

## 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****SECTION 1**

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.

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

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

25 (END)