

# Retainage Law in the 50 States

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**DISCLAIMER:** *This publication does not contain legal advice. Individual circumstances vary widely, so readers should consult legal counsel before acting on the information provided herein.*

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## Acknowledgments

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A sincere thank you to the many construction law attorneys who contributed to this publication of *Retainage Law in the 50 States*. We appreciate the efforts of these attorneys in providing this important reference. A listing of those attorneys appears in the appendix. We would also like to recognize the contributions of Kegler, Brown, Hill & Ritter summer associate Alexandra Tuffuor to this publication and extend a special thank you to Richard A. Stockenberg, of St. Louis, Missouri, for his invaluable prior research on this topic.

## About ASA and FASA

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## Preface

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

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

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

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

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## Retainage Law in the 50 States

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### ALABAMA

House: 334-242-7600

Senate: 334-242-7800

Legislative Reference Service: 334-242-7560

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

#### *Public*

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

#### *Private*

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

### ALASKA

House: 907-465-3725

Senate: 907-465-3701

Legislative Information Office: 907-465-4648

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

#### *Public*

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

## **ARIZONA**

House Information Desk: 602-926-4221

Senate Information Desk: 602-926-3559

Legislative Website: <http://www.azleg.gov/>

### *Public*

The rate of retainage is 10% of the amount of each pay estimate. When 50% of the work is complete, one-half of the retainage is released. Thereafter, if work is deemed satisfactory, no more than 5% may be withheld. In lieu of retainage, a contractor may deposit securities. Upon final payment, the contractor is entitled to all interest earned on the deposited securities. When a contractor substitutes securities, a subcontractor is also entitled to substitute securities. Upon completion and acceptance of each separate building, public work, or division of the contract, payment may be made in full. ARIZ. REV. STAT. § 34-221(C).

For construction manager-at-risk services, design-build services, and job-order construction contracts, the maximum rate of retainage is 10% of the amount of each pay estimate. When the contract is 50% complete, one-half of the amount retained, including any securities substituted, shall be paid upon the contractor's request, provided the contractor's progress is satisfactory. After the contract is 50% complete, no more than 5% may be retained, provided the contractor is proceeding acceptably. If, at any time, the owner determines satisfactory progress is not being made, 10% 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. § 34-607.

### *Private*

Owners may withhold a "reasonable amount of retention." They are permitted to withhold only 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). At a subcontractor's request, owners must notify subcontractors of progress payments and final payment within five days. ARIZ. REV. STAT. § 32-1129.01.

## **ARKANSAS**

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

Senate: 501-682-2902

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

### *Public*

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

## **CALIFORNIA**

Chief Clerk of the Assembly: 916-319-2856

Secretary of the Senate: 916-445-4251

Bill Status: 916-445-2323

Legislative Website: <http://www.leginfo.ca.gov/>

### *Public*

Until final completion and acceptance of the project, the rate of retainage shall not be less than 5%. However, any time after 95% of the work is complete, the department may reduce the funds withheld to an amount not less than 125% 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 forty-five days of the "date of completion," as defined by statute. If a dispute arises, the owner may retain 150% of the disputed amount. CAL. CIV. CODE §§ 3260, 3262.5.

## **COLORADO**

House: 303-866-2904

Senate: 303-866-2316

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

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

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

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

### *Public*

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

## **CONNECTICUT**

General Assembly: 860-240-0100

Legislative Website: <http://www.cga.ct.gov>

### *Public*

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

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

For contracts awarded by municipalities, the maximum rate of retainage is 5%. Additionally, a contractor shall not withhold more than 5% 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 7.5% of the estimated amount of the progress payment for the life of the construction project. CONN. GEN. STAT. § 42-158k. An escrow account shall be established for all retainage. CONN. GEN. STAT. § 42-158p.

