



January 30, 2025

HOUSE BILL No. 1033

DIGEST OF HB 1033 (Updated January 29, 2025 4:22 pm - DI 141)

Citations Affected: IC 5-16; IC 36-1.

Synopsis: Retainage requirements. Changes the maximum amount of retainage for certain state and local public works projects from: (1) 10% to 6% of the dollar value of all work satisfactorily completed until the public work is 50% complete; and (2) 5% to 3% of the dollar value of all work satisfactorily completed until the public work is substantially complete. Removes the requirement of a minimum amount of retainage for 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.
January 30, 2025, amended, reported — Do Pass.

HB 1033—LS 6197/DI 87



January 30, 2025

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 36-1-12-14, AS AMENDED BY P.L.133-2007,
17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

HB 1033—LS 6197/DI 87



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

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

- 23 (1) the board and the contractor; or
 24 (2) the subcontractor and the contractor.

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

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

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

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

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

- 40 (1) The escrow agent shall invest all escrowed principal in
 41 obligations selected by the escrow agent.
 42 (2) The escrow agent shall hold the escrowed principal and



1 income until receipt of notice from the board and the contractor,
 2 or the contractor and the subcontractor, specifying the part of the
 3 escrowed principal to be released from the escrow and the person
 4 to whom that portion is to be released. After receipt of the notice,
 5 the escrow agent shall remit the designated part of escrowed
 6 principal and the same proportion of then escrowed income to the
 7 person specified in the notice.

8 (3) The escrow agent shall be compensated for the agent's
 9 services. The parties may agree on a reasonable fee comparable
 10 with fees being charged for the handling of escrow accounts of
 11 similar size and duration. The fee shall be paid from the escrowed
 12 income.

13 The escrow agreement may include other terms and conditions
 14 consistent with this subsection, including provisions authorizing the
 15 escrow agent to commingle the escrowed funds with funds held in
 16 other escrow accounts and limiting the liability of the escrow agent.

17 (e) Except as provided by subsections (i) and (h), the contractor
 18 shall furnish the board with a performance bond equal to the contract
 19 price. If acceptable to the board, the performance bond may provide for
 20 incremental bonding in the form of multiple or chronological bonds
 21 that, when taken as a whole, equal the contract price. The surety on the
 22 performance bond may not be released until one (1) year after the date
 23 of the board's final settlement with the contractor. The performance
 24 bond must specify that:

- 25 (1) a modification, omission, or addition to the terms and
- 26 conditions of the public work contract, plans, specifications,
- 27 drawings, or profile;
- 28 (2) a defect in the public work contract; or
- 29 (3) a defect in the proceedings preliminary to the letting and
- 30 awarding of the public work contract;

31 does not discharge the surety.

32 (f) The board or escrow agent shall pay the contractor within
 33 sixty-one (61) days after the date of substantial completion, subject to
 34 sections 11 and 12 of this chapter. Payment by the escrow agent shall
 35 include all escrowed principal and escrowed income. If within
 36 sixty-one (61) days after the date of substantial completion there
 37 remain uncompleted minor items, an amount equal to two hundred
 38 percent (200%) of the value of each item as determined by the
 39 architect-engineer shall be withheld until the item is completed.
 40 Required warranties begin not later than the date of substantial
 41 completion.

42 (g) Actions against a surety on a performance bond must be brought



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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1033, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 5, strike "ten percent (10%)".
Page 1, line 5, reset in roman "six".
Page 1, line 6, reset in roman "percent (6%)".
Page 1, line 9, strike "five percent (5%)".
Page 1, line 9, reset in roman "three".
Page 1, line 10, reset in roman "percent (3%)".
Page 1, delete lines 16 through 17.
Delete pages 2 through 3.
Page 4, delete line 1.
Page 4, line 32, strike "ten percent (10%)".
Page 4, line 32, reset in roman "six".
Page 4, line 33, reset in roman "percent (6%)".
Page 4, line 36, strike "five percent (5%)".
Page 4, line 36, reset in roman "three".
Page 4, line 37, reset in roman "percent (3%)".
Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1033 as introduced.)

VANNATTER

Committee Vote: yeas 12, nays 0.

