



# Minnesota Subcontractors Association

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## What the New 2016 Retainage Law Means to Subcontractors

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The MSA co-sponsored the 2016 retainage law that was recently passed by the Legislature and signed into law by Governor Dayton. There are five main points to consider regarding the new retainage law - the effective date of the law and the four changes to the statute. This paper identifies and explains the changes.

### First

The law goes into effect on August 1, 2016. The new retainage law applies to contracts entered into on or after August 1, 2016. The new law does not change or alter a contract signed on or before July 31, 2016.

### Second

Retainage is limited to a maximum of 5%. Contract provisions may not increase this amount. If there is a contract provision requiring retainage greater than 5%, then the contract provision is null and void.

### Third

In addition to the normal Prompt Payment remedies, if a prime contractor (or any upper-tier subcontractor) does not pay the lower-tier subcontractor for undisputed work within 10 days of receipt, the following, in addition to the retainage, may be recovered in court:

- Court costs, disbursements & attorney fees;
- Interest at 1.5 % per month (18% per year) and
- The minimum monthly interest of \$10.00 if the retainage owed is \$100.00 or more.

### Fourth

During a project, if an undisputed progress payment is not made within the ten (10) days, either the prime contractor or subcontractor can suspend work until the undisputed payment is received.

### Fifth

Retainage is not required. Nothing in the new law requires that a party withhold retainage on any building and construction contract.

The above summary identifies the primary changes to Minnesota's Retainage law taking effect on August 1, 2016. The new law not only limits retainage to 5%, but provides you, the subcontractor, with additional tools to improve your leverage and your cash flow. **We hope you take full advantage of it.**

In negotiating this new law the MSA, partners and opponents agreed to reconvene and discuss additional payment reforms, including discussing the possibility of establishing a trigger date or other mechanism to compel timely payment of retainage. The MSA will work to accomplish this end until we establish such a mechanism.

The MSA has observed that some parties to a building and construction contract will construe the requirements of a new law in ways counter to the law's intent. We will listen for your observations and address them when they arise.