## **DELAWARE**

House Receptionist: (D) 302-744-4351, (R) 302-744-4171

Senate Receptionist: (D) 302-744-4286, (R) 302-744-4048

Legislative Research: 302-739-4114, 800-282-8545

Legislative Website: <http://legis.delaware.gov/>

### *Public*

Retainage shall not exceed 5% of the value of the work completed by the contractor. At completion, the public entity may release 60% of the retainage. 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 for retention. 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% of the amount withheld by the contractor in the contractors dispute with the subcontractor. DEL. CODE ANN. tit. 29, § 6962(5)(a)(1)(B).

## **DISTRICT OF COLUMBIA**

D.C. City Council: 202-724-8080

Legislative Services: 202-724-8050

Legislative Website: <http://www.dccouncil.washington.dc.us>

### *Public*

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

## **FLORIDA**

House: 850-488-1157

Legislative Information Services: 904-488-4871, 800-342-1827

Legislative Website: <http://www.leg.state.fl.us>

### *Public*

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

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

For contracts with the Dept. of Transportation *see* FLA. STAT. ANN. §§ 337.175; 337.015.

## **GEORGIA**

Clerk of the House: 404-656-5015

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

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

### *Public*

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

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

A subcontractor is entitled to the same percentage of retainage as the contractor. If the contractor's retainage is reduced or if the contractor receives full payment of the withheld



amount, it must reduce the subcontractor's retention, but only if 50% of the subcontractor's work has been completed. GA. CODE ANN. §§13-10-80(b)(2)(C), -81.

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

## **HAWAII**

Senate: 808-586-6719

Bill Status: 808- 587-0478

Legislative Website: <http://www.capitol.hawaii.gov>

### *Public*

The rate of retainage may not exceed 5% of the amount due. All funds are to be held by a procurement officer. After the project is 50% complete, no funds may be retained if progress is satisfactory. If progress is unsatisfactory, however, the procurement officer may continue to withhold funds. The contractor may substitute securities in lieu of retainage. HAW. REV. STAT. § 103.32.1.

## **IDAHO**

General Legislature: 208-334-2475

Legislative Website: <http://www.legislature.idaho.gov>

### *Public*

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

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

### *Private*

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

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

## **ILLINOIS**

House: 217-782-8223

Senate: 217-782-4517

Bill Status: 217-782-3944

Legislative Website: <http://www.ilga.gov>

### *Public*

The Illinois Code does not specify a maximum or mandatory rate of retainage.

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

However, for any contracts for the construction of highways, retainage may be withheld as required by the Standard Specifications for Road and Bridge construction. At the request of the contractor or subcontractor and with agency approval, retention may be held under a trust agreement. 605 ILL. COMP. STAT. 5/4-103.

The Standard Specifications for Road and Bridge construction provides that 2% of the cost of completed work shall be retained when the awarding authority is the State of Illinois. STANDARD SPECIFICATIONS FOR RD. AND BRIDGE CONSTR. 109.07(a). When the awarding authority is a county or municipality, 10% shall be retained until the work is 50% complete. Upon 50% completion, at the discretion of the Engineer, retainage may be reduced to a minimum of 5% if work is progressing satisfactorily. STANDARD SPECIFICATIONS FOR RD. AND BRIDGE CONSTR. 109.07(b).

## **INDIANA**

House: 317-232-9600

Senate: 317-232-9400

Bill Status: 317-232-9856

Legislative Website: <http://www.state.in.us/legislative>

### *Public*

Generally, a state agency may elect one of two options with regard to retainage. It may hold between 6% and 10% of the value of the work until the project is 50% complete. Upon 50% completion, no additional funds may be withheld. Alternatively, it may retain a maximum of 5%, but not less than 3%, of the value of the work, until the project is complete. IND. CODE § 5-16-5.5-3.5. If there are minor incomplete items, the division may withhold an amount equal to 200% of the value of those items. IND. CODE § 5-16-5.5-6.

For contracts over \$150,000 a division may elect one of the two following options.

It may withhold a maximum of 6% until the work is 50% complete or it may withhold a maximum of 3% until the work is substantially complete. If, upon substantial completion, there are incomplete minor items, the division may withhold an amount equal to 400% of the value of

each unfinished item. IND. CODE § 4-13.6-7-3. This provision may also be applied to contracts for less than \$150,000. IND. CODE § 4-13.6-7-1.

