§ 139. Retained percentages. 1. A clause shall be inserted in all specifications or contracts hereafter made or awarded by the state, or by any public department or official thereof for work to be executed except as provided in section thirty-eight of the highway law in which the execution and delivery by the contractor of a performance bond shall be required, providing that the state shall retain five per centum of the amount of each progress payment in accordance with section one hundred thirty-nine-f of the state finance law.

2. The clause specified in subdivision one of this section may be inserted in the specifications of any uncompleted public contract, of the kind referred to in such subdivision, heretofore made or awarded by the state or by any public department, or official thereof, with the written consent of the commissioner of general services and of the official of the public department by whom such contract was awarded and of the contractor, provided the surety or sureties upon the performance and labor and material bonds given by the contractor upon any such contract shall consent in writing thereto and the retained percentage of moneys earned under such contract shall, after the insertion of such clause, be payable in accordance with the provisions set forth in said clause.

3. Under any contract heretofore or hereafter made or awarded by the state, or by any public department or official thereof, the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the state comptroller or, if so directed by the state comptroller, with a bank or trust company which has entered into an agreement with the state comptroller to provide the services which the state comptroller is required to perform pursuant to the provisions of this subdivision (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 New York, (3) bonds of any political subdivision in the state of New York, (4) bonds of the New York state housing finance agency, or (5) bonds of the New York state medical care facilities finance agency, of a market value not exceeding par, at the time of deposit, equal to the amount so withdrawn. The state comptroller shall, from time to time, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be clipped, presented for payment, and the proceeds remitted to the contractor. The contractor shall not be entitled to interest or coupons or income on any of the deposited obligations, the proceeds of which shall be or shall have been used, or applied by the state, or by any public department or official thereof, pursuant to the terms of the contract. The state comptroller or any such bank or trust company when authorized by the state comptroller, may impose upon each contractor a service charge for receiving, handling and disbursing obligations, funds and coupons pursuant to the provisions of this subdivision in an amount to be determined by the state comptroller. The provisions of this section, as amended, shall supersede the provisions of any act inconsistent herewith.