

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the State
5 Agency Retainage Act.

6 Section 5. Definitions. As used in this Act:

7 "Retainage" means a portion of moneys withheld from the
8 payment of a contract for a specified period of time to ensure
9 that a contractor or subcontractor completes a construction
10 project in the manner specified in the contract. "Retainage"
11 does not include (i) moneys withheld due to violations of
12 local, State, or federal laws or (ii) moneys withheld from
13 grants to entities for capital improvements to non-State
14 property.

15 "Satisfactory progress" means the advancement of project
16 work without deficiency and in accordance with industry
17 standards and the contractual schedule and budget.

18 "State agency" has the meaning given in Section 1-7 of the
19 Illinois State Auditing Act.

20 Section 10. Determination of satisfactory progress.
21 Subject to the limitations in Section 15, a State agency may
22 withhold as retainage a portion of the moneys from the payment

1 of a contract that is entered into on or after the effective
2 date of this Act if and only if the State agency determines
3 that satisfactory progress has not been achieved by a
4 contractor or subcontractor during any period for which a
5 payment is to be made. If the contractor or subcontractor has
6 displayed unsatisfactory performance on previous State agency
7 projects resulting in a low performance score or suspension of
8 prequalification, the State agency may apply retainage from
9 the beginning of the project. Retainage may not be used as a
10 substitute for good contract management, and the State agency
11 may not withhold funds without cause. Determinations to retain
12 and the specific amount to be withheld must be made by the
13 State agency on a case-by-case basis and must be based on an
14 assessment of past performance and the likelihood that such
15 performance will continue. The State agency shall re-evaluate
16 its determination at subsequent project milestones.

17 Section 15. Limitations on the amount of retainage. The
18 amount of retainage withheld may not exceed 10% of the amount
19 of the draw amounts submitted and approved under the terms of
20 the contract until the contract is 50% completed, may not
21 exceed 5% of the amount of the draw amounts submitted and
22 approved under the terms of the contract for the duration of
23 the contract, and may be decreased as the contract approaches
24 completion to recognize better than expected performance, the
25 ability to rely on alternative safeguards, and other factors.

1 Upon completion of all contract requirements, amounts retained
2 under this Act must be paid promptly.

3 Section 20. Limitations on retainage from subcontractors.

4 (a) Notwithstanding any other provision of law, if a State
5 agency has not withheld retainage from a payment to a
6 contractor on a project, then that contractor may not withhold
7 retainage from a payment to a subcontractor for the same
8 project.

9 (b) If a State agency has withheld retainage from a
10 contractor in accordance with Section 10, then the contractor
11 may withhold retainage from a payment to a subcontractor, but
12 only to the extent that the amount retained from payment to the
13 contractor by the State agency is attributable to a failure on
14 the part of the subcontractor to make satisfactory progress
15 with respect to the subcontractor's contractual obligations.

16 (c) This Section applies only to subcontracts entered into
17 on or after the effective date of this Act in connection with a
18 State construction contract that is subject to the provisions
19 of Section 10.

20 Section 99. Effective date. This Act takes effect July 1,
21 2026.