## **IOWA**

House: 515-281-3221

Senate: 515-281-3371

Bill Status: 515-281-5129

Legislative Website: <http://www.legis.state.ia.us>

### *Public*

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

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

## **KANSAS**

Legislative Administrative Services: 785-296-2391

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

### *Public*

Generally, the maximum rate of retainage is not specified. For projects exceeding \$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 substitute securities in lieu of retainage. KAN. STAT. ANN. § 75-6909.

For projects involving state roads, however, the maximum rate of retainage is 10%. KAN. STAT. ANN. § 68-411.

### *Private*

The maximum rate of retainage is 10%. KAN. STAT. ANN. §16-1803, -1804.

## **KENTUCKY**

Senate: 502-564-3120

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

### *Public and Private*

Until 50% of the contract is complete, the maximum rate of retainage is 10%. When more than 50% of the project is complete, the rate of retainage shall reduce to 5%. KY. REV. STAT. ANN. §§ 371.410(1). When the work is substantially complete, the contractor may withhold 200% of the estimated cost of the balance of any contractor's or subcontractor's

contractually obligated, yet incomplete work. KY. REV. STAT. ANN. §§ 371.410(2). *See also* KY. REV. STAT. ANN. §§ 176.090 et. seq.

## **LOUISIANA**

House: 225-342-6945

Senate: 225-342-2040

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

### *Public*

For projects less than \$500,000, the maximum rate of retainage is 10%. For projects exceeding \$500,000, the maximum rate of retainage is 5% of the contract price. Retainage is held until forty-five 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%. For projects exceeding \$500,000, the maximum rate of retainage is 5%. Retainage is held until forty-five days after formal acceptance of the work. The department shall not withhold retainage if the contractor furnishes a retainage bond equal to 10% of the contract amount for projects less than \$500,000 or 5% of the contracts exceeding \$500,000. LA. REV. STAT. ANN. § 48:256.

## **MAINE**

House: 207-287-1400

Senate: 207-287-1540

Bill Status: 207-287-1692

Legislative Website: <http://janus.state.me.us>

### *Public*

The public entity shall withhold 5% 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. However, contractors may withhold retainage from subcontractors and suppliers even if the absence of retainage being withheld from the contractor ME. REV. STAT. ANN. tit. 10, § 1116.

## **MARYLAND**

State General Assembly Operator: 410-841-3000

Legislative Information Desk: 410-946-5400

Legislative Website: <http://mlis.state.md.us>

### *Public*

Generally, when a contractor has furnished 100% payment and performance security, the maximum rate of retainage is 10%. When the project is 50% complete, the public body may retain no more than 5%, unless it is able to demonstrate a need to retain more. 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 only withhold retainage in the same percentage that has been withheld by the government. However, a contractor or subcontractor may withhold additional amounts if they determine their subcontractor's or sub-subcontractor's performance provides reasonable grounds for withholding more. MD. CODE ANN. STATE FIN. & PROC. § 17-110.

For procurement contracts, when a contractor has furnished 100% payment and performance security, the maximum rate of retainage is 5%. Additionally, a procurement unit and the Maryland Transportation Authority may withhold any amount the entity believes necessary to protect the State's interests. Retained funds may be placed in an interest bearing account. MD. CODE ANN. STATE FIN. & PROC. §§ 13-225(b), 15-108.

## **MASSACHUSETTS**

House: 617-722-2000

Senate: 617-722-1455

Legislative Website: <http://www.mass.gov/legis>

### *Public*

The rate of retainage may not exceed 5% of the approved amount of a 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, as defined by statute, the contractor receives all but 1% of the retainage, less the estimated cost to complete incomplete or unsatisfactory work. MASS. GEN. LAWS ch. 30 § 39G.

