

2003 Assembly Bill 417

Date of enactment: **March 16, 2004**
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2003 WISCONSIN ACT 157

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

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

SECTION 1. 16.855 (19) of the statutes is amended to read:

16.855 (19) As the work progresses under any contract for construction the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. ~~On all construction projects, the~~ The retainage shall be an amount equal to ~~10%~~ not more than 5% of said ~~the~~ estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the architect or engineer certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation

in the work embraced in the contract. This subsection does not apply to contracts awarded under s. 16.858.

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

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

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or may pay out the entire amount retained and receive from the contractor guarantees in the form of a bond or other collateral sufficient to ensure

completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by the contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

SECTION 3. Initial applicability.

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