

RETAINAGE

ESCROW & RELEASE

HF 589 (BUESGENS, HOLBERG, NELSON, JOHNSON, GRUENHAGEN)

Proposed Changes

➤ What Does HF 589 Do?

Unless otherwise agreed to by contract:

- Requires retainage to be **held in an interest bearing escrow or trust account**.
- Requires retainage and interest to be **released and paid to within 30 days after substantial completion** of the project.
 - Substantial completion is defined in § 514.051 and is when the work is sufficiently complete so that the work can be occupied or used for its intended purpose.

Existing Law

➤ Construction Contracts Allow for **Progress Payments & Retainage**

- A progress payment is a monthly payment made to a contractor/sub-contractor by the owner

➤ What is **Retainage**?

- Retainage is a sum withheld from progress payments to the contractor/sub-contractor as an assurance for the timely completion and quality of a contractor/subcontractor's work.
- The retainage is money earned by a contractor/sub-contractor but not paid to the contractor/sub-contractor until the completion of construction.
- Up to 5% of the progress payment may be retained.
 - **For example:** Contractor enters into a 5-month building project with Owner. In month #1, Contractor earns \$10,000 excavating for a foundation. Owner pays Contractor \$9,500 and retains ("keeps") \$500 – often held long after the work is done & the project is complete.

➤ **When is Retainage Released and Paid to the Contractor/Sub-Contractor?**

- Minnesota statute does not answer this question.

➤ **Where is Retainage Held?**

- Minnesota statute does not answer this question.

➤ **What about other states?**

- Nationally, retainage is a typical practice in public and private construction contracts. In many states, retainage is held in escrow and paid to the contractor/subcontractor with interest. Many states also permit contractors/subcontractors to substitute securities in lieu of retainage. The majority of states permit contracting agencies or owners to reduce or even eliminate retainage once portion of the contract is complete. **For example:**
 - In North Dakota the maximum retainage is 10% of the contract estimate. When more than 50% of the work is done, no further retainage may be withheld. At 95% of completion, the state may pay 95% of the retained funds to the contractor. Retainage is held in a North Dakota financial institution and accrues interest.
 - In Wisconsin the maximum retainage rate is 5% for public projects. When 50% of the work is complete no additional funds shall be retained. If the progress is not satisfactory, additional funds may be retained at a rate not to exceed 10%.