

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 947

(SENATE AUTHORS: RARICK, Sparks, Anderson, B., Simonson and Goggin)

DATE	D-PG	OFFICIAL STATUS
02/07/2019	293	Introduction and first reading Referred to Judiciary and Public Safety Finance and Policy
02/14/2019	403	Withdrawn and re-referred to Jobs and Economic Growth Finance and Policy
02/25/2019	537	Chief author stricken Koran Chief author added Rarick
03/20/2019	1023a	Comm report: To pass as amended and re-refer to State Government Finance and Policy and Elections
03/26/2019		Comm report: To pass as amended Second reading

1.1 A bill for an act

1.2 relating to contracts; modifying retainage requirements for certain public contracts

1.3 and building and construction contracts; amending Minnesota Statutes 2018,

1.4 sections 15.72, subdivision 2; 337.10, subdivision 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 15.72, subdivision 2, is amended to read:

1.7 Subd. 2. **Retainage.** (a) A public contracting agency may reserve as retainage from any

1.8 progress payment on a public contract for a public improvement an amount not to exceed

1.9 five percent of the payment. ~~A~~ The public contracting agency may reduce the amount of

1.10 the retainage and may eliminate retainage on any monthly contract payment if, in the agency's

1.11 opinion, the work is progressing satisfactorily.

1.12 (b) For all construction contracts greater than \$5,000,000, the public contracting agency

1.13 must reduce retainage to no more than 2.5 percent if the public contracting agency determines

1.14 the work is 75 percent or more complete, that work is progressing satisfactorily, and all

1.15 contract requirements are being met.

1.16 (c) The public contracting agency must release any remaining retainage no later than 60

1.17 days after substantial completion.

1.18 (d) A contractor on a public contract for a public improvement must pay out any

1.19 remaining retainage to its subcontractors no later than ten days after receiving payment of

1.20 retainage from the public contracting agency, unless there is a dispute about the work under

1.21 a subcontract. If there is a dispute about the work under a subcontract, the contractor must

1.22 pay out retainage to any subcontractor whose work is not involved in the dispute, and must

2.1 provide a written statement detailing the amount and reason for the withholding to the
2.2 affected subcontractor and the public agency.

2.3 (e) A contractor may not reserve as retainage from a subcontractor an amount that exceeds
2.4 the amount reserved by the public contracting agency under this subdivision. Upon written
2.5 request of a subcontractor who has not been paid for work in accordance with section
2.6 16A.1245 or 471.425, subdivision 4a, the public contracting agency shall notify the
2.7 subcontractor of a progress payment, retainage payment, or final payment made to the
2.8 contractor. A contractor must include in any contract with a subcontractor the name, address,
2.9 and telephone number of a responsible official at the public contracting agency that may
2.10 be contacted for purposes of making a request under this paragraph.

2.11 (f) After substantial completion, a public contracting agency may withhold no more
2.12 than:

2.13 (1) 250 percent of the value of incomplete or defective work; and

2.14 (2) one percent of the value of the contract or \$500, whichever is greater, pending
2.15 completion and submission of all final paperwork by the contractor, provided that an amount
2.16 withheld under this clause may not exceed \$10,000.

2.17 If the public contracting agency withholds payment under this paragraph, the public
2.18 contracting agency must promptly provide a written statement detailing the amount and
2.19 basis of withholding to the contractor. The public contracting agency must provide a copy
2.20 of this statement to any subcontractor that requests it. Any amounts withheld for incomplete
2.21 or defective work shall be paid within 45 days after the completion of the work. Any amounts
2.22 withheld under clause (1) must be paid within 45 days after completion of the work. Any
2.23 amounts withheld under clause (2) must be paid within 45 days after submission of all final
2.24 paperwork.

2.25 (g) As used in this subdivision, "substantial completion" shall be determined as provided
2.26 in section 541.051, subdivision 1, paragraph (a). For construction, reconstruction, or
2.27 improvement of streets and highways, including bridges, substantial completion means the
2.28 date when construction-related traffic devices and ongoing inspections are no longer required.

