



# Minnesota Subcontractors Association

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## Retainage - Summary

**The Action** - MSA is driving an effort at the Minnesota State Capitol to change the law that controls current retainage practices. The goal of the change is to cap retainage at 5% and ensure that subcontractors (and general contractors) are paid, in a reasonable time, for the work they have completed.

**Retainage** is best described as the difference between the amount earned by a subcontractor for the work they have completed, and the amount that is actually paid to the subcontractor for that completed work.

Current MN statute permits 5% retainage in private contracts, unless the contract “provides otherwise”; today retainage of 10% or greater is often withheld from subcontractors. In comparison retainage on MN State projects is capped at 5%, and federal agencies such as the Department of Defense, the General Services Administration and the US Department of Transportation have 'zero' retainage policies.

**Reform** is needed because many general contractors are exploiting the current retainage law. Payment of retainage is often unreasonably withheld and subcontractors and suppliers are forced to wait for months, and years, to be paid for their work. Unfortunately subcontractors have no choice but to accept these unreasonable retainage contracts and practices – otherwise they will not be hired.

**Retainage abuse** drives up the cost of construction, generates litigation and penalizes small and emerging businesses.

Subcontractors bear the brunt of retainage abuse, especially subcontractors performing work early on in the construction process. Often general contractors withhold retainage from quality subcontractors due to unrelated failings of another subcontractor. Many in the industry believe that general contractors withhold retainage and use it as working capital because there is nothing in the current law preventing them from doing so, and nothing that requires them to pay the subcontractor in a reasonable time.

**The Goal** is to cap the amount of retainage at 5% and establish a statutory trigger date for payment. Subcontractors need to know that they will be paid for their work in a reasonable time so they can plan, pay employees and suppliers, avoid unnecessary litigation, and grow their businesses.

The proposed reforms will not allow a subcontractor to demand payment for incomplete or faulty work; those items are exempt in the bill. Further, general contractors have other protection and normally withhold amounts, in addition to retainage, for things such as “punch list items”.

## What to Do - Call Your Legislator

**Elevator Speech:** Retainage is money that I have earned for work that I have already completed, but is withheld from me. Retainage is often 10% of the contract price. In practice it is withheld until every other Subcontractor on the job has finished their work. After that, it often takes months or years for me collect and get paid in full. I should be paid in a reasonable time for the quality work I have completed.

### Primary Retainage Talking Points:

1. Support and Pass House File 2451 / Senate File 1898 (the 2016 MN Retainage Reform bill).
2. Retainage abuse is unfair and it hurts all subcontractors, particularly small and emerging subcontractors.
3. Retainage drives up the cost of construction.

# Support Retainage Reform

HF2451 / SF1898

Ensure People in the Construction Industry Get Paid for the Work They Do

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## What is Retainage?

- Retainage is money that a subcontractor **has already earned for his/her completed work**, but the general contractor withholds (“retains”) until the entire project is completed.

## How much Retainage can be withheld in MN?

- MN § 337.10 says that 5% can be withheld, unless the contract “provides otherwise”. Today most contracts withhold 10% from Subcontractors.

\* State projects are capped at 5% retainage, and most Federal contracts withhold no retainage.

## The PROBLEM with current law - There is NO cap and NO payment due date.

MN statute 337.10 gives any upstream party the right to withhold, any amount of retainage from Subcontractors, but never says when the upstream party must pay the Subcontractors back.

\*Today, subcontractors wait months or years to be paid in full for the work they have completed.

## A Fair Fix - What this Bill does:

1. Limits retainage to 5% of the total contract price;
2. Ensures that retainage is paid within 60 days after the construction is sufficiently complete, so it can be occupied and used for the intended purpose (i.e. “Substantial Completion” is defined in statute and is a term of art in the construction industry); and
3. If a party is not paid the money they are owed, that party can petition the court for the reasonable attorney’s fees required to collect the money they are owed.

\*Note - If this law passes, and there is a dispute or unfinished work, the Subcontractor will **not** get paid the retainage until the work is deemed completed by the overseeing party.

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Support HF2451 / SF1898