

**ASSEMBLY BILL 417 (LRB -2258)**

An Act to amend 16.855 (19) and 66.0901 (9) (b) of the statutes; relating to: the retainage on public construction contracts. (FE)  
**2003**

- 06-24. A. Introduced by Representatives **Vrakas, Nischke, Hines, Musser, M. Lehman, Wieckert, Townsend, Gunderson, Plouff, Hahn, Seratti, Suder and Towns**; cosponsored by Senators **Stepp, Roessler, Cowles and Schultz**.
- 06-24. A. Read first time and referred to committee on Government Operations and Spending Limitations ..... 272
- 08-11. A. Fiscal estimate received.
- 10-08. A. Public hearing held.

**2004**

- 01-28. A. Executive action taken.
- 01-30. A. Report passage recommended by committee on Government Operations and Spending Limitations, Ayes 6, Noes 0 ..... 656
- 01-30. A. Referred to committee on Rules ..... 656
- 02-19. A. Placed on calendar 2-24-2004 by committee on Rules.
- 02-24. A. Read a second time ..... 722
- 02-24. A. Assembly amendment 1 offered by Representative Olsen (**LRB a2286**) ..... 722
- 02-24. A. Assembly amendment 1 **adopted** ..... 722
- 02-24. A. Ordered to a third reading ..... 722
- 02-24. A. Rules suspended ..... 722
- 02-24. A. Read a third time and **passed**, Ayes 88, Noes 9 ..... 722
- 02-24. A. Ordered immediately messaged ..... 723
- 02-25. S. Received from Assembly ..... 631
- 02-25. S. Read first time and referred to committee on Economic Development, Job Creation and Housing ..... 632
- 03-03. S. Public hearing held.
- 03-04. S. Executive action taken.
- 03-04. S. Report concurrence recommended by committee on Economic Development, Job Creation and Housing, Ayes 5, Noes 0 ..... 663
- 03-04. S. Available for scheduling.
- 03-04. S. Placed on calendar 3-9-2004 by committee on Senate Organization.
- 03-09. S. Read a second time.
- 03-09. S. Ordered to a third reading.
- 03-09. S. Rules suspended.
- 03-09. S. Read a third time and **concurred in**.
- 03-09. S. Senator Welch added as a cosponsor.
- 03-09. S. Ordered immediately messaged.
- 03-09. A. Received from Senate concurred in.

**2003  
ENROLLED BILL**

03en A B-417

**ADOPTED DOCUMENTS:**

**Orig**     **Engr**           **SubAmdt**       

**03** -22582

**Amendments to above (if none, write "NONE"):** ~~None~~ AA1

**Corrections - show date (if none, write "NONE"):** None

**Topic** Relay

3/10/04  
**Date**

[Signature]  
**Enrolling Drafter**

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## 2003 ASSEMBLY BILL 417

June 24, 2003 – Introduced by Representatives VRAKAS, NISCHKE, HINES, MUSSER, M. LEHMAN, WIECKERT, TOWNSEND, GUNDERSON, PLOUFF, HAHN, SERATTI, SUDER and TOWNS, cosponsored by Senators STEPP, ROESSLER, COWLES and SCHULTZ. Referred to Committee on Government Operations and Spending Limitations.

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

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### *Analysis by the Legislative Reference Bureau*

Currently, as work proceeds on a state building project or, in the case of a local governmental unit, a building project or a contract for the furnishing of supplies or materials, the state or the local governmental unit makes payments to the contractors, but the state or the local governmental unit retains 10% of the value of the work performed until 50% of the value of the work is completed. After this point, there is generally no retainage unless progress is not satisfactory, but the total retainage may never exceed 10% of the value of the work. Currently, local governmental units include cities, villages, towns, counties, school districts, boards of school directors, sewer districts, drainage districts, technical college districts, and other public or quasi-public bodies that have the duty of receiving bids for and awarding public contracts.

Under this bill, the state or the local governmental unit retains not more than 5% of the value of the work performed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

ASSEMBLY BILL 417

plain

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% 100% of the work has been completed. At 50%  
8 completion, no additional amounts shall be retained, and partial payments shall be  
9 made in full to the contractor unless the architect or engineer certifies that the job  
10 is not proceeding satisfactorily. At 50% completion or any time thereafter when the  
11 progress of the work is not satisfactory, additional amounts may be retained but in  
12 no event shall the total retainage be more than 10% of the value of the work  
13 completed. Upon substantial completion of the work, an amount retained may be  
14 paid to the contractor. For the purposes of this section, estimates may include any  
15 fabricated or manufactured materials and components specified, previously paid for  
16 by contractor and delivered to the work or properly stored and suitable for  
17 incorporation in the work embraced in the contract. This subsection does not apply  
18 to contracts awarded under s. 16.858.

plain

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

20 66.0901 (9) (b) *Retained percentages.* As the work progresses under a contract  
21 involving \$1,000 or more for the construction, execution, repair, remodeling or  
22 improvement of a public work or building or for the furnishing of supplies or  
23 materials, regardless of whether proposals for the contract are required to be  
24 advertised by law, the municipality, from time to time, shall grant to the contractor  
25 an estimate of the amount and proportionate value of the work done, which entitles

1 the contractor to receive the amount of the estimate, less the retainage, from the  
2 proper fund. The retainage shall be an amount equal to 10% not more than 5% of the  
3 estimate until 50% 100% of the work has been completed. At 50% completion, further  
4 partial payments shall be made in full to the contractor and no additional amounts  
5 may be retained unless the architect or engineer certifies that the job is not  
6 proceeding satisfactorily, but amounts previously retained shall not be paid to the  
7 contractor. At 50% completion or any time after 50% completion when the progress  
8 of the work is not satisfactory, additional amounts may be retained but the total  
9 retainage may not be more than 10% of the value of the work completed. Upon  
10 substantial completion of the work, an amount retained may be paid to the  
11 contractor. When the work has been substantially completed except for work which  
12 cannot be completed because of weather conditions, lack of materials or other  
13 reasons which in the judgment of the municipality are valid reasons for  
14 noncompletion, the municipality may make additional payments, retaining at all  
15 times an amount sufficient to cover the estimated cost of the work still to be  
16 completed or may pay out the entire amount retained and receive from the contractor  
17 guarantees in the form of a bond or other collateral sufficient to ensure completion  
18 of the job. For the purposes of this section, estimates may include any fabricated or  
19 manufactured materials and components specified, previously paid for by the  
20 contractor and delivered to the work or properly stored and suitable for incorporation  
21 in the work embraced in the contract.

### SECTION 3. Initial applicability.

22 (1) This act first applies to contracts entered into on the effective date of this  
23 subsection.  
24

25 (END)



State of Wisconsin  
2003-2004 LEGISLATURE

**CORRECTIONS IN:**

**ASSEMBLY AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 417**

Prepared by the Legislative Reference Bureau  
(March 15, 2004)

In enrolling, the following corrections were made:

1. Page 1, line 4: delete lines 4 and 5 and substitute "~~completed.~~" on line 13 and substitute "At 50% completion, no additional amounts shall be retained, and partial".
2. Page 1, line 13: delete the material beginning with that line and ending with page 2, line 1, and substitute "~~completed.~~" on line 9 and substitute "At 50% completion, further partial payments shall be made in full to the".

(END)

**ASSEMBLY AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 417**

February 24, 2004 – Offered by Representative OLSEN.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 7: delete “50% 100%” and substitute “50%”.

3 **2.** Page 2, line 7: delete the material beginning with “At” and ending with  
4 “~~completed.~~” on line 13 and substitute:

5 “At 50% completion, no additional amounts shall be retained, and partial  
6 payments shall be made in full to the contractor unless the architect or engineer  
7 certifies that the job is not proceeding satisfactorily. At 50% completion or any time  
8 thereafter when the progress of the work is not satisfactory, additional amounts may  
9 be retained but in no event shall the total retainage be more than 10% of the value  
10 of the work completed.”.

11 **3.** Page 3, line 3: delete “50% 100%” and substitute “50%”.

12 **4.** Page 3, line 3: delete the material beginning with “At” and ending with  
13 “~~completed.~~” on line 9 and substitute:

