

## 2003 ASSEMBLY BILL 417

**AN ACT to amend** 16.855 (19) and 66.0901 (9) (b) of the statutes; **relating to:** the retainage on public construction contracts.

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*Analysis by the Legislative Reference Bureau*

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 16.855 (19) of the statutes is amended to read:  
2           16.855 **(19)** As the work progresses under any contract for construction the  
3 department, from time to time, shall grant to the contractor an estimate of the  
4 amount and proportionate value of the work done, which shall entitle the contractor  
5 to receive the amount thereof, less the retainage, from the proper fund. ~~On all~~  
6 ~~construction projects, the~~ The retainage shall be an amount equal to ~~10%~~ not more  
7 than 5% of said the estimate until 50% of the work has been completed. At 50%  
8 completion, no additional amounts shall be retained, and partial payments shall be

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1 made in full to the contractor unless the architect or engineer certifies that the job  
2 is not proceeding satisfactorily. At 50% completion or any time thereafter when the  
3 progress of the work is not satisfactory, additional amounts may be retained but in  
4 no event shall the total retainage be more than 10% of the value of the work  
5 completed. Upon substantial completion of the work, an amount retained may be  
6 paid to the contractor. For the purposes of this section, estimates may include any  
7 fabricated or manufactured materials and components specified, previously paid for  
8 by contractor and delivered to the work or properly stored and suitable for  
9 incorporation in the work embraced in the contract. This subsection does not apply  
10 to contracts awarded under s. 16.858.

11 **SECTION 2.** 66.0901 (9) (b) of the statutes is amended to read:

12 66.0901 **(9)** (b) *Retained percentages.* As the work progresses under a contract  
13 involving \$1,000 or more for the construction, execution, repair, remodeling or  
14 improvement of a public work or building or for the furnishing of supplies or  
15 materials, regardless of whether proposals for the contract are required to be  
16 advertised by law, the municipality, from time to time, shall grant to the contractor  
17 an estimate of the amount and proportionate value of the work done, which entitles  
18 the contractor to receive the amount of the estimate, less the retainage, from the  
19 proper fund. The retainage shall be an amount equal to ~~10%~~ not more than 5% of the  
20 estimate until 50% of the work has been completed. At 50% completion, further  
21 partial payments shall be made in full to the contractor and no additional amounts  
22 may be retained unless the architect or engineer certifies that the job is not  
23 proceeding satisfactorily, but amounts previously retained shall not be paid to the  
24 contractor. At 50% completion or any time after 50% completion when the progress  
25 of the work is not satisfactory, additional amounts may be retained but the total

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1 retainage may not be more than 10% of the value of the work completed. Upon  
2 substantial completion of the work, an amount retained may be paid to the  
3 contractor. When the work has been substantially completed except for work which  
4 cannot be completed because of weather conditions, lack of materials or other  
5 reasons which in the judgment of the municipality are valid reasons for  
6 noncompletion, the municipality may make additional payments, retaining at all  
7 times an amount sufficient to cover the estimated cost of the work still to be  
8 completed or may pay out the entire amount retained and receive from the contractor  
9 guarantees in the form of a bond or other collateral sufficient to ensure completion  
10 of the job. For the purposes of this section, estimates may include any fabricated or  
11 manufactured materials and components specified, previously paid for by the  
12 contractor and delivered to the work or properly stored and suitable for incorporation  
13 in the work embraced in the contract.

14 **SECTION 3. Initial applicability.**

15 (1) This act first applies to contracts entered into on the effective date of this  
16 subsection.

17 (END)