

# New York Further Tightens 2023 Retainage Law: 5% Cap on Retainage Cannot Be Increased in Private Construction Contracts

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On December 19, 2025, Governor Kathy Hochul signed Senate Bill S5655 further amending New York's Prompt Payment Act to render void any provision in a private construction contract exceeding \$150,000 that requires retainage of more than 5% of the contract sum.<sup>[1]</sup>

More than two years ago, on November 17, 2023, Hochul signed Senate Bill S3539, which amended Section 756-c of the New York General Business Law to cap the amount of retainage that may be withheld from a contractor or subcontractor on a private construction contract of \$150,000 or more at 5% of the contract sum.<sup>[2]</sup>

Before the December 19, 2025, amendment, owners and general contractors could effectively circumvent the retainage cap by relying on Section 756-a of the New York General Business Law, which allows the terms of a construction contract to supersede the Prompt Payment Act "except as otherwise provided in [the] article."<sup>[3]</sup> Under the new legislation, however, any contractual provision that does not comply with the retainage requirements in Section 756-c is void and unenforceable.<sup>[4]</sup>

Notably, based on the plain language of the statute, the 5% retainage cap applies to the total contract sum, not to individual progress payments. As a practical matter, this still permits owners to withhold 10% retainage on progress payments for the first 50% of a contractor's work, provided that retainage withholding is reduced to 0% on future progress payments once 50% of the project has been completed.

In light of these changes to New York's retainage requirements — which took effect immediately and apply to all contracts entered into on or after December 19, 2025 — owners, contractors, and subcontractors should carefully review their construction agreements and consult experienced construction counsel before negotiating or revising retainage provisions. Troutman Pepper Locke attorneys are well positioned to advise clients on the complexities of prompt payment requirements nationwide and to negotiate construction contracts that protect their interests.

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<sup>[1]</sup> 2025 NY Senate-Assembly Bill S5655, A5405.

<sup>[2]</sup> 2023 NY Senate-Assembly Bill S3539, A4167.

<sup>[3]</sup> General Business Law § 756-a.

<sup>[4]</sup> General Business Law § 757.

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