

HOUSE BILL No. 1033

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-5.5-3.5; IC 22-5-9; IC 36-1-12-14.

Synopsis: Retainage requirements. Establishes a maximum amount of retainage that may be withheld from payments to contractors and subcontractors of a private construction project. Establishes a uniform maximum amount of retainage for private construction projects and certain state and local public works projects.

Effective: July 1, 2025.

Pressel, Miller D

January 8, 2025, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 124th General Assembly (2025)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2024 Regular Session of the General Assembly.

HOUSE BILL No. 1033

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-16-5.5-3.5, AS AMENDED BY P.L.133-2007,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2025]: Sec. 3.5. (a) To determine the amount of retainage to
4 be withheld, a state agency shall elect one (1) of the following options:
5 (1) Withhold no more than ten percent (10%) ~~nor less than six~~
6 ~~percent (6%)~~ of the dollar value of all work satisfactorily
7 completed until the public work is fifty percent (50%) complete,
8 and nothing further after that.
9 (2) Withhold no more than five percent (5%) ~~nor less than three~~
10 ~~percent (3%)~~ of the dollar value of all work satisfactorily
11 completed until the public work is substantially complete.
12 (b) If upon substantial completion of the work there are any
13 remaining uncompleted minor items, an amount computed under
14 section 6 of this chapter shall be withheld until those items are
15 completed.
16 SECTION 2. IC 22-5-9 IS ADDED TO THE INDIANA CODE AS
17 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2025]:

Chapter 9. Retainage in Private Construction Contracts

Sec. 1. This chapter applies only to a contract executed after June 30, 2025.

Sec. 2. This chapter does not apply to any contract subject to:

- (1) IC 4-13.6;
- (2) IC 5-16;
- (3) IC 5-23-4 (build, operate, transfer, and public-private agreements);
- (4) IC 5-30 (design-build);
- (5) IC 5-32 (employment of construction manager as constructor);
- (6) IC 36-1-12; or
- (7) any other statute applicable to a contract for public works.

Sec. 3. As used in this chapter, "construction" refers to the erection, alteration, reconstruction, rehabilitation, remodeling, renovation, repair, or demolition of a building structure, or improvement including installation of fixtures or equipment, excavation, site work, and landscaping.

Sec. 4. (a) As used in this chapter, "contract" means a contract for construction entered into between:

- (1) an owner and a contractor or subcontractor; or
- (2) a contractor and a subcontractor.

(b) The term does not include a contract:

- (1) with a person that supplies materials, but no onsite labor, to a contractor or subcontractor; or
- (2) for professional services provided by any of the following:
 - (A) A person acting within the scope of practice specified by any of the following:
 - (i) IC 25-4 for architecture.
 - (ii) IC 25-21.5 for surveying.
 - (iii) IC 25-31 for professional engineering.
 - (B) A licensed architect, professional engineer, or professional surveyor in connection with the architect's, engineer's, or surveyor's professional employment or practice.
 - (C) A person who performs services or studies that:
 - (i) relate to the design or the feasibility of a building, structure, or improvement; and
 - (ii) are recognized in the industry as professional in nature.

Sec. 5. As used in this chapter, "contractor" means a private



1 entity, also known as a "prime contractor" or a "general
2 contractor", that enters into a contract:

- 3 (1) with an owner; and
4 (2) to perform construction work, including providing some
5 materials or services in conjunction with that work.

6 **Sec. 6.** As used in this chapter, "owner" means a private entity
7 holding any title or interest in real property that enters into a
8 contract:

- 9 (1) with a contractor or subcontractor; and
10 (2) for performance of construction work by the contractor or
11 subcontractor on the real property.

12 **Sec. 7.** As used in this chapter, "private entity" means an
13 association, corporation, limited liability company, fiduciary,
14 individual, joint venture, partnership, sole proprietorship, or any
15 other private legal entity.

16 **Sec. 8.** As used in this chapter, "retainage" means an amount to
17 be withheld from a payment to a contractor or subcontractor
18 under the terms of a contract until the occurrence of a specified
19 event.

20 **Sec. 9.** As used in this chapter, "subcontractor" means a private
21 entity that enters into a contract with an owner or a contractor to
22 furnish and perform labor or labor and materials for at least some
23 of the construction work.

24 **Sec. 10.** As used in this chapter, "substantial completion" means
25 when the construction work is sufficiently completed:

- 26 (1) in accordance with the contract documents as modified by
27 any completed change orders agreed to by the parties; and
28 (2) so that the owner can occupy or take possession of the
29 construction and use the construction as it is intended to be
30 used.

31 **Sec. 11.** If a retainage provision is included in a contract, the
32 provision must comply with one (1) of the following:

33 (1) Retainage from payments to a contractor or subcontractor
34 may not exceed:

35 (A) ten percent (10%) of the dollar value of all work
36 satisfactorily completed, if the work is less than fifty
37 percent (50%) complete; and

38 (B) zero (0), if the work is at least fifty percent (50%)
39 complete.

40 (2) Retainage from payments to a contractor or subcontractor
41 may not exceed five percent (5%) of the dollar value of all
42 work satisfactorily completed until substantial completion of



1 **the work.**

2 SECTION 3. IC 36-1-12-14, AS AMENDED BY P.L.133-2007,
3 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2025]: Sec. 14. (a) This section applies to public work
5 contracts in excess of two hundred thousand dollars (\$200,000) for
6 projects other than highways, roads, streets, alleys, bridges, and
7 appurtenant structures situated on streets, alleys, and dedicated
8 highway rights-of-way. A board may require a contractor and
9 subcontractor to include contract provisions for retainage as set forth
10 in this section for contracts that are not more than two hundred
11 thousand dollars (\$200,000). This section also applies to a lessor
12 corporation qualifying under IC 20-47-2 or IC 20-47-3 or any other
13 lease-back arrangement containing an option to purchase,
14 notwithstanding the statutory provisions governing those leases.

