

Senate Bill 438

By: Senators Tippins of the 37th, Dugan of the 30th, Miller of the 49th, Strickland of the 17th, Hickman of the 4th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
2 relating to retention of contractual payments and creation of escrow accounts on contracts
3 for installation, improvement, maintenance, or repair of water or sewer facilities, so as to
4 change certain provisions relating to retainage of progress payments; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 style="text-align:center">**SECTION 1.**

8 Article 2 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to
9 retention of contractual payments and creation of escrow accounts on contracts for
10 installation, improvement, maintenance, or repair of water or sewer facilities, is amended by
11 revising subsections (b) and (c) of Code Section 13-10-80, relating to definitions, contract
12 requirements, application, effect of greater benefits contracted for, and evidence of
13 indebtedness paid, as follows:

14 "(b) In any public works construction contract entered into on or after July 1, ~~2001~~ 2022,
15 with an owner, as defined in paragraph (3) of subsection (a) of this Code section, such
16 contract shall provide for the following:

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17 (1) After work has commenced at the construction site, progress payments to be made
18 on some periodic basis, and at least monthly, based on the value of work completed as
19 may be provided in the contract documents plus the value of materials and equipment
20 suitably stored, insured, and protected at the construction site and at the owner's
21 discretion such materials and equipment suitably stored, insured, and protected off site
22 at a location approved by the owner's authorized contract representative when allowed
23 by the contract documents, less retainage; and

24 (2)(A) Retainage to a maximum of ~~10~~ 5 percent of each progress payment; ~~provided,~~
25 ~~however, when 50 percent of the contract value including change orders and other~~
26 ~~additions to the contract value provided for by the contract documents is due and the~~
27 ~~manner of completion of the contract work and its progress are reasonably satisfactory~~
28 ~~to the owner's authorized contract representative, the owner shall withhold no more~~
29 ~~retainage.~~ At the discretion of the owner and with the approval of the contractor, the
30 retainage of each subcontractor may be released separately as the subcontractor
31 completes his or her work.

32 ~~(B) If, after discontinuing the retention, the owner's authorized contract representative~~
33 ~~determines that the work is unsatisfactory or has fallen behind schedule, retention may~~
34 ~~be resumed at the previous level. If retention is resumed by an owner, the contractor~~
35 ~~and subcontractors shall be entitled to resume withholding retainage accordingly.~~

36 ~~(C)~~(B) At substantial completion of the work or such other standard of completion as
37 may be provided in the contract documents and as the owner's authorized contract
38 representative determines the work to be reasonably satisfactory, the owner shall,
39 within 30 days after invoice and other appropriate documentation as may be required
40 by the contract documents are provided, pay the retainage to the contractor. If at that
41 time there are any remaining incomplete ~~minor~~ items, an amount equal to 200 percent
42 of the value of each item as determined by the owner's authorized contract
43 representative shall be withheld until such item or items are completed. The reduced

44 retainage shall be shared by the contractor and subcontractors as their interests may
45 appear.

46 ~~(D)~~(C) The contractor shall, within ten days from the contractor's receipt of retainage
47 from the owner, pass through payments to subcontractors and shall reduce each
48 subcontractor's retainage ~~in the same manner~~ by the same percentage amount as the
49 ~~contractors~~ contractor's retainage is reduced by the owner; provided, however, ~~that the~~
50 ~~value of each subcontractor's work complete and in place equals 50 percent of his or her~~
51 ~~subcontract value, including approved change orders and other additions to the~~
52 ~~subcontract value, provided, further, that the work of the subcontractor is proceeding~~
53 ~~satisfactorily and the subcontractor has provided or provides such satisfactory~~
54 ~~reasonable assurances of continued performance and financial responsibility to~~
55 ~~complete his or her work, including any warranty work as the contractor in his or her~~
56 ~~reasonable discretion may require, including, but not limited to, a payment and~~
57 ~~performance bond.~~