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

## **MICHIGAN**

House: 517-373-0135

Senate: 517-373-2400

Legislative Website: <http://www.legislature.mi.gov>

### *Public*

The maximum rate of retainage may not exceed 10% of each progress payment. MICH. COMP. LAWS §125.1563(2)(a). If progress is satisfactory, the retainage may be reduced when 50% of the work is complete. If the public entity determines that the contractor's performance is acceptable, it may retain not more than 10% of the dollar value of work after the 50% 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% or more of the work under the contract is in place and at the request of the original contractor, the public agency shall release the retainage, plus interest, to the original contractor. This is only to be done if the original contractor provides to the public agency an irrevocable letter of credit, in the amount of the retainage and interest, containing terms mutually acceptable to the contractor and the public agency. MICH. COMP. LAWS § 125.1563. *See also* MICH. COMP. LAWS § 125.1564.

## **MINNESOTA**

House: 651-296-2146

Senate: 651-296-0504

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

### *Public*

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

## **MISSISSIPPI**

House: 601-359-3360

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

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

### *Public*

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

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

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

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

## **MISSOURI**

House: 573-751-3659

Senate: 573-751-3824

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

### *Public*

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

### *Private*

The maximum rate of retainage is 10%. There is line item release of retainage and established provisions requiring retainage be held in trust. All retainage is to be released at substantial completion of the contract. MO. REV. STAT. § 436.303. The contractor may substitute securities for retention and the subcontractors must be given the same opportunity for

such substitution. MO. REV. STAT. § 436.306. A contractor is prohibited from withholding retainage from any subcontractor in excess of the retainage withheld by an owner, unless the subcontractor's performance is unsatisfactory. MO. REV. STAT. § 436.315. *See also* MO. REV. STAT. §§ 436.306 to 436.327.

## **MONTANA**

Legislative Information Office: 406-444-4800

Legislative Service Division: 406-444-3064

Legislative Website: <http://www.leg.mt.gov>

### *Public*

The maximum rate of retainage is 5% if the contractor is performing by the terms of the contract. The contractor can withhold no more retainage from subcontractors than is withheld by the owner. MONT. CODE ANN. § 18-1-301.

### *Private*

Retainage may not exceed 5%. A contractor may not withhold a higher percentage from its subcontractors than is being withheld from the contractor. 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.

## **NEBRASKA**

Bicameral Legislative Switchboard: 402-471-2311

Clerk of the Legislature: 402-471-2271

Legislative Website: <http://www.unicam.state.ne.us>

### *Public*

There are no statues specifying the maximum or mandatory rate of retainage.

For state highway contracts, if the contractor has provided all required reports and has not been paid by the owner for more than sixty days after final completion, the retained funds 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**

Senate: 775-684-1400

Legislative Hotline (sessions only): 702-687-5545

Legislative Counsel Bureau (between sessions): 702-687-6800

Legislative Website: <http://leg.state.nv.us>

### *Public*

The maximum rate of retainage is 10%. If the performance is satisfactory, retainage may be eliminated when 50% of the work is complete. The public body must pay the contractor, at the end of each quarter, interest for the quarter on the amount withheld at a rate equal to the rate quoted by at least three financial institutions. NEV. REV. STAT. § 338.515.

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

A contractor or subcontractor may retain up to 10% of any partial payment due under a subcontract until half of the work is complete. Subsequent payments must equal that paid by the public body for the work performed by the subcontractor. If the contractor or subcontractor receives interest earned on the retainage, he or she shall, within ten days, pay each subcontractor the interest which has accrued from the retainage. NEV. REV. STAT. §§ 338.555, .595.

## **NEW HAMPSHIRE**

House: 603-271-2548

Senate: 603-271-2111

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

Although a public agency is permitted to withhold retainage, there are no statutes specifying the maximum rate that may be withheld. The contractor may substitute securities in lieu of retainage. N.H. Rev. Stat. Ann. § 21-I:20.

## **NEW JERSEY**

Assembly: 609-292-5339

Senate: 609-292-5199

Legislative Information: 609-292-4840

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

### *Public*

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

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

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

## **NEW MEXICO**

House: 505-986-4751

Senate: 505-986-4714

Legislative Council Service: 505-986-4600

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

### *Public and Private*

Retainage is prohibited for the majority of private and public construction contracts. N.M. STAT. ANN. § 57-28-5. The following retainage statutes have been repealed: §§ 13-4-27 to -30; 57-28-4, -6, -9, -10.