15 (b) A board that enters into a contract for public work, and a
16 contractor who subcontracts parts of that contract, shall include in their
17 respective contracts provisions for the retainage of portions of
18 payments by the board to contractors, by contractors to subcontractors,
19 and for the payment of subcontractors. At the discretion of the
20 contractor, the retainage shall be held by the board or shall be placed
21 in an escrow account with a bank, savings and loan institution, or the
22 state as the escrow agent. The escrow agent shall be selected by mutual
23 agreement between board and contractor or contractor and
24 subcontractor under a written agreement among the bank or savings
25 and loan institution and:

- 26 (1) the board and the contractor; or
27 (2) the subcontractor and the contractor.

28 The board shall not be required to pay interest on the amounts of
29 retainage that it holds under this section.

30 (c) To determine the amount of retainage to be withheld, the board
31 shall:

- 32 (1) withhold no more than ten percent (10%) ~~nor less than six~~
33 ~~percent (6%)~~ of the dollar value of all work satisfactorily
34 completed until the public work is fifty percent (50%) completed,
35 and nothing further after that; or
36 (2) withhold no more than five percent (5%) ~~nor less than three~~
37 ~~percent (3%)~~ of the dollar value of all work satisfactorily
38 completed until the public work is substantially completed.

39 If upon substantial completion of the public work minor items remain
40 uncompleted, an amount computed under subsection (f) shall be
41 withheld until those items are completed.

42 (d) The escrow agreement must contain the following provisions:



- 1 (1) The escrow agent shall invest all escrowed principal in
 2 obligations selected by the escrow agent.
- 3 (2) The escrow agent shall hold the escrowed principal and
 4 income until receipt of notice from the board and the contractor,
 5 or the contractor and the subcontractor, specifying the part of the
 6 escrowed principal to be released from the escrow and the person
 7 to whom that portion is to be released. After receipt of the notice,
 8 the escrow agent shall remit the designated part of escrowed
 9 principal and the same proportion of then escrowed income to the
 10 person specified in the notice.
- 11 (3) The escrow agent shall be compensated for the agent's
 12 services. The parties may agree on a reasonable fee comparable
 13 with fees being charged for the handling of escrow accounts of
 14 similar size and duration. The fee shall be paid from the escrowed
 15 income.
- 16 The escrow agreement may include other terms and conditions
 17 consistent with this subsection, including provisions authorizing the
 18 escrow agent to commingle the escrowed funds with funds held in
 19 other escrow accounts and limiting the liability of the escrow agent.
- 20 (e) Except as provided by subsections (i) and (h), the contractor
 21 shall furnish the board with a performance bond equal to the contract
 22 price. If acceptable to the board, the performance bond may provide for
 23 incremental bonding in the form of multiple or chronological bonds
 24 that, when taken as a whole, equal the contract price. The surety on the
 25 performance bond may not be released until one (1) year after the date
 26 of the board's final settlement with the contractor. The performance
 27 bond must specify that:
- 28 (1) a modification, omission, or addition to the terms and
 29 conditions of the public work contract, plans, specifications,
 30 drawings, or profile;
- 31 (2) a defect in the public work contract; or
- 32 (3) a defect in the proceedings preliminary to the letting and
 33 awarding of the public work contract;
- 34 does not discharge the surety.
- 35 (f) The board or escrow agent shall pay the contractor within
 36 sixty-one (61) days after the date of substantial completion, subject to
 37 sections 11 and 12 of this chapter. Payment by the escrow agent shall
 38 include all escrowed principal and escrowed income. If within
 39 sixty-one (61) days after the date of substantial completion there
 40 remain uncompleted minor items, an amount equal to two hundred
 41 percent (200%) of the value of each item as determined by the
 42 architect-engineer shall be withheld until the item is completed.



- 1 Required warranties begin not later than the date of substantial
2 completion.
- 3 (g) Actions against a surety on a performance bond must be brought
4 within one (1) year after the date of the board's final settlement with the
5 contractor.
- 6 (h) This subsection applies to public work contracts of less than two
7 hundred fifty thousand dollars (\$250,000). The board may waive the
8 performance bond requirement of subsection (e) and accept from a
9 contractor an irrevocable letter of credit for an equivalent amount from
10 an Indiana financial institution approved by the department of financial
11 institutions instead of a performance bond. Subsections (e) through (g)
12 apply to a letter of credit submitted under this subsection.
- 13 (i) This subsection applies to the Indiana stadium and convention
14 building authority created by IC 5-1-17-6. The board awarding the
15 contract for a capital improvement project may waive any performance
16 bond requirement if the board, after public notice and hearing,
17 determines:
- 18 (1) that:
- 19 (A) an otherwise responsive and responsible bidder is unable
20 to provide the performance bond; or
- 21 (B) the cost or coverage of the performance bond is not in the
22 best interest of the project; and
- 23 (2) that an adequate alternative is provided through a letter of
24 credit, additional retainage of at least ten percent (10%) of the
25 contract amount, a joint payable check system, or other sufficient
26 protective mechanism.

