

**75-6909. Public improvement contracts; provisions for retention of moneys; release of moneys, when.** Notwithstanding any other statutory provision of this state, in any contract entered into by the state of Kansas or any department or agency of the state, or any county, city, school district or any other political subdivision of the state, for the construction, reconstruction, renovation, remodeling or repair of any building or structure or for the construction, reconstruction, repair or maintenance of any highway, road, bridge, underpass, viaduct, sewer or waterworks, or other improvements to public property, the contracting public entity may include a provision for retaining moneys until such time as the contract has been satisfactorily completed, subject to the following:

(a) With respect to any contract to which this act applies of \$1,000,000 or more, at any time before the public contracting entity releases the contract funds it has retained, the public entity may approve a request from the contractor that the retained funds be placed in an interest bearing escrow account. It shall be the responsibility of the contractor to establish the escrow account in a state or national bank, federally chartered savings and loan association, or federally chartered savings bank with offices located in Kansas. All fees or charges for establishing and maintaining the escrow account shall be paid by the contractor. Prior to paying any retained funds into the escrow account the public contracting entity shall enter into an appropriate escrow agreement with the bank, savings and loan association or savings bank and the contractor. The escrow agreement shall provide that the retained funds shall be returned to the contracting public entity in the event the contracting public entity notifies the bank, savings and loan association or savings bank that the contractor has defaulted on the contract, that the retained funds shall not be released to the contractor until authorized by the contracting public entity and that the interest on the retained funds shall be paid to the contractor as it accumulates.

(b) With respect to any contract to which this act applies of \$1,000,000 or more, at any time after the contracting public entity has retained any contract funds the contractor may request and upon approval by the public contracting entity of such request the contractor may substitute securities of the following types for the retained contract funds:

(1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills;

(2) bonds or notes of the state of Kansas or any political subdivision of the state; or

(3) certificates of deposit from any state or national bank, federally chartered savings and loan association, or federally chartered savings bank, with offices located in Kansas.

The value of the securities substituted must be at least equal to the amount of the funds retained. The substituted securities shall be issued in such a manner as to allow the contracting public entity to convert the securities to cash in the event the contracting public entity makes a claim against the contractor as a result of the contractor's default on the contract. Upon substitution of appropriate securities the contracting public entity shall pay the retained funds to the contractor within five working days. When the contract is satisfactorily completed the substituted securities will be returned to the contractor with any interest that has accumulated. In the event that the contracting public entity makes a claim against the retained securities the entity shall retain only such substituted securities of a sufficient value to cover the amount of the claim and return the remaining substituted securities to the contractor plus any accumulated interest. Substituted securities retained to cover the amount of the claim made by the contracting public entity may be converted to cash by the entity. All costs associated with substituting securities as provided in this subsection shall be paid by the contractor. The contracting public entity may require the contractor to establish and maintain an escrow account with an escrow agent approved by the contracting public entity for the purpose of effectuating the substitution of securities provided for in this subsection.

**History:** L. 1998, ch. 159, § 2; July 1.