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

## **NEW YORK**

Assembly: 518-455-4100

Senate: 518-455-2800

Bill Status: 518-455-7545

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

### *Public*

The maximum rate of retainage is 5%. However, the public entity may withhold more than 5%, however, not more than 10%, if no performance bond was required. A contractor may retain no more than 5% from a bonded subcontractor, or up to 10% from an unbonded subcontractor. The contractor may substitute securities in lieu of retainage. N.Y. STATE FIN. LAW §§ 139, 139f.

### *Private*

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

## **NORTH CAROLINA**

General Assembly: 919-733-7928

Legislative Services: 919-733-7044

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

### *Public*

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

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

## **NORTH DAKOTA**

Legislative Assembly: 701-328-3373

Legislative Council: 701-328-2916

Legislative Website: <http://www.legis.nd.gov>

### *Public and Private*

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

Contracts entered into with the Water District Board are governed by N.D. CENT. CODE § 61-35-103. Contracts entered into with the North Dakota Mill and Elevator Association are governed by N.D. CENT. CODE § 54-18-18.

## **OHIO**

Clerk of the Legislature: 614-466-3357

Legislative Information: 614-466-8842

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

### *Public and Private*

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

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

## **OKLAHOMA**

House: 1-800- 522-8506

Senate: 405-524-0126

Bill Status – Senate: 405-521-5642

Legislative Website: <http://www.okhouse.gov>

### *Public*

The rate of retainage may not exceed 10% of all partial payments. When 50% of the project is complete and if progress is satisfactory, the amount retained may be reduced to 5% of the amount earned to date. OKLA. STAT. tit. 61, § 113.1. In a subcontract, the maximum rate of retainage is 10%; once the subcontract is 50% complete, the value of retainage shall not exceed the retainage withheld by the awarding authority. OKLA. STAT. tit. 61, § 226.

A contractor may substitute securities in lieu of retainage. OKLA. STAT. tit. 61, § 113.2.

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

## **OREGON**

Assembly: 503-986-1187

Secretary of the Senate: 503-986-1851

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

Bill Status: 503-986-1180

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

### *Public*

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

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

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

### *Private*

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

## **PENNSYLVANIA**

House: 717-787-2372

Secretary of the Senate: 717-787-5920

Bill Status: 717-787-2342

Code Search: 717-783-1530

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

### *Public*

The rate of retainage may not exceed 10%. After 50% of the work is complete, the rate of retainage may not exceed 5%. 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% until half of the project is complete. Thereafter, retainage may not exceed 3%. 39 PA. CONS. STAT. § 3921.

For contracts involving 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, and may make payments to further reduce retainage when the project is 95% complete. 36 PA. CONS. STAT. § 746.

## **RHODE ISLAND**

House: 401-222-2466

Senate: 401-222-6655

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

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

### *Public*

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

## **SOUTH CAROLINA**

House: 803-734-2010

Senate: 803-212-6200

Legislative Website: <http://www.scstatehouse.net>

### *Public*

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

## **SOUTH DAKOTA**

House: 605-773-3851

Senate: 605-773-3821

Legislative Research Council: 605-773-3251

Legislative Website: <http://legis.state.sd.us>

### *Public*

Except as stated below, the rate of retainage is not defined by statute. The state must withhold from final payment an amount necessary to ensure completion and satisfaction. However, after final completion and when the contractor has submitted all required reports, interest, at a rate defined by statute, is paid to the contractor. S.D. CODIFIED LAWS § 5-18-12. A contractor may substitute securities for retention. S.D. CODIFIED LAWS § 5-18-12.1.

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

## **TENNESSEE**

House: 615-741-2901

Senate: 615-741-2730

Legislative Information System: 615-741-1552

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

### *Public and Private*

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

Retained funds must be kept in an interest bearing escrow account. TENN. CODE ANN. § 66-11-144. 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 to 703.

