



CONNECTICUT BANKERS ASSOCIATION

FEBRUARY 16, 2010

TO: MEMBERS OF THE GENERAL LAW COMMITTEE

FROM: CONNECTICUT BANKERS ASSOCIATION

CONTACTS: Tom Mongellow, Fritz Conway

RE: S. B. 131, AN ACT CONCERNING RETAINAGE.

POSITION: OPPOSE

This bill would inappropriately reduce the ability of property owners, developers and borrowers to safeguard their construction projects from potential inferior or incomplete workmanship by contractors. Employing a "retainage clause" during a construction project allows an owner/developer the ability to withhold a portion of the contractor's fee until that service is completed or product is properly installed. Retainage is similar to holding an amount in escrow during a residential sale, until a property condition is rectified. By using a retainage provision in a construction contract, owