

2003 DRAFTING REQUEST

Bill

Received: **03/07/2003**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Daniel Vrakas (608) 266-3007**

By/Representing: **Melanie**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters: **jkuesel**

Subject: **Munis - miscellaneous
Counties - miscellaneous
State Govt - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Vrakas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Retainage amounts on public construction contracts

Instructions:

See Attached. Based on 01 b0572/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 03/08/2003 jkuesel 03/11/2003	csicilia 03/27/2003		_____			S&L
/1			chaskett	_____	amentkow		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			03/27/2003	_____	03/27/2003		
/2	mshovers 05/05/2003	csicilia 05/05/2003	rschluet 05/05/2003	_____	amentkow 05/05/2003	sbasford 06/12/2003	sbasford 06/12/2003

FE Sent For:

Amn.

<END>

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/2	mshovers 05/05/2003	csicilia 05/05/2003	rschluet 05/05/2003 _____		amentkow 05/05/2003		

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Addl. Drafters: jkuesel

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See Attached. Based on 01 b0572/1

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/?	mshovers 03/08/2003 jkuesel 03/11/2003	csicilia 03/27/2003		_____			S&L
/1		1/4/03 5/5/03	chaskett		amentkow		

[Handwritten signature]
5-5-03 p6

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

03/27/2003 _____ 03/27/2003

12 MFSBJTK 5/5/03

FE Sent For:

<END>

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1?	mshovers	3/27 03	1 3/27 cpu	ss/cp 3/27			
11	ME S	3/8/03					

FE Sent For:

<END>

Shovers, Marc

From: Malaise, Gordon
Sent: Friday, March 07, 2003 4:33 PM
To: Shovers, Marc
Cc: Champagne, Rick; Kuesel, Jeffery; Hartsough, Melanie
Subject: FW: Reduction of Retainage Amount on Construction Contracts

-----Original Message-----

From: Hartsough, Melanie
Sent: Friday, March 07, 2003 4:21 PM
To: Malaise, Gordon
Subject:

Marc:

This looks like something you would have drafted for the 2001 budget on the municipalities side and that either Jeff or Rick would have drafted on the state side.

Representative Vrakas would like a redraft of what was vetoed from the 2001 budget.

Gordon

Hi Gordon,

We're interesting in introducing legislation that was vetoed from the 2001-2003 budget.

The language vetoed from the budget dealt with reducing retainage-the portion of the amount earned by the contractor. Wisconsin Statute 66.0901 (9) (b) requires public owners and 16.855 (19) (b) for state contracts to hold back ten percent of the money earned by the contractor on the first 50% of the project.

Our proposal would change the retainage percentage to up to 5% of the project.

If you have any questions please contact me directly at 4-8668.

Thank you,
Melanie

Melanie Hartsough
Office of Rep. Vrakas
Melanie.Hartsough@legis.state.wi.us
608-264-8668



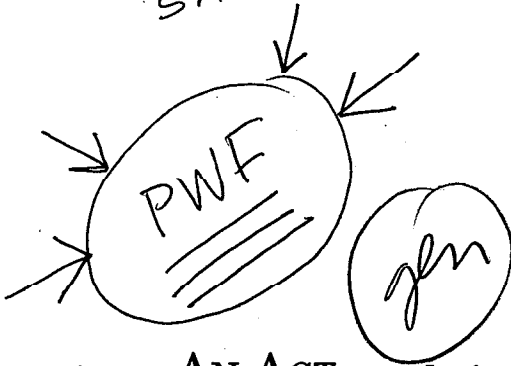
TODAY

(NRP)

PRELIMINARY DRAFT - NOT RE

identical
draft B

x-reb ✓
SA ✓



1 AN ACT ...; relating to: the retainage on public construction contracts

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 ~~done~~ 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 ~~done~~ performed.

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

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

(FNS
1-1)

2

SECTION 1. Initial applicability.

LFB:.....Olin - Retainage amount on public contracts

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

LPS:
throw
bill section
numbers

INSHP. 103

1
2
3
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11
12

At the locations indicated, amend the bill as follows:

1. Page 254, line 6: after that line insert:

~~SECTION 32~~ m. 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 retaining, from the proper fund. On all construction projects, the retainage shall be an amount equal to 10% 5% of said 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

retainage

INSI-112002

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

9 **2.** ~~Page 911, line 4: after that line insert:~~

10 SECTION ~~2026m.~~ 66.0901 (9) (b) of the statutes is amended to read:

11 66.0901 (9) (b) *Retained percentages.* As the work progresses under a contract
12 involving \$1,000 or more for the construction, execution, repair, remodeling or
13 improvement of a public work or building or for the furnishing of supplies or
14 materials, regardless of whether proposals for the contract are required to be
15 advertised by law, the municipality, from time to time, shall grant to the contractor
16 an estimate of the amount and proportionate value of the work done, which entitles
17 the contractor to receive the amount of the estimate, less the retainage, from the
18 proper fund. The retainage shall be an amount equal to ~~10%~~ 5% of the estimate until
19 50% of the work has been completed. At 50% completion, further partial payments
20 shall be made in full to the contractor and no additional amounts may be retained
21 unless the architect or engineer certifies that the job is not proceeding satisfactorily,
22 but amounts previously retained shall not be paid to the contractor. At 50%
23 completion or any time after 50% completion when the progress of the work is not
24 satisfactory, additional amounts may be retained but the total retainage may not be

ind 1-1 p 3 of 3

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

13 **3.** Page 1815, line 25: after that line insert:

14 ~~"(10b) RETAINAGE AMOUNT ON PUBLIC WORKS CONTRACTS The treatment of~~
 15 ~~sections 16.855 (19) and 66.0901 (9) (b) of the statutes first applies with respect to~~
 16 ~~contracts entered into on the effective date of this subsection."~~

(END)

of ins

17

225 Regency Court, Suite 200
Brookfield, WI 53045
262-432-0035 262-784-2287 fax



Fax

Marc Shovers

Don Croysdale

608-266-0000

To: *Don Croysdale*

From: *Don Mitchell*

414-276-1743

Fax: 414-276-4420

Pages: 4 (including cover sheet)

414-276-4420

fax

Phone:

Date: 4/8/03

Re:

CRS

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Reply to

Draft for your review.

Marc Shovers

2258

(608) 264-6948

2001 - 2002 Legislature
Jan. 2002 Spec. Sess.
ASSEMBLY BILL 1

- 39 -

LRB-4866/1
ALL:all:all
SECTION 21

1 16.855 (19) As the work progresses under any contract for construction the
2 department, from time to time, shall grant to the contractor an estimate of the
3 amount and proportionate value of the work done, which shall entitle the contractor
4 to receive the amount thereof, less the retaining retainage, from the proper fund. On
5 all construction projects, the ~~The~~ retainage shall be an amount equal to 10% not more
6 than 5% of said estimate until 50% ~~100%~~ of the work has been completed. At 50%
7 completion, no additional amounts shall be retained, and partial payments shall be
8 made in full to the contractor unless the architect or engineer certifies that the job
9 is not proceeding satisfactorily. At 50% completion or any time thereafter when the
10 progress of the work is not satisfactory, additional amounts may be retained but in
11 no event shall the total retainage be more than 10% of the value of the work
12 completed. Upon substantial completion of the work, an amount retained may be
13 paid to the contractor. For the purposes of this section, estimates may include any
14 fabricated or manufactured materials and components specified, previously paid for
15 by contractor and delivered to the work or properly stored and suitable for
16 incorporation in the work embraced in the contract. This subsection does not apply
17 to contracts awarded under s. 16.858.

18 SECTION 22. 16.964 (9) of the statutes is created to read:

19 16.964 (9) (a) In this subsection:

20 1. "Act of terrorism" has the meaning given in s. 146.50 (1) (ag).

21 2. "Local emergency planning committee" means a committee appointed under
22 s. 59.54 (8) (a).

23 (b) From the appropriation under s. 20.505 (6) (e), the office shall provide grants
24 to local emergency planning committees to purchase materials and services for use
25 in investigating, preventing, or responding to acts of terrorism. Materials and

readvertised and relet upon the readvertisement. If a bidder makes an error, omission or mistake and discovers it after the bids are opened, the bidder shall immediately and without delay give written notice and make known the fact of the mistake, omission or error which has been committed and submit to the municipality clear and satisfactory evidence of the mistake, omission or error and that it was not caused by any careless act or omission, on the bidder's part in the exercise of ordinary care in examining the plans or specifications and in conforming with the provisions of this section. If the discovery and notice of a mistake, omission or error causes a forfeiture, the bidder may not recover the moneys or certified check forfeited as liquidated damages unless it is proven before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission the bidder was free from carelessness, negligence or inexcusable neglect.

(6) SEPARATION OF CONTRACTS; CLASSIFICATION OF CONTRACTORS. In public contracts for the construction, repair, remodeling or improvement of a public building or structure, other than highway structures and facilities, a municipality may bid projects based on a single or multiple division of the work. Public contracts shall be awarded according to the division of work selected for bidding. The municipality may set out in any public contract reasonable and lawful conditions as to the hours of labor, wages, residence, character and classification of workers to be employed by any contractor, classify contractors as to their financial responsibility, competency and ability to perform work and set up a classified list of contractors. The municipality may reject the bid of any person, if the person has not been classified for the kind or amount of work in the bid.