58 ~~(E)~~(D) The subcontractor shall, within ten days from the subcontractor's receipt of
59 retainage from the contractor, pass through payments to lower tier subcontractors and
60 shall reduce each lower tier subcontractor's retainage in the same manner as the
61 ~~subcontractors~~ subcontractor's retainage is reduced by the contractor; provided,
62 however, ~~that the value of each lower tier subcontractor's work complete and in place~~
63 ~~equals 50 percent of his or her subcontract value, including approved change orders and~~
64 ~~other additions to the subcontract value, provided, further, that the work of the lower~~
65 ~~tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has~~
66 ~~provided or provides such satisfactory reasonable assurances of continued performance~~
67 ~~and financial responsibility to complete his or her work, including any warranty work~~
68 ~~as the subcontractor in his or her reasonable discretion may require, including, but not~~
69 ~~limited to, a payment and performance bond.~~

70 (c) This Code section shall not apply to:

71 (1) Any contracts let by the Department of Transportation of this state for the
72 construction, improvement, or maintenance of roads or highways in this state or purposes
73 incidental thereto; or

74 (2) Any contracts whose value or duration at the time of the award does not exceed
75 \$150,000.00 or 45 days in duration."

76 **SECTION 2.**

77 Said article is further amended by revising Code Section 13-10-81, relating to authorization
78 and procedure for retention of contractual payments by state or political subdivisions and
79 procedure for final payments, as follows:

80 "13-10-81.

81 (a) Any department, agency, or instrumentality of the state or any political subdivision of
82 the state is authorized to insert in the specifications of all contracts relating to the
83 installation, extension, improvement, maintenance, or repair of any water or sewer facility
84 a clause providing for the retention of amounts not exceeding ~~10~~ 5 percent of the gross
85 value of the completed work as may be provided for in the contract; ~~provided, however,~~
86 ~~that no amounts shall be retained on estimates or progress payments submitted after 50~~
87 ~~percent of the work on the project has been completed if in the opinion of the department,~~
88 ~~agency, or instrumentality of the state or any political subdivision thereof such work is~~
89 ~~satisfactory and has been completed on schedule. This will not affect the retained amounts~~
90 ~~on the first 50 percent of the work on the project which may continue to be held to ensure~~
91 ~~satisfactory completion of the project. If, after discontinuing the retention, the department,~~
92 ~~agency, or instrumentality of the state or any political subdivision thereof determines that~~
93 ~~the work is unsatisfactory or has fallen behind schedule, retention may be resumed at the~~
94 ~~previous level.~~ Retainage shall be invested at the current market rate and any interest
95 earned on the retained amount by such department, agency, or instrumentality of the state

96 or any political subdivision of the state shall be paid to the contractor when the project has
97 been completed within the time limits specified and for the price specified in the contract,
98 or in any amendments or change orders approved in accord with the terms of the contract,
99 as certified pursuant to subsection (b) of this Code section.

100 (b) Final payment of the retained amounts to the contractor under the contract to which the
101 retained amounts relate shall be made after certification by the engineer in charge of the
102 project covered by the contract that the work has been satisfactorily completed and is
103 accepted in accordance with the contract, plans, and specifications. Payment to the
104 contractor of interest earned on the retained amounts shall be made after certification by
105 the engineer in charge of the project covered by the contract that the work has been
106 completed within the time specified and within the price specified in the contract.

107 (c) At substantial completion of the work and as the governmental entity's authorized
108 contract representative determines the work to be reasonably satisfactory, the governmental
109 entity shall, within 30 days after invoice and other appropriate documentation as may be
110 required by the contract documents are provided, pay the retainage to the contractor. If at
111 that time there are any remaining incomplete ~~minor~~ items, an amount equal to 200 percent
112 of the value of each item as determined by the governmental entity's authorized contract
113 representative shall be withheld until such item or items are completed."

114

SECTION 3.

115 All laws and parts of laws in conflict with this Act are repealed.