

March 21, 2007

S 1245. RETAINAGE PAYMENTS/CONSTRUCTION CONTRACTS. Filed 3/21/07. *AMENDING THE LAWS RELATED TO RETAINAGE PAYMENTS ON CONSTRUCTION CONTRACTS.*

Amends GS 143-134.1 to require the balance of public contracts let by state government (with the exception of the Department of Transportation) requiring an estimated expenditure of \$300,000 or more in public money, to be paid in full to prime contractors 45 days after acceptance or certification. Increases the amount of interest to be paid for late payments to prime contractors and from prime contractors to sub-contractors from 1% to 1½% per month. Provides that when there is conditional acceptance of a contract and the owner retains a sum pending correction, punitive interest (was, interest) does not apply. Prohibits retainage on periodic or final payments by the owner or prime contractor if the total project costs are less than \$300,000; allows retainage when the project costs are equal to or greater than \$300,000 and sets requirements for the retainage including the amount to be retained, release of the retainage by the owner or prime contractor, and other requirements. Requires payment to be made in full upon the completion and acceptance of each individual work item for which a separate price is stated in the contract, and only to those trades that were 100% complete at the time the project was 50% complete. Includes information that is to be included in the bid document. Provides that release of retainage does not affect applicable warranties or statute of limitations. In the event a suit is brought, allows a judge to award attorney's fee to the prevailing party. Makes technical and conforming changes.

Intro. by Jenkins.

GS 143

May 1, 2007

S 1245. RETAINAGE PAYMENTS/CONSTRUCTION CONTRACTS. Filed 3/21/07. Senate committee substitute makes the following changes to 1st edition. Amends GS 143-129(a) (bidding required) to prohibit construction or repair work requiring an estimated expenditure of \$500,000 (was, \$300,000) in public money unless the section is complied with. Amends GS 143-134.1 to require the prime contractor and subcontractors to be paid interest at the rate of 1% (previously proposed 1½ %) per month if final payment is delayed. Removes references to interest as punitive. Modifies proposed GS 143-134.1(b1) to remove the following provisions: (1) requiring the owner to release half of the retainage withheld on periodic payments within 15 days of the later of receiving a request or receipt of the surety's consent, when the contractor satisfactorily completes 50% of the project on schedule and the owner and others have given approval; (2) requiring any retainage on payments withheld by the owner or contractor to be deposited in an interest-bearing account and be paid to the contractor or subcontractor whose funds have been retained; and (3) requiring the owner to release all retainage on payments held by the owner within 45 days from when a separate usable phase of the project is available for use. Modifies proposed GS 143-134.1(b2) to remove the provision requiring payment to be made in full upon the completion and acceptance of items of work on which a price is stated separately in the contract or can be separately ascertained. Requires payments to be made within 45 days of the earlier of receiving the subcontractor's request or receipt of the surety's consent. Modifies proposed GS 143-134.1(b3) to provide that an owner's release (earlier language also included release by a contractor or subcontractor) of retainage on payments as part of a payment in full on a line item of work does not affect applicable warranties or statutes of limitations. Removes the provision that the terms of a construction contract under the Article do not materially alter the rights of a contractor, subcontractor, or a material supplier to receive timely payment. Removes the requirement of a finding that payments were retained in violation of the section in order to award attorney's fees to the prevailing party. Requires the Secretary of Administration to study the use of interest-bearing escrow accounts in other states for precedents to use in conjunction with retainage from payment on public construction projects. Following the study, the Secretary must adopt rules for agencies and UNC and community colleges and guidelines for local government units concerning retainage on public construction projects. Changes the bill's effective date to October 1, 2007, for contracts entered into on or after that date. Makes a conforming title change.

July 19, 2007

S 1245. RETAINAGE PAYMENTS/CONSTRUCTION CONTRACTS. Filed 3/21/07. House committee substitute makes the following changes to 2nd edition. Deletes proposed amendment to GS 143-129(a). Modifies proposed amendments to GS 143-134.1 as follows. Deletes proposed restriction setting a minimum public dollar expenditure on public construction contracts required to be paid in full within 45 days after the terms of contract have been met. Reduces from less than \$300,000 to less than \$100,000 the total project costs on public construction contracts for which no retainage on periodic or final payments made by the owner or prime contractor are allowed. Amends the amount allowing retainage on periodic or final payments on public construction accounts under specified conditions from equal to or greater than \$300,000 to equal or greater than \$100,000. Provides that when a project is 50% complete that any nonconforming work identified in writing prior to that time that has been corrected by the contractor and accepted by the architect, engineer, or owner is not a basis for any further retainage from periodic payments due to a contractor that is continuing to perform satisfactorily.

Provides for the release to the contractor of all retainage on payments held by the owner within 60 days (was, 45 days) after the submission of a pay request, if specified events occur. Directs that if the owner has a basis to retain funds, the amount may not exceed 2½ (was, 1½) times the estimated value of the work to be completed or corrected. Provides that third party claims and additive change orders are not a basis for delaying the release of any retainage on payments.

Provides that payments to early finishing trades be made no later than 60 days (was, 45) following the receipt of the subcontractor's request or surety's consent. Provides guidelines for determining early finishing trades under the statute, the requirements of the bid document, and the effect of the statute on warranties on the work done by contractors or subcontractors.

Deletes proposed provision regarding bringing or defending a lawsuit under the statute. Also deletes provision for a study by the Secretary of the Department of Administration regarding the use of escrow accounts in other states.

Changes the effective date of the act from October 1, 2007, to January 1, 2008.

July 26, 2007

S 1245. RETAINAGE PAYMENTS/CONSTRUCTION CONTRACTS. Filed 3/21/07. House committee substitute makes the following changes to 3rd edition. Modifies proposed amendments to GS 143-134.1 to provide additional guidelines (1) for determining when a public construction project is deemed to be 50% complete and (2) to govern retainage on periodic payments made by the prime contractor to the subcontractor. Also provides guidelines regarding permitting an owner to withhold additional retainage from the prime contractor and allowing the prime contractor to offset the additional retainage held by the owner by withholding additional retainage from the subcontractors.

August 27, 2007

SL 2007-365 (S 1245). RETAINAGE PAYMENTS/CONSTRUCTION CONTRACTS AN ACT AMENDING THE LAWS RELATED TO RETAINAGE PAYMENTS ON PUBLIC CONSTRUCTION CONTRACTS. Summarized in *Daily Bulletin* 3/21/07, 5/1/07, 7/19/07, and 7/26/07. Enacted August 17, 2007. Effective January 1, 2008.