(7) BIDDER'S CERTIFICATE. When bidding on a public contract, the bidder shall incorporate and make a part of the bidder's proposal for doing any work or labor or furnishing any material in or about any public work or contract of the municipality a sworn statement by the bidder, or if not an individual by one authorized, that the bidder or authorized person has examined and carefully prepared the proposal from the plans and specifications and has checked the same in detail before submitting the proposal or bid to the municipality. As a part of the proposal, the bidder also shall submit a list of the subcontractors the bidder proposes to contract with and the class of work to be performed by each. In order to qualify for inclusion in the bidder's list a subcontractor shall first submit a bid in writing, to the general contractor at least 48 hours prior to the time of the bid closing. The list may not be added to or altered without the written consent of the municipality. A proposal of a bidder is not invalid if any subcontractor and the class of work to be performed by the subcontractor has been omitted from a proposal; the omission shall be considered inadvertent or the bidder will perform the work personally.

(8) SETTLEMENT OF DISPUTES; DEFAULTS. Whenever there is a dispute between a contractor or surety or the municipality as to whether there is compliance with the provisions of a public contract as to the hours of labor, wages, residence, character and classification of workers employed by the contractor, the determination of the municipality is final. If a violation of these provisions occurs, the municipality may declare the contract in default and request the surety to perform or relet upon advertisement the remaining portion of the public contract.

(9) ESTIMATES AND RETAINAGE OF FUNDS. (a) Notwithstanding sub. (1) (a), in this subsection, "municipality" does not include the department of transportation.

(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% of the estimate until 50% of the work has been completed. At 30% 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 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.

History: 1971 c. 134; 1975 c. 390; 1983 s. 27; 1991 s. 316; 1993 s. 112, 100 Jan 491; 1999 s. 130 m. 257, 258, 328 to 334; Stats. 1999 s. 66.0901; 1999 s. Under sub. (5), a bidder has no "right" to withdraw its bid or demand amended. Under the terms of the proposal, the commission was entitled to deposit upon the plaintiff's failure to execute the contract within 10 days of award. Nelson Inc. v. Sewerage Commission of Milwaukee, 72 Wis. 2d N.W.2d 390.

Acceptance of the bid is a precondition to forfeiture of the bidder's deposit. (5). Gastra v. Village of Fairwater 77 Wis. 2d 7, 252 N.W.2d 60.

When a bid error was discovered after the contract was let, the dispute arose by the arbitration clause in the contract, not by sub. (5). Turtle Lake v. Const., 133 Wis. 2d 383, 400 N.W.2d 475 (Ct. App. 1986).

When a governmental entity determines that an apparent low bidder is relieved from an erroneous bid under sub. (5), the bidder should be allowed the bid. 82 Ariz. Gen. 144.

Polite can not be purchased by competitive bid since they are "ex and not supplies (or) material." 66 Ariz. Gen. 284.

Municipalities may require bidders to include a list of subcontractors. (7). 76 Ariz. Gen. 29.

66.0902 Municipal prevailing wage and hour scales. (1) DEFINITIONS. In this section:

(a) "Area" means the county in which a proposed project that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, "area" means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, "area" means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, "area" means the entire state or, if the department is requested to review a determination under sub. (3) (b), "area" means the city, village or town in which a proposed project that is subject to this section is located.

(b) "Department" means the department of workforce development.

(c) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

(cm) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

(d) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(e) "Multiple-trade public works project" has the meaning given in s. 103.49 (1) (bm).

(f) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (e).

(g) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or occupation engaged in the erection, construction,

MUNICIPAL LAW
up to 5% 10%



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2258/2
MES&JTK:cjs:cpk
stays (FMA)

2003 BILL

SOON
2/25/5

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.

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.

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

BILL**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 than} 5% of said ^{the}
7 estimate until ^{100%} 50% of the work has been completed. ~~At 50% completion, no additional~~
8 ~~amounts shall be retained, and partial payments shall be made in full to the~~
9 ~~contractor unless the architect or engineer certifies that the job is not proceeding~~
10 ~~satisfactorily. At 50% completion or any time thereafter when the progress of the~~
11 ~~work is not satisfactory, additional amounts may be retained but in no event shall~~
12 ~~the total retainage be more than 10% ^{5%} of the value of the work completed. Upon~~
13 substantial completion of the work, an amount retained may be paid to the
14 contractor. For the purposes of this section, estimates may include any fabricated
15 or manufactured materials and components specified, previously paid for by
16 contractor and delivered to the work or properly stored and suitable for incorporation
17 in the work embraced in the contract. This subsection does not apply to contracts
18 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

BILL

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

SECTION 3. Initial applicability.

21
22 (1) This act first applies to contracts entered into on the effective date of this
23 subsection.

24 (END)

Emery, Lynn

From: Hartsough, Melanie
Sent: Thursday, June 12, 2003 10:25 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2258/2 Topic: Retainage amounts on public construction contracts

It has been requested by <Hartsough, Melanie> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2258/2 Topic: Retainage amounts on public construction contracts