acceptance of the project. IOWA CODE § 573.14. At that point, if no claims have been filed, all retainage shall be released to the contractor. Certain academic institutions (*see* IOWA CODE § 262), or contracts where a bond is required (*see* IOWA CODE § 573.2), shall make payments without retention until the project is 95% complete. The final 5% shall be released 30 days after the completion and final acceptance of the project, provided that no claims are on file. IOWA CODE § 573.12. The contractor may retain no more than 5% from payments to any subcontractor. *Id.*

KANSAS:

Public:

The rate of retainage is not specified. Contracting public entities may include a retainage provision until satisfactory completion. For projects in excess of \$1,000,000, the public entity may approve a contractor's request to have the retained funds held in an escrow account. The contractor may provide substitute securities in lieu of retainage. KAN. STAT. ANN. § 75-6909.

However, on projects dealing with state roads, highways, or bridges, the secretary of transportation shall withhold no more than 10% of the contract price. KAN. STAT. ANN. § 68-411. The funds shall be released when the project has been completed and approved by the secretary. *Id.*

KENTUCKY:

Public:

The rate of retainage is not specified. The contractor may provide substitute securities in lieu of retainage on contracts with the Department of Highways. KY. REV. STAT. ANN. §§ 176.090, 176.095.

LOUISIANA:

Public:

A public body may withhold no more than 10% of the contract price on projects costing less than \$500,000. LA. REV. STAT. ANN. § 38:2248.A. On projects costing more than \$500,000, a public body may withhold no more than 5% of the contract price. *Id.* The contractor may substitute securities for retainage, with the consent of the surety. LA. REV. STAT. ANN. § 38:2249.

The Department of Transportation and Development shall withhold no more than 10% of the contract price on projects costing less than \$500,000. LA. REV. STAT. ANN. § 48:256.1.A(1). On projects costing more than \$500,000, the Department may withhold no more than 5% of the contract price. *Id.* Final payment shall be made after the expiration of 45 days after completion and acceptance of the work. LA. REV. STAT. ANN. § 48:256.1.A(2). Any interest earned on the retained amounts shall be credited to the state Transportation Trust Fund. *Id.* The contractor can substitute a retainage bond for retainage. On contracts less than \$500,000 the amount of the bond shall be 10% of the contract amount while on contracts more than \$500,000 the amount of the bond shall be 5% of the amount of the contract. LA. REV. STAT. ANN. § 48:256.1.D.

MAINE:

Public:

The mandatory rate of retainage generally is 5% of the amount due to the contractor. However, the state may reduce the rate of retainage at substantial completion. There may be substitute security. ME. REV. STAT. ANN. tit. 5, § 1746.

Private:

The contractor is required to pay subcontractors and suppliers the full amount due within seven days after receipt of retainage. The contractor may withhold retainage on subcontractors and suppliers even if retainage is not held by the owner. ME. REV. STAT. ANN. tit. 10, § 1116.

MARYLAND:

Public:

Where a contractor has furnished 100% payment security and 100% performance security for a construction contract, a public body can withhold no more than 10% of the total amount due to the contractor. MD. CODE ANN., STATE FIN. & PROC. § 17-110(b)(1). Once the contract is 50% complete, the public body may withhold no more than 5% unless the public body can show that additional retainage is needed to protect the public interest. MD. CODE ANN., STATE FIN. & PROC. § 17-110(b)(2). Moreover, the public body may withhold from final payments an amount that the body reasonably believes necessary to protect the state's interest. MD. CODE ANN., STATE FIN. & PROC. § 17-110(b)(3). The public body must release the retained funds within 120 days after satisfactory completion of the project. MD. CODE ANN., STATE FIN. & PROC. § 17-110(b)(4). A contractor may not withhold a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the public body MD. CODE ANN., STATE FIN. & PROC. § 17-110(c)(1). Moreover, a subcontractor may not withhold a percentage of payments due another subcontractor that exceeds the percentage of payments retained from the subcontractor. MD. CODE ANN., STATE FIN. & PROC. § 17-110(d)(1).

Procurement contracts are treated slightly differently. *See generally* MD. CODE ANN., STATE FIN. & PROC. § 13-225. Where a contractor has furnished 100% payment security and 100% performance security for a state procurement contract, the primary procurement unit can withhold no more than 5% of the total amount due to the contractor. MD. CODE ANN., STATE FIN. & PROC. § 13-225(b)(1). Moreover, the primary procurement unit may withhold from final payments an amount that the unit reasonably believes necessary to protect the state's interest. MD. CODE ANN., STATE FIN. & PROC. § 13-225(b)(2). The retained funds may be placed in an interest-bearing escrow account. MD. CODE ANN., STATE FIN. & PROC. § 13-225(b)(3); *see also* MD. CODE ANN., STATE FIN. & PROC. §§ 15-107, 15-108. A contractor may not withhold a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the

primary procurement unit. MD. CODE ANN., STATE FIN. & PROC. § 13-225(c)(1). Moreover, a subcontractor may not withhold a percentage of payments due another subcontractor that exceeds the percentage of payments retained from the subcontractor. MD. CODE ANN., STATE FIN. & PROC. § 13-225(d)(1); *see also* MD. CODE ANN., STATE FIN. & PROC. § 15-226 (dealing with prompt payment).

MASSACHUSETTS:

Public:

The rate of retainage may not exceed 5% of the approved amount of the periodic payment. The government also may retain an amount based on its estimate of the fair value of its claims against the contractor. At substantial completion, the contractor receives all but 1% of retainage less the estimated cost to complete incomplete/unsatisfactory work. The penalty for the owner's non-payment is the wrongfully withheld amounts will receive interest at 3% above the rediscount rate. The statute defines substantial completion. MASS. GEN. LAWS ch. 30, §§ 39G, 39K.

