

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE BILL 1146**

Short Title: Retainage Rules/Public Contracts.

(Public)

Sponsors: Representative Nesbitt.

Referred to: State Government.

April 10, 2003

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE THE SECRETARY OF THE DEPARTMENT OF  
ADMINISTRATION TO ADOPT RULES AND GUIDELINES FOR RETAINAGE  
FROM PAYMENT ON PUBLIC CONSTRUCTION CONTRACTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 8 of Chapter 143 is amended by adding a new section to read:

**"§ 143-134.4. Rules and guidelines for retainage.**

(a) The Secretary of the Department of Administration shall study retainage from payment on public construction projects. After the study, the Secretary shall adopt rules for State agencies and The University of North Carolina and community colleges and shall adopt guidelines for local government units for retainage on public construction projects. The rules and guidelines shall address the following:

- (1) Retainage by public owners from payment to contractors and retainage by those contractors from payment to subcontractors.
- (2) Retainage from periodic progress payments and final payment, including a maximum allowable amount of retainage.
- (3) A time certain for the owner's release of retainage, based upon the owner's occupancy, substantial completion of the work, or the owner's use of the improvements for the purposes intended.
- (4) A time certain for the contractor's release of retainage to a subcontractor, based upon the contractor's receipt of retainage.
- (5) Conditions permitting withholding of retention beyond the date of release, including those stated in G.S. 143-134.1(d), and limits on the amount of retainage for a condition permitting withholding.
- (6) Interest on wrongfully withheld retainage and conditions for the payment of attorneys' fees for the collection of wrongfully withheld retainage.

(7) Line item release of retainage, based upon a schedule of values, for specific work that has been completed by the contractor and approved by the owner.

(8) For any rules adopted, an effective date of 60 days from the date of publication in the North Carolina Register that applies to all public construction projects entered into on or after that date.

(9) Any other matters relating to the withholding and release of retainage on public construction projects.

(b) In developing the rules and guidelines required by this section, the Secretary shall study and consider the use of escrow accounts and, in lieu of retainage, the use of payment and performance bonds, letters of credit, or other forms of security.

(c) Notwithstanding the provisions of G.S. 150B-21.1(a), the Secretary shall adopt rules under this section as temporary rules. After publishing the proposed temporary rules in the North Carolina Register and at least 30 days prior to adopting any temporary rules, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt temporary rules.

(2) Accept oral and written comments on the proposed temporary rules.

(3) Hold at least one public hearing on the proposed temporary rules.

The Secretary shall submit to the Codifier of Rules a reference to this section as the Secretary's statement of need."

**SECTION 2.** The Secretary shall adopt rules, as required by this act, within 120 days from the date this act becomes law and shall adopt and publish guidelines, as required by this act, within 150 days from the date this act becomes law.

**SECTION 3.** This act is effective when it becomes law.