2.29 (h) The maximum retainage percentage allowed for a building and construction contract
2.30 is the retainage percentage withheld by the public contracting agency from the contractor.

2.31 (i) Withholding retainage for warranties or warranty work is prohibited.

2.32 **EFFECTIVE DATE.** This section applies to agreements entered into on or after August
2.33 1, 2019.

3.1 Sec. 2. Minnesota Statutes 2018, section 337.10, subdivision 4, is amended to read:

3.2 Subd. 4. **Progress payments and retainages.** (a) Unless the building and construction
 3.3 contract provides otherwise, the owner or other persons making payments under the contract
 3.4 must make progress payments monthly as the work progresses. Payments shall be based
 3.5 upon estimates of work completed as approved by the owner or the owner's agent. A progress
 3.6 payment shall not be considered acceptance or approval of any work or waiver of any defects
 3.7 therein.

3.8 (b) Retainage on a building and construction contract may not exceed five percent. An
 3.9 owner or owner's agent may reduce the amount of retainage and may eliminate retainage
 3.10 on any monthly contract payment if, in the owner's opinion, the work is progressing
 3.11 satisfactorily. Nothing in this subdivision is intended to require that retainage be withheld
 3.12 in any building or construction contract. For all construction contracts greater than
 3.13 \$5,000,000, the owner or the owner's agent must reduce retainage to no more than 2.5
 3.14 percent if the owner or the owner's agent determines the work is 75 percent or more complete,
 3.15 that work is progressing satisfactorily, and all contract requirements are being met.

3.16 (c) The owner or the owner's agent must release any remaining retainage no later than
 3.17 60 days after substantial completion. For purposes of this subdivision, "substantial
 3.18 completion" shall be determined as provided in section 541.051, subdivision 1, paragraph
 3.19 (a).

3.20 ~~(e)~~ (d) Any contractor holding retainage must reduce that retainage at the same rate
 3.21 reduced by the owner or the owner's agent. A contractor must pay out any remaining retainage
 3.22 no later than ten days after receiving payment of retainage, unless there is a dispute about
 3.23 the work under a subcontract, in which case the contractor must pay out retainage to any
 3.24 party whose work is not involved in the dispute. Nothing in this subdivision is intended to
 3.25 require that retainage be withheld in any building or construction contract.

3.26 (e) After substantial completion, an owner or owner's agent may withhold no more than:

3.27 (1) 250 percent of the value of incomplete or defective work; and

3.28 (2) one percent of the value of the contract or \$500, whichever is greater, pending
 3.29 completion and submission of all final paperwork by the contractor, provided that an amount
 3.30 withheld under this clause may not exceed \$10,000.

3.31 If the owner or the owner's agent withholds payment under this paragraph, the owner or the
 3.32 owner's agent must promptly provide a written statement detailing the amount and basis of
 3.33 withholding to the contractor. The owner or the owner's agent and the contractor must

4.1 provide a copy of this statement to any subcontractor that requests it. Any amounts withheld
4.2 for incomplete or defective work shall be paid within 45 days after the completion of the
4.3 work. Any amounts withheld under clause (1) must be paid within 45 days after completion
4.4 of the work. Any amounts withheld under clause (2) must be paid within 45 days after
4.5 submission of all final paperwork.

4.6 (f) The maximum retainage percentage allowed for a building and construction contract
4.7 is the retainage percentage withheld by the owner from the contractor.

4.8 (g) Withholding retainage for warranties or warranty work is prohibited.

4.9 (h) Retainage must not be used as collateral for the owner, owner's agent, or contractor.

4.10 (i) This subdivision does not apply to a public agency as defined in section 15.71,
4.11 subdivision 3.

4.12 (j) This subdivision does not apply to contracts for professional services as defined in
4.13 sections 326.02 to 326.15.

4.14 **EFFECTIVE DATE.** This section applies to agreements entered into on or after August
4.15 1, 2019.