MICHIGAN:

Public:

The rate of retainage may not exceed 10% of each progress payment. Retainage may be reduced when the job has been 50% completed if the contractor is performing satisfactorily. If the public agency determines that the contractor's performance is not satisfactory, it may retain not more than 10% of the dollar value of work more than 50% in place. The retained funds are placed in an interest bearing account and paid to the contractor with final payment. MICH. COMP. LAWS § 125.1563. Where the contractor causes an unacceptable delay, all interest earned on retained funds during the period of delay shall become the property of the public body. *See also* MICH. COMP. LAWS § 125.1564(7)(a). Alternatively, the public body can contract with a second contractor to complete the project and use the retained funds and interest earned on the retained funds to pay the second contractor. *See also* MICH. COMP. LAWS § 125.1564(7)(b).

MINNESOTA:

Public:

Retainage may not exceed 5%. Agency may release or eliminate retainage if the work is progressing satisfactorily. Contractor may substitute security in lieu of retainage. MINN. STAT. § 15.72-3.

Private:

Unless the contract provides otherwise, an owner can retain no more than 5% of any progress payment. MINN. STAT. § 337.10(4)(b). Moreover, the owner may reduce or eliminate the retainage if the work is progressing satisfactorily. *Id.* The retainage

subdivisions do not apply to contracts for specific professional services (including architects, engineers, surveyors, landscape architects, geoscientists, and interior designers) or construction or improvement of residential real estate. MINN. STAT. §§ 337.10(4)(c) and (d).

MISSISSIPPI:

Public:

The state may withhold no more than 5% from any payment to a contractor. MISS. CODE ANN. § 31-5-33(1). The amount retained by a contractor from a subcontractor shall not exceed the percentage withheld by the state from the contractor. *Id.* In any contract worth \$250,000 or more, or any contract involving subcontractors, regardless of amount, the retention rate shall be reduced to 2.5% once the project is 50% complete, provided that the project is progressing satisfactorily. MISS. CODE ANN. § 31-5-33(2). Moreover, at that point, the public body shall release 50% of the retainage to the contractor to be disbursed to subcontractors and suppliers. *Id.* Contractors may substitute certain securities for retainage. MISS. CODE ANN. § 31-5-15.

The Mississippi Transportation Commission may, but is not required to, withhold retainage in contracts with contractors. MISS. CODE ANN. § 31-5-33(3). *See also* A.G. Op. # 99-0641 (Dec. 3, 1999).

For any contract that exceeds \$1,000, a county board of supervisors must retain between 2.5% and 10% of each payment. MISS. CODE ANN. § 19-13-15(1). The amount retained by a contractor from payments due a subcontractor shall not exceed the percentage withheld by the board of supervisors from the contractor. *Id.* On any contract, except for a contract for building or repairing a bridge or doing work on a public road, that exceeds \$750,000, the board of supervisors shall retain 10% until the project is 50% complete. MISS. CODE ANN. § 19-13-15(3). At that point, if the work is progressing satisfactorily, 50% of the retainage shall be released to the contractor to be disbursed to the appropriate subcontractors and suppliers. *Id.* Thereafter, a 5% retainage shall be withheld. *Id.*

MISSOURI:

Public:

Retainage withheld on public works projects shall not exceed 5% of the value of the contract or subcontract, unless the public owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. At no time, however, can retainage exceed 10%. Mo.Rev.Stat. § 34.057.1.(1). Before substantial completion and at the owner's discretion and at the contractor's request, retainage may be released to subcontractors that have completed performance. Mo.Rev.Stat. § 34.057.1.(3). Within 30 days after substantial completion, the owner shall pay all retainage less authorized offsets or deductions. The owner may withhold

200% of the value of punch list items. Mo.Rev.Stat. § 34.057.1.(4). Payments may be withheld on certain conditions, but attorneys' fees and interest at the rate of 1.5% per month may be awarded if a payment was not withheld in good faith for reasonable cause. Mo.Rev.Stat. § 34.057.6. The general contractor must pay its subcontractors within 15 days of receipt of funds. Mo.Rev.Stat. § 34.057.7.

Private:

All retainage shall be held by the owner in trust for the benefit of the contractor and the contractor's subcontractors at all tiers who are not in default in proportion to their respective interests. Mo.Rev.Stat. § 436.303. Retainage is capped at 10%. Mo.Rev.Stat. § 436.303. Contractors and subcontractors at all tiers may eliminate cash retainage by substituting security in the form of a retainage bond, a letter of credit or a certificate of deposit. Mo.Rev.Stat. § 436.312. A general contractor may not withhold any retainage from a subcontractor in excess of the retainage withheld from the contractor by the owner. Mo.Rev.Stat. § 436.315. There may be line item release of a subcontractor's retainage prior to substantial completion if there is no risk to the owner involving the subcontractor's work. Mo.Rev.Stat. § 436.321. Within 30 days of the project reaching substantial completion, all retainage or substitute security shall be released by the owner to the contractor less an amount equal to 150% of the value of the punch list. If retainage is withheld in violation of the statute, a court may award interest up to 1.5% per month, plus attorneys' fees. Mo.Rev.Stat. § 436.333.

MONTANA:

Public:

A public body may withhold no more than 5% of a contract as retainage. MONT. CODE. ANN. § 18-2-316(1). The contractor can hold no more on a subcontract than has been withheld by the public body. MONT. CODE. ANN. § 18-2-316(2). The contractor can substitute certain securities for retainage and the subcontractors must be given the same opportunity. MONT. CODE. ANN. § 18-1-301. Interest accrued in deposit accounts must be paid to the contractor. *Id.*

Private:

The owner may not withhold more than 5% as retainage. MONT. CODE. ANN. § 28-2-2110(1). The contractor can withhold no more on subcontract than has been withheld by the owner. MONT. CODE. ANN. § 28-2-2110(2). Line item release is mandatory upon completion and acceptance of each portion of work for which a separate price is stated in the construction contract. Query: Does this mean that if a schedule of values is called for in the contract then retainage must be released upon "final acceptance" of that portion of the work? MONT. CODE. ANN. § 28-2-2110(3).

NEBRASKA:

Public:

For highway and bridge contracts, when the contractor has provided all required reports and has not been paid by the owner for more than 60 days after final completion, the retained funds (and the final payment) are subject to an interest rate 3% above the Federal Reserve composite prime lending rate from the previous year. NEB. REV. STAT. § 39-1349.

NEVADA:

Public:

A public body shall not pay more than 90% of the amount of a progress payment until the work is 50% complete. NEV. REV. STAT. 338.515.1. After the project is 50% complete, the public body may not withhold any money unless the public body believes that the project is not progressing satisfactorily. *Id.* The public body will pay the contractor the actual cost of certain supplies, material, and equipment. *See* NEV. REV. STAT. 338.515.2. Moreover, the public body may withhold from progress payments or retainage payments an amount sufficient to pay any expenses the public body reasonably expects to incur as a result of the contractor's error. NEV. REV. STAT. 338.525.1. The public body must pay to the contractor interest on any amount withheld by the public body on a quarterly basis. NEV. REV. STAT. 338.515.3. When the public body occupies one or more buildings of a public work, the body shall pay the contractor the proportional value of the occupied portion including retention and interest. NEV. REV. STAT. 338.520.

When engaged in a public works project, a contractor may withhold no more than 10% from a payment to a subcontractor until 50% of the subcontract is complete. NEV. REV. STAT. 338.555.1. Thereafter, the contractors shall make all payments without withholding any retainage, provided that the subcontractor is progressing satisfactorily, and the payment must be equal to that paid by the public body to the contractor for work performed by the subcontractor. *Id.* If the contractor receives interest earned on the retainage, he shall within ten days pay each subcontractor the interest attributable to their retention. NEV. REV. STAT. 338.555.2.

When engaged in a public works project, a subcontractor who engages the services of a second subcontractor may withhold no more than 10% from a payment to the second subcontractor until 50% of the subcontract is complete. NEV. REV. STAT. 338.595.1. Thereafter, the subcontractor shall make all payments without withholding any retainage, provided that the second subcontractor is progressing satisfactorily, and the payment must be equal to that paid by the contractor to the subcontractor for work performed by the second subcontractor. *Id.* If the subcontractor receives interest earned on the retainage, he shall within ten days pay the second subcontractor the interest attributable to his retention. NEV. REV. STAT. 338.555.2. *See also* NEV. REV. STAT.

338.550, 338.555.2, 338.560, 338.565, 338.590, 338.600, and 338.605 (dealing with prompt payment).

NEW HAMPSHIRE:

The Granite State has not legislated a retention statute. However, by rule contractors are allowed to withdraw cash retainage by substituting defined securities having a value equal to the amount withdrawn on contracts with state agencies. The initial amount must be at least \$10,000. The contractor is entitled to receive the income earned from the securities. RSA 21-I:20.

NEW JERSEY:

Public:

For highway work, 5% retainage is withheld until the project is 50% complete. Thereafter, no retainage is withheld. At substantial completion, only 2% retainage is withheld. The contractor is allowed to substitute securities in lieu of retainage. N.J. STAT. ANN. §§ 40A:11-16.3, 27:7-34.

A public body may withhold no more than 2% from any payment. N.J. STAT. ANN. § 40A:11-16.3.a. All retained funds shall be returned within 45 days of the final acceptance date. N.J. STAT. ANN. § 40A:11-16.3.b. Where the contract exceeds \$100,000, the contractor may substitute certain bonds or notes for retainage. N.J. STAT. ANN. § 40A:11-16.1. The contractor is entitled to all interest that accrues on said bonds or notes. *Id.* If the public body requires maintenance security after acceptance of the work, it may obtain a maintenance bond. N.J. STAT. ANN. § 40A:11-16.3.b. The bond may last no longer than two years and shall be no more than the contract price. *Id.*

NEW MEXICO:

Public and Private:

See generally Retainage Act, N.M. STAT. ANN. § 57-28-1 *et seq.* (the Act does not apply to construction projects for residential property containing four or fewer dwellings (N.M. Stat. Ann. § 57-28-3)). In making payments, the owner may retain no more than 5% of the estimated work done and materials supplied. N.M. STAT. ANN. § 57-28-5E. No further retainage shall be withheld once the project is “substantially complete.” *Id.* A contractor may withhold no more than 5% retainage from a subcontractor. *Id.* Line item release is possible upon completion and acceptance of each separate building or division of the contract. N.M. STAT. ANN. § 57-28-5F. All retained funds must be held in an escrow account. N.M. STAT. ANN. § 57-28-4. As interest on the all investments held in escrow becomes due, it shall be distributed to the contractor. N.M. STAT. ANN. § 57-28-6C. Securities can be offered by the contractor or subcontractor in lieu of retainage. N.M. STAT. ANN. § 57-28-4 If an owner fails to deposit retainage into an escrow account or to release retainage as required by the Act,

the owner shall pay interest on that amount at a rate of one and 1.5% per month. N.M. STAT. ANN. § 57-28-10. If a dispute arises between the owner and the contractor or the subcontractor, the owner is only entitled to retain an amount necessary to cover the cost of correcting the deficiency. N.M. STAT. ANN. § 57-28-9. *See also* N.M. STAT. ANN. § 57-28-5 (dealing with prompt payment).

NEW YORK:

Public:

The rate of retainage is 5%, but the public owner may retain in excess of 5% but not more than 10% if there are no requirements by the owner for the contractor to provide a performance bond. A contractor may retain no more than 5% from a subcontractor that is bonded; if prior to the award of the subcontract, a subcontractor is unwilling or unable to provide a bond, the contractor may retain up to 10%. The contractor may provide substitute securities in lieu of retainage. NY STATE FIN. LAW §§ 139, 139-f.

Municipal bodies may retain no more than 5% from bonded contractors or 10% from unbonded contractors. N.Y. GEN. MUN. LAW § 106-b(1)(a). The municipal body shall release the funds upon substantial completion of the project, less 200% of the value of any items yet to be completed or disputed. *Id.* Contractors may withhold no more than 5% from bonded subcontractors or 10% from unbonded subcontractors. N.Y. GEN. MUN. LAW § 106-b(2). A contractor may substitute securities for retainage. N.Y. GEN. MUN. LAW § 106.

Private:

By mutual agreement of the parties, an owner may retain a “reasonable amount” of the contract sum as retainage. N.Y. GEN. BUS. LAW § 756-c. A contractor may withhold a reasonable amount from a subcontractor so long as the amount does not exceed the percentage retained by the owner. *Id.* All retainage shall be released no later than 30 days after final approval of the contract. *Id.* Late payments shall accrue interest at a rate of 1% per month. *Id.*

NORTH CAROLINA:

Public and Private:

There is no specific retainage law. However, North Carolina’s prompt pay law states that a contractor’s amount of retainage on subcontractors may not exceed the owner’s retainage on the contractor.

The Department of Transportation can enter into an a trust agreement with the contractor for the deposit of the retained funds. N.C. GEN. STAT. §§ 22C-4, 143-134.1, 136-28.9.

NORTH DAKOTA:

Public:

The rate of retainage is 10% of the estimated value of the labor and material furnished on a contract until 50% of the work is completed. Thereafter, no further funds are retained. At 95% completion, the state may pay 95% of the retained funds to the contractor. The remainder will be paid upon final acceptance. Retained funds are deposited in a North Dakota financial institution with interest accruing to the contractor. N.D. CENT. CODE § 48-02-07.

However, N.D. CENT. CODE § 40-22-37 (dealing with municipal governments) has the exact language dealing with retainage. North Dakota also has laws governing retainage in contracts with water district boards (N.D. CENT. CODE § 61-35-103) and the North Dakota Mill and Elevator Association (N.D. CENT. CODE § 54-18-18). The retainage provisions in these specific statutes are substantially similar to those in N.D. CENT. CODE §§ 48-02-07 and 40-22-37.

Private:

Retainage is a maximum of 10% until the project is 50% complete. Thereafter, no further retainage can be withheld. If retainage funds are invested, interest earned on funds goes to the contractor. N.D. CENT. CODE § 43-07-23.

OHIO:

Public (and private):

A public body shall retain 8% of the contract price until the project is 50% complete. OHIO REV. CODE ANN. § 153.12(A). Thereafter, no additional funds shall be withheld and the retained funds shall be placed into an escrow account. *Id.*; *see also* OHIO REV. CODE ANN. § 153.13. When the project is substantially complete, the retained funds with accumulated interest shall be released to the contractor, withholding only the amount necessary to assure completion. OHIO REV. CODE ANN. § 153.13. In addition to payments on account of work performed, the public body shall retain 8% of payments for materials until such materials are incorporated into the project. OHIO REV. CODE ANN. § 153.14.

OHIO REV. CODE ANN. § 4113.61 deals with the relationship between contractors and subcontractors (and between subcontractors and lower lever subcontractors) in both public and private settings. It provides that a contractor or subcontractor may reduce the amount withhold as retainage under the contract or withhold amounts that may be necessary to resolve disputes. OHIO REV. CODE ANN. §§ 4113.61(A)(1)(b), 4113.61(A)(2)(b). If a contractor or a subcontractor receives a retainage payment, he must distribute it within the shorter of ten days or the period specified in the contract, provided that all work has been satisfactorily performed. OHIO REV. CODE ANN. §§

4113.61(A)(3), 4113.61(A)(4). If the contractor or subcontractor fails to make this distribution, the amount due shall accrue interest at the rate of 18% per annum. OHIO REV. CODE ANN. §§ 4113.61(A)(3), 4113.61(A)(4).

OKLAHOMA:

Public:

A public body shall withhold no more than 10% from any payment as retainage. OKLA. STAT. tit. 61, § 113.1(A); *see also* OKLA. STAT. tit. 61, § 226(A). Once the contractor has completed 50% of the contract, the retainage shall be reduced to 5%, if satisfactory progress is being made and the surety approves. OKLA. STAT. tit. 61, § 113.1.A; *see also* OKLA. STAT. tit. 61, § 226(A). Retainage in a subcontract shall not exceed 10% of the amount due. OKLA. STAT. tit. 61, § 226(B). Once the subcontract is 50% complete, the retainage percentage withheld shall be no greater than the retainage percentage withheld by the owner. *Id.* The owner shall release all retained funds within 21 days of completion and approval of the contract. OKLA. STAT. tit. 61, § 226(C). The owner may retain, however, up to 150% of the estimated costs to correct any incomplete or defective work. *Id.* A contractor can substitute certain securities for retainage. OKLA. STAT. tit. 61, § 113.2. The Department of Transportation and the Turnpike Authority may not withhold retainage on any public construction contract. OKLA. STAT. tit. 61, § 113.1.B.

County governments are bound by similar laws. A county shall withhold no more than 10% from any payment as retainage. OKLA. STAT. tit. 19, § 8(A). Once the contractor has completed 50% of the contract, the retainage shall be reduced to 5%, if satisfactory progress is being made and the surety approves. *Id.* However, the amount retained shall be sufficient to ensure payment of taxes, workers compensation, and amounts due to any subcontractor. *Id.*

OREGON:

Public:

A public body may not withhold more than 5% from any payment. OR. REV. STAT. § 279C.570(7). Once the contract is 50% complete, the public body may, upon the contractor's request, eliminate retainage if the work is progressing satisfactorily and the surety approves. *Id.* Once the work is 97.5% complete, the public body may reduce the retainage to 100% of the value of the work yet to be completed. *Id.* The retainage should be included in the final payment. OR. REV. STAT. § 279C.570(8). If the final payment is not made within 30 days after the final completion and acceptance of the contract, the public body shall pay interest at a rate of 1.5% per month. *Id.* Securities may be substituted for retainage. OR. REV. STAT. § 279C.560(3). Alternatively, the contractor may elect to have the retained funds deposited in an interest-bearing bank account. OR. REV. STAT. § 279C.560(4). In either case, the contractor is entitled to all interest or earnings that accrue. OR. REV. STAT. §§ 279C.560(3) and (4); *see also* OR. REV. STAT. §

701.435(2) (dealing with interest payments to subcontractors). Where the contractor opts to substitute securities for retainage, subcontractors may deposit securities as well if the subcontract is for more than \$50,000 and constitutes at least 10% of the prime contract. OR. REV. STAT. § 701.435(1). The withholding of retainage by a contractor or subcontractor on public improvements contracts is governed by the same laws governing private contracts (i.e. OR. REV. STAT. §§ 701.420 and 701.430, *discussed below*). OR. REV. STAT. § 279C.555; *see also* OR. REV. STAT. § 279C.580 (dealing with contractor's relations with subcontractors).

Private:

If a contractor or subcontractor has furnished a payment and performance bond, then owners, contractors and subcontractors may withhold no more than 5% of the contract or subcontract price as retainage. OR. REV. STAT. § 701.420(1). However, if a bond is not furnished then the owner, contractor or subcontractor may withhold retainage at a rate set in the contract or subcontract. When a contractor pays a subcontractor in full, including amounts held as retainage, the owner shall pay the contractor, out of the money that is withheld from the contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. OR. REV. STAT. § 701.420(3). The owner, contractor or subcontractor shall release all retained funds within 30 days of completion and acceptance of the work, otherwise, the funds shall accrue interest at the rate of 1% per month. OR. REV. STAT. § 701.420(2).

PENNSYLVANIA:

Public:

The rate of retainage shall not exceed 10%. 62 PA. CONS. STAT. § 3921(a). Once the project is 50% complete, 50% of the amount retained shall be returned to the contractor, provided the contractor is making satisfactory progress. *Id.* Thereafter, the public body may withhold no more than 5% of the contract price. *Id.* However, where a good faith dispute arises, the public body may retain 150% of the disputed amount, unless the contractor furnishes a bond. *Id.*

The Department of General Services shall withhold no more than 6% of the contract price until the project is 50% complete. 62 PA. CONS. STAT. § 3921(b). At that point, 50% of the retained sums shall be released to the contractor and the Department may withhold no more than 3% of the contract price as retainage. *Id.* When the work is substantially complete (and approved by an architect or engineer) the public body shall release all retained funds (less 150% of amounts in controversy) within 45 days. 62 PA. CONS. STAT. § 3941.

Late final payments (in contracts with retainage) shall accrue interest at a rate of 10% per annum. 62 PA. CONS. STAT. § 3941(b). Within 20 days of receiving a retainage payment from a public body, a contractor shall pay all subcontractors their share of the funds received. 62 PA. CONS. STAT. § 3922.

For highway work, retainage is 5% until the project is 50% complete. Thereafter, no retainage is withheld. The Secretary of Transportation may waive or reduce retainage if otherwise assured the contract will be completed. The Secretary may make payments to further reduce retainage when the project is 95% complete. PA. CONS. STAT. § 746, 62 PA. CONS. STAT. § 3921.

Private:

Though no retainage rate is specified, the statute provides that all retained funds shall be released to the contractor within 30 days of final completion and acceptance of the work. 73 PA. CONS. STAT. § 509(a). A contractor may withhold retainage from a subcontractor, even where the owner is not withholding retainage from the contractor. 73 PA. CONS. STAT. § 509(b). Contractors shall release all retainage to subcontractors within 30 days of final acceptance of the work. *Id.* Subcontractors, in turn, must pay all retainage due other subcontractors within 14 days of receiving a retainage payment from the contractor. 73 PA. CONS. STAT. § 509(c). Late retainage payments will accrue interest from the date on which said retainage was due and owing. 73 PA. CONS. STAT. § 509(d). A violation of statutory payment terms may also result in a penalty equal to 1% per month of the amount wrongfully withheld plus reasonable attorney fees to the prevailing party. 73 PA. CONS. STAT. § 512.

RHODE ISLAND:

Public:

Where the contract is worth more than \$500,000, retention may not exceed 5% of the contract price, regardless of whether payments are made periodically or in a lump sum. R.I. GEN. LAWS § 37-12-10(a). However, in contracts worth less than \$500,000, the parties may agree to a higher retainage percentage. *Id.* All retainage shall be released within 90 days of acceptance of the project. R.I. GEN. LAWS § 37-12-10(b). Late retainage payments shall accrue interest at a rate of 10% per annum. *Id.* Contractors may substitute securities for retainage. R.I. GEN. LAWS § 37-12-11.

SOUTH CAROLINA:

Public:

Retainage held by the owner or the contractor may not exceed 3.5%. S.C. CODE ANN. § 11-35-3030(4)(a). The state releases funds upon completion of each division of the work. S.C. CODE ANN. § 11-35-3030(4)(b). The state is required to “forthwith” release retainage for each subcontractor upon certification that the subcontractor’s work is complete. The contractor is required to release retention to its subcontractors within ten days after receiving payment from the state. *Id.*

SOUTH DAKOTA:

Public:

Except as noted below, the rate of retainage is not defined by statute. The state must withhold from final payment an amount necessary to assure completion. However, after final completion and when the contractor has submitted all required reports, interest at a statutorily defined rate is paid to the contractor for the retained funds. A contractor may provide substitute securities in lieu of retainage. For county buildings and improvements, there is a graduated scale for retention. For projects less than \$50,000, retention shall be not less than 12%. For projects up to \$250,000, retention shall be not less than 12% on the first \$50,000, and then 5% on the next \$200,000. For projects in excess of \$250,000, retention shall be not less than 12% on the first \$50,000, 5% on the next \$200,000, and then 2.5% of the contract in excess of \$250,000. The state is authorized, but not required, to provide for substitute securities. S.D. CODIFIED LAWS §§ 5-18-12, -12.1; 7-25-10.

TENNESSEE:

Public:

The rate of retainage shall be at least 5% until the contract is completed and the work is accepted. A contractor or subcontractor may substitute securities in this account in lieu of retainage. The securities which remain on deposit including the interest shall upon satisfactory completion of the contract and written release by the owner or contractor be paid to the contractor or subcontractor or to whom such funds and interest are owed. TENN. CODE ANN. §§ 4-15-102, 12-4-108.

Private:

The rate of retainage is not specified. Retainage must be held in a separate escrow account. However, the owner must release retainage upon the occurrence of any of the following: issuance of a certificate of occupancy, substantial completion, or when the owner began to use, or could have begun to use the project. TENN. CODE ANN. §§ 66-11-144, 66-34-204.

TEXAS:

Public:

Although the Texas code does not specify a generally applicable retainage rate, it does provide that all contracts that provide for retainage of more than 5% (except for contracts worth less than \$400,000 and contracts made by the Department of Transportation) shall deposit the retainage in an interest-bearing account and pay the interest earned to the contractor upon the completion of the contract. TEX. GOV'T CODE

ANN. §§ 2252.032 and 2252.033. A claim for retainage is never valid for an amount greater than 10% of the amount of that contract. TEX. GOV'T CODE ANN. § 2253.076.

Under the Texas transportation code, 5% of the contract must be retained until the entire project has been completed and accepted. TEX. TRANSP. CODE ANN. §§ 223.009 and 223.010(a). However, the state only needs to withhold 4% where the contract includes the use of recycled materials. TEX. TRANSP. CODE ANN. § 223.010(h). The retained funds may be deposited under a trust agreement with a bank. TEX. TRANSP. CODE ANN. § 223.010(b). Interest earned under the trust agreement shall be paid to the contractor. TEX. TRANSP. CODE ANN. § 223.010(e).

Under the Texas water code, the state shall retain 10% of the contract amount until final completion and acceptance of the work. TEX. WATER CODE ANN. § 49.276(d). However, the board may eliminate the retention once the project is 50% complete if satisfactory progress is being made. *Id.* Moreover, if, after the midpoint, the state determines that the retained amounts are in excess of the amount needed to ensure the successful completion of the project, it can release the excess amounts. *Id.* The state is not obligated to pay interest on the retainage withheld during the first half of the project. *Id.* The state shall, however, pay interest on any retainage withheld after the midpoint. *Id.* Where a political subdivision receives financial assistance from the state water board, it must include specific retainage provisions in its construction contracts. *See* TEX. WATER CODE ANN. §§ 17.183, 15.914.

Private:

The owner is required to retain 10% of either the contract price, or the value of the work, whenever a mechanic's lien may be claimed. TEX. PROP. CODE ANN. § 53.101.

UTAH:

Public & Private:

Retention shall not exceed 5% of the total construction price. The percentage of retention withheld between the contractor and the subcontractor or between subcontractors shall be the same as the retention withheld between the owner and the contractor.

Any payment made on a contract between a private contractor and a public agency must be retained in an interest-bearing account. The interest accrued must be for the benefit of the contractor and subcontractors and paid after the project is completed and accepted by the owner or public agency.

A contractor or subcontractor who receives retention proceeds must pay the proceeds to those whom retention has been withheld. However, if the retention payment received is for a specifically designated subcontractor, then the payment of the retention shall be to that subcontractor. UTAH CODE ANN. § 13-8-5.

VERMONT:

Public & Private:

The rate of retainage is not specified. If there is retainage withheld, the amount retained must be released to the contractor within 30 days after completion of the work and acceptance. Even if the owner does not withhold retainage on the contractor, the contractor may withhold retainage on its subcontractors. VT. STAT. ANN. tit. 9, § 4005.

VIRGINIA:

Public:

The rate of retainage may not exceed 5%. On public contracts of \$200,000 or more, a contractor has the option to have retainage held in an escrow account; this option must be exercised in its bid proposal. A contractor may not hold more than 5% retainage on its subcontractors. VA. CODE ANN §§ 2.2-4333, 4334.

WASHINGTON:

Public:

Retainage of not more than 5% is required for a trust fund for the protection and payment of claims of persons arising under the contract. The contractor may at any time request that retainage be reduced to 100% 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 by the public body in an interest bearing account in a bank, or placed in escrow with a bank or trust company by the public body. A contractor may not withhold more than 5% from the moneys earned by any subcontractor. Any funds retained by a contractor from a subcontractor shall earn a rate of interest equal to the rate received by the contractor from the reserved funds. Further, the contractor may provide a bond in lieu of retainage. When the public owner accepts the contractor's retainage bond, the contractor must accept like bonds from its subcontractors. WASH REV. CODE § 60.28.011.

In contracts of \$25,000 or less, the contractor and the public entity can agree that the public entity will retain 50% of the contract price in lieu of a bond. WASH REV. CODE § 39.08.010.

WEST VIRGINIA:

Retention has not been legislated in the Mountaineer State.

WISCONSIN:

Public:

The rate of retainage is 10% until 50% completion. Thereafter, no additional funds are retained if progress is satisfactory. If after 50% completion, it is decided that work is not satisfactory, additional amounts may be retained but can not be at a rate in excess of 10%. WIS. STAT. § 16.855.

WYOMING:

Public:

A public body may withhold no more than 10% of the value of a contract until the project is 50% complete. WYO. STAT. ANN. § 16-6-702. Thereafter, the public body may eliminate the retainage if satisfactory progress is being made. *Id.* On any contract of more than \$25,000, the retained funds shall be placed into an interest-bearing account. WYO. STAT. ANN. § 16-6-704. All interest and income shall be paid to the contractor. WYO. STAT. ANN. § 16-6-705. In most cases, the funds will not be released until the project has been accepted by the public body. WYO. STAT. ANN. § 16-6-702. However, if satisfactory progress is being made, the public body may release the retainage if the contractor has provided satisfactory and substantial reasons for early payment and the surety approves (and furnishes bonds for the contract work). *Id.* If it becomes necessary for a public owner to take over completion of the contract, all retainage shall be first applied toward cost of completion of the contract. If there is a positive balance remaining after completion, it shall be payable to the contractor or its creditors. WYO. STAT. ANN. § 16-6-703.

50 STATE SUMMARY OF RETAINAGE LAWS (PLUS THE DISTRICT OF COLUMBIA AND FEDERAL GOVERNMENT)

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<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
	A: 44 Public 13 Private	A: 20 Public 12 Private	A: 20 Public 7 Private	A: 26 Public 3 Private	A: 8 Public 3 Private	A: 12 Public 9 Private	A: 24 Public 13 Private	A: 15 Public 14 Private
Alabama: –Public	5% for 50%, then zero		Yes	Yes	Yes			
–Private		Yes						Yes
Alaska: –Public						Within 8 days of receipt of funds		Yes

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Arizona: –Public	10% required until 50% complete, then pay 50% of amount withheld and hold not more than 5%			Yes	Yes			
–Private	“Reasonable”	Yes				Within 7 days of receipt of funds		Yes
Arkansas: –Public	10% required until 50% complete		Yes				30 days after substantial completion	
California: –Public	5% required		Yes	Yes				
–Private						Within 10 days of receipt of funds	Within 45 days of “date of completion”	Yes, obligatory

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Colorado: –Public	Not more than 10% until 50% complete, thereafter zero			Yes		Within 7 days of receipt of funds	Within 30 days of final acceptance	
Connecticut: –Public	Ranges between 2.5% and 10% depending on agency	May not withhold more than owner		Yes				
–Private	7.5%		Yes, mandatory	Yes, contractors and subcontractors			Upon substantial completion	Yes
Delaware: –Public	5%			Yes			Within 60 days of completion	
District of Columbia:	10% required until 50% complete						Upon substantial completion, at mayor's discretion	
Federal Government:	No retainage							

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Florida: –Public	Generally 10% until 50% complete; DOT may withhold 10%	At 50% complete GC may withhold more than 5% from subs even though state must reduce to 5%		Yes				
Georgia: –Public	10% until 50% complete, then zero	May not withhold more than owner	At discretion of state		Yes	Within 10 days of receipt of funds	At substantial completion within 30 days of invoice	Yes
–Private	“Reasonable”	Yes				Within 10 days of receipt of funds if sub 50% complete		Yes
Hawaii: –Public	5% for 50%, then zero	Yes, if sub provides collateral				Within 10 days of receipt of funds		

<p><i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i></p>	<p>How Many States Have Caps or Minimums?</p>	<p>Are There Restrictions on How Much GC May Retain From Subs?</p>	<p>Are There Provisions for Escrow Accounts?</p>	<p>Are There Provisions for Substitute Security?</p>	<p>Are There Provisions for Line Item Release?</p>	<p>Are There Provisions When GC Must Release Retainage to Subs?</p>	<p>Are There Provisions for Final Release of Retainage by Owner?</p>	<p>Are There Provisions for Interest and/or Attorneys' Fees?</p>
<p>Idaho: –Public</p>	<p>5% with payment or performance bond; for contracts with drainage districts, 10% required</p>	<p>5%</p>			<p>Yes</p>	<p>Within 30 days of completion of subcontract</p>	<p>Within 30 days of acceptance</p>	
<p>–Private</p>	<p>5% with payment or performance bond</p>					<p>Within 10 days of receipt of funds</p>	<p>Within 35 days of substantial completion reduced to 150% of punch list</p>	
<p>Illinois: –Public</p>	<p>Counties required to hold at least 10% until 50% complete, then disburse so long as continue to hold at least 5%</p>		<p>Yes, trust fund</p>					

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Indiana: –Public	Different rules for state “agency” and “division” ranging from 3% to 10%		Yes			Within 10 days of receipt of funds	Within 61 days of substantial completion	
Iowa: –Public	5% (different rules for academic institutions and bonded jobs)	Lesser of 5% or contract amount					Within 30 days of final acceptance	Yes
Kansas: –Public	No cap except 10% for bonded and bridge work		Yes	Yes				
Kentucky: –Public				Yes, for highway work				

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Louisiana: –Public	10% if contract less than \$500,000; otherwise 5%; however, retainage may go as high as 20%			Yes, with consent of surety				
Maine: –Public	5% mandatory except DOT contracts capped at 5%, but is not mandatory			Yes				
–Private		GC is authorized to hold more from sub than owner withholds				Within 7 days of receipt of funds	Within 30 days of final acceptance	Yes

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Maryland: –Public	Generally, where contractor is bonded, capped at 10% for 50%, then drops to 5%; procurement contracts are different	May not withhold more than owner	Yes				Within 120 days after satisfactory completion	
Massachusetts: –Public	5%						At substantial completion gets all but 1% punch list	Yes
Michigan: –Public	10% until 50% complete, then zero unless performance is not satisfactory		Yes	At 94% complete, if contractor tenders letter of credit retainage plus interest shall be released				
Minnesota: –Public	5%			Yes				