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

## **TEXAS**

Speaker of the House: 512-463-1000

Secretary of the Senate: 512-463-0100

Legislative Reference Library: 512-463-1252

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

### *Public*

The Texas Government Code does not specify a maximum rate of retainage. It does provide, however, that all contracts, except those under \$400,000, 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. Additionally, a claim for retainage is never valid for an amount greater than 10% 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% of the contract price. 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% until final completion of the project. However, if satisfactory progress is being made, the board may eliminate retention when the project is 50% 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% of the work, but does receive interest on any retainage held on the remaining 50% 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% of either the contract price or the value of the work to be complete. TEX. PROP. CODE ANN. § 53.101

## **UTAH**

House: 801-538-1029

Senate: 801-538-1035

Bills Status: 801-538-1588

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

### *Public & Private*

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



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

## **VERMONT**

General Assembly: 802-828-2228

Legislative Council: 802-828-2231

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

### *Public & Private*

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

## **VIRGINIA**

House: 804-698-1619

Senate: (804) 698-7400

Legislative Information: (804) 698-7410

Legislative Website: <http://legis.state.va.us>

### *Public*

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

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

## **WASHINGTON**

House: 360-786-7750

Senate: 360-786-7550

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

### *Public*

Retainage of 5% 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% of the value of the uncompleted work. At the opinion of the contractor, the retainage may be held in a fund by the public body, deposited in an interest bearing account, or placed in escrow. WASH. REV. CODE § 60.28.011.

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

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

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

## **WEST VIRGINIA**

House: 304-340-3200

Senate Clerk: 304-357-7800

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

There are no retainage statutes in West Virginia.

## **WISCONSIN**

Assembly Chief Clerk: 608-266-1501

Senate Chief Clerk: 608-266-2517

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

### *Public*

The maximum rate of retainage is 5%. When 50% 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%. WIS. STAT. § 16.855.

## **WYOMING**

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

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

Legislative Services Office: (307) 777-7881

Legislative Website: <http://legisweb.state.wy.us>

### *Public*

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

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

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**These materials were prepared on behalf of the Foundation of the American Subcontractors Association, Inc. by its General Counsel, Don Gregory.**

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## Retainage Law in the 50 States

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

State		Rate of retainage	Retainage withheld upon 50% completion?	May securities be substituted in lieu of retainage?	Statute
<b>Connecticut</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10% for the Dept. of Works</li> <li>• 2.5% for the Dept. of Transportation</li> <li>• 5% for municipalities</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	CONN. GEN. STAT. §§ 49-41b(1), (2), (3)
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 7.5%</li> </ul>			CONN. GEN. STAT. §§ 42-158k, -158p
<b>Delaware</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	DEL. CODE ANN. tit. 29, §§ 6962(5)(a)(1), (5)(c)
<b>District of Columbia</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• Mayor has discretion to reduce retainage</li> </ul>		D.C. CODE § 2-203.01
<b>Florida</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced to 5%</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	FLA. STAT. ANN. § 255.078
<b>Georgia</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>		GA. CODE ANN. §§13-10-80(b)(2), -81 GA. CODE ANN. § 32-2-75
<b>Hawaii</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	HAW. REV. STAT. § 103.32.1
<b>Idaho</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>			IDAHO CODE § 54-1926 IDAHO CODE § 42-2944
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>			IDAHO CODE § 29-115
<b>Illinois</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 2% withheld by State</li> <li>• 10% withheld by municipality</li> </ul>	<ul style="list-style-type: none"> <li>• For a municipality, reduction to 5%</li> </ul>		STANDARD SPECIFICATIONS FOR RD. AND BRIDGE CONSTR. 109.07(a)

