The law governing retainage in Minnesota construction contracts has changed again. In 2016, Minnesota law was amended to reduce the cap on retainage from 10% to 5%. The 5% cap has not changed. The 2019 changes impact how quickly retainage must be released and has new requirements for hold backs relating to disputes and punch list work.

The new retainage law changes apply to construction contracts entered into on and after August 1, 2019 and applies to both public and private construction work. Contracts entered into prior to August 1st will be governed by the old law.

Key provisions of the new retainage law are as follows:

- The owner/public entity must release retainage to downstream contractors within 60 days of substantial completion.
- General contractors must reduce retainage at the same rate as the owner reduces retainage.
- Minnesota’s Prompt Pay Act requires GC’s and all contractors to pay their downstream subcontractors within 10 calendar days of receiving retainage payment from the owner/public entity or upstream contractor.
- The new law provides a definition of substantial completion; “Date of substantial completion shall be determined by the date when construction is sufficiently completed so that the owner or the owner’s representative can occupy or use the improvement for the intended purpose.” Minn. Stat. Section 541.051, Subd. 1(a).
- The new law specifically prohibits withholding retainage for warranty work.
- After substantial completion, the owner/public entity can withhold funds for punch list work provided it is not greater than 250% of the cost to complete or correct the work. If there is a withholding of funds, the contractor must be given a written statement of the basis for the withholding and assigned dollar amounts.
- The owner/public entity may withhold 1% of the contract value or $500 whichever is greater to encourage downstream contractors to complete “final paperwork” needed to fulfill a contract obligation. Waiting for filing of certified payroll reports would be an example of when this provision may be used.
There are a few additional provisions that only apply to public construction jobs:

- If requested, a public owner must provide information to a subcontractor regarding the status of retainage payments, progress payments and final payments made to the general contractor.
- A public contracting agent is not required to pay any portion of a contract that is funded by federal or state aid until the aid payments are received by the public contracting agency.

Please note that there is nothing in the new law that requires payment for work that is not complete. Similarly, there is no requirement to make payment for work that has not been invoiced.

One of the primary objectives of this law change was to facilitate quicker payment to subcontractors. Identifying the “date of substantial completion” as the date when the 60 day clock begins to run should reduce disputes on timeliness of payment. Requiring a written statement of the reasons for withholding of funds should also help to improve communication and reduce any misunderstandings on what additional needs to be done to trigger payment. Finally, there should be less withholding of payment due to a dispute with an upstream contractor that does not involve work performed by the subcontractor trying to get paid. Time will tell, but we believe the changes outlined in this communication should be helpful.

We had opposition on this legislative effort from the AGC, League of Minnesota Cities, Minnesota Department of Administration and other influential groups. Thank you to all who took the time to write an email and talk to your elected representatives. The Minnesota Subcontractors Association and other trade associations were all involved in this effort.