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Minnesota: –Private	5% unless contract provides otherwise							
Mississippi: –Public	Generally, 5%; at 50% complete half of retainage is released and on most jobs retainage is then capped at 2.5%; for county projects retainage ranges between 2.5%-10%	May not withhold more than owner		Yes				
Missouri: –Public	5% unless A/E and owner certify more is needed, but not more than 10%	May not withhold more than owner			Yes	Within 15 days of receipt of funds	Within 30 days of substantial completion and acceptance	Yes

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Missouri: –Private	10%	May not withhold more than owner	Funds held in trust for benefit of contractor and subcontractors	Yes, for general contractor and subcontractors	Yes	Within 5 days of receipt of funds	Within 30 days of substantial completion	Yes
Montana: –Public	5%	May not withhold more than owner		Yes, for general contractor and subcontractors				
–Private	5%	May not withhold more than owner			Mandatory upon final acceptance for each item priced separately			
Nebraska: –Public							60 days after final completion	Yes
Nevada: –Public	10% required until 50% complete	10% cap	Yes					Yes
New Hampshire: –Public				Yes				

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New Jersey: –Public	For highway work 5% until 50% complete, then zero; for local government, 2% is required			Yes			45 days of acceptance	
New Mexico: –Public & Private	5% until substantial completion (local public bodies and Intel may be exempt)	General contractor may not withhold more than 5% (even if owner does not withhold any)	Yes, funds not subject to reach of third parties	Yes, by general contractor and subcontractors	Yes	Within 7 days of receipt of funds	10 days after certification of completion	Yes
New York: –Public	5% if job bonded; otherwise 10%	5% if subcontractor bonded; otherwise 10%		Yes				
–Private	“Reasonable”	May not withhold more than owner					30 days after final approval	Yes

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North Carolina: –Public & Private		May not withhold more than owner	DOT may have trust agreements					
North Dakota: –Public	10% until 50%, then zero		Yes				95% may be paid at 95% completion, balance at completion	
–Private	10% until 50%, then zero		Yes					
Ohio: –Public	8% mandatory until 50% complete, then zero		Yes				Within 30 days of acceptance or occupancy	
–Public & Private						Within 10 days of receipt of funds or per contract whichever is shorter		Yes

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Oklahoma: –Public	10% until 50%, then 5%; no retainage by DOT or turnpike authority	10% until 50%, then no higher than owner is holding		Yes, contractors and some subcontractors			Within 21 days of completion and approval	
Oregon: –Public	5%; at 50% may be reduced to zero		Yes	Yes			Within 30 days of completion and acceptance	Yes
–Private	5% on bonded job; if no bond as per contract						When general contractor pays subcontractor, owner must pay general contractor same amount; all retainage due within 30 days of completion and acceptance	Yes

<i>49 states have legislation regarding retainage for public contracts; 21 for private. Fourteen states, plus District of Columbia have mandatory retainage.</i>	How Many States Have Caps or Minimums?	Are There Restrictions on How Much GC May Retain From Subs?	Are There Provisions for Escrow Accounts?	Are There Provisions for Substitute Security?	Are There Provisions for Line Item Release?	Are There Provisions When GC Must Release Retainage to Subs?	Are There Provisions for Final Release of Retainage by Owner?	Are There Provisions for Interest and/or Attorneys' Fees?
Pennsylvania: –Public	Ranges between 3%-10% depending on level of govt					Within 20 days of receipt of funds	For Dept. of General Services, within 45 days of substantial completion	Yes
–Private		General contractor may withhold from subcontractor even if owner is not withholding					Within 30 days of final completion and acceptance	Yes
Rhode Island: –Public	For contracts over \$500,000, 5%; otherwise per contract			Yes			Within 90 days of acceptance	Yes
South Carolina: –Public	3.5%	3.5%			Required	Within 10 days of receipt of funds		

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South Dakota: –Public	At least 12% of the first \$50,000, then 5% on next \$200,000, then 2.5% on excess over \$250,000			Yes, at discretion of state				Yes
Tennessee: –Public	Mandatory retainage of at least 5%			Yes				
–Private			Required				Upon receipt of occupancy permit, certificate of substantial completion or could use property	

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<p>Texas: –Public</p>	<p>At least 5% is mandatory for DOT; 10% shall be retained by water districts and local government until 50% complete</p>		<p>Required if retainage exceeds 5%</p>					
<p>–Private</p>	<p>10% is mandatory on any job for which a lien may be claimed</p>						<p>May not release until 30 days after completion</p>	
<p>Utah: –Public & Private</p>	<p>5%</p>	<p>May not withhold more than the owner</p>	<p>Yes</p>				<p>Within 45 days of later of receipt of final bill, certificate of occupancy, contractor's acceptance of final pay quantities</p>	<p>Yes</p>

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Vermont: –Public & Private		General Contractor may withhold from subcontractor even if owner does not withhold				Within 7 days of receipt of funds	Within 30 days of completion and acceptance	Yes
Virginia: –Public	5%	5%	Yes, if contract exceeds \$200,000					
Washington: –Public	5% mandatory	5%	Yes	Yes				
West Virginia: –Public & Private	No legislation							

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<p>Wisconsin: –Public</p>	<p>5% until 50% complete, thereafter may withhold up to 10% if work is not satisfactory; for municipal contracts 5% is required until 50% complete;</p>						<p>Upon substantial completion retainage “may be paid”</p>	
<p>Wyoming: –Public</p>	<p>10% until 50% complete</p>		<p>Yes, for contracts in excess of \$25,000</p>		<p>Yes</p>		<p>Upon substantial completion</p>	