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



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<b>Massachusetts</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>	<ul style="list-style-type: none"> <li>• At substantial completion the contractor receives all but 1% of retainage</li> </ul>		MASS. GEN. LAWS ch. 30 §§ 39G, K
<b>Michigan</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• Retainage may be reduced, but rate not specified</li> </ul>		MICH. COMP. LAWS §§125.1563(2)(a), (b) MICH. COMP. LAWS 125.1563(3) MICH. COMP. LAWS § 125.1564
<b>Minnesota</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	MINN. STAT. § 15.72-3
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>			MINN. STAT. § 337.10
<b>Mississippi</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%, generally</li> <li>• 2.5%-10%, for county contracts</li> <li>• 10% for contracts exceeding \$750K</li> </ul>	<ul style="list-style-type: none"> <li>• For contracts exceeding \$250K, retainage reduces to 2.5%</li> <li>• Reduces to 5% for contracts exceeding \$750K</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	MISS. CODE ANN. § 31-5-15 MISS. CODE ANN. §§ 31-5-33(1), (2)
<b>Missouri</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%, unless the parties agree otherwise, up to 10%</li> </ul>			MO. REV. STAT. § 34.057
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	MO. REV. STAT. § 436.303 MO. REV. STAT. § 436.306 MO. REV. STAT. § 436.315
<b>Montana</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>			MONT. CODE ANN. § 18-1-301
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>			MONT. CODE ANN. § 28-2-2110
<b>Nebraska</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Not specified</li> </ul>			NEB. REV. STAT. § 39-1349
<b>Nevada</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• May be eliminated</li> </ul>		NEV. REV. STAT. §§ 338.515, .520, .555, .595

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<b>New Hampshire</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Not specified</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N.H. Rev. Stat. Ann. § 21-I:20
<b>New Jersey</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 2%</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	
<b>New Mexico</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• Generally, prohibited</li> <li>• 5% for road contracts</li> </ul>			N.M. STAT. ANN. § 57-28-5 N.M. STAT. ANN. § 67-3-48
<b>New York</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%, generally</li> <li>• 10% of no performance bond is required</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N.Y. STATE FIN. LAW §§ 139, 139f
	<i>Private</i>	<ul style="list-style-type: none"> <li>• A reasonable amount</li> </ul>			N.Y. GENERAL BUSINESS LAW § 756-C
<b>North Carolina</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• None for contracts under 100K</li> <li>• 5% for contracts exceeding 100K</li> </ul>	<ul style="list-style-type: none"> <li>• For contracts exceeding 100K, none may be withheld</li> </ul>		N.C. GEN. STAT. §143-134.1
<b>North Dakota</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>		N.D. CENT. CODE §§ 43-07-23, 40-22-37 N.D. CENT. CODE § 61-35-103
<b>Ohio</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 8%</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>		OHIO REV. CODE ANN. §§ 153.12, 13
<b>Oklahoma</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	OKLA. STAT. tit. 61, § 113.1, 2 OKLA. STAT. tit. 61, § 226
<b>Oregon</b>					
	<i>Public</i>	<ul style="list-style-type: none"> <li>• 5%, unless the agency charter indicate otherwise</li> </ul>	<ul style="list-style-type: none"> <li>• May be reduced or eliminated</li> </ul>		OR. REV. STAT. §§ 279c.555, .560, .570
	<i>Private</i>	<ul style="list-style-type: none"> <li>• 5%</li> </ul>		<ul style="list-style-type: none"> <li>• Yes</li> </ul>	OR. REV. STAT. § 701.420 OR. REV. STAT. § 701.430
<b>Pennsylvania</b>					
		<ul style="list-style-type: none"> <li>• 10%, generally</li> <li>• 6% for contracts with the Dept. of Gen. Services</li> </ul>	<ul style="list-style-type: none"> <li>• 5%</li> <li>• 3% for contracts with the Dept. of Gen. Services</li> </ul>		39 PA. CONS. STAT. § 3921 36 PA. CONS. STAT. § 746

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

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<b>Washington</b>					
	<i>Public</i>	• 5%		• Yes	Wash. Rev. Code § 39.08.010 WASH. REV. CODE § 60.28.010 WASH. REV. CODE § 60.28.011
<b>West Virginia</b>					
	<i>Public</i>	• No retainage statutes			
<b>Wisconsin</b>					
	<i>Public</i>	• 5%	• No		Wis. STAT. § 16.855
<b>Wyoming</b>					
	<i>Public</i>	• 10%	• May be eliminated		WYO. STAT. ANN. § 16-6-702 WYO. STAT. ANN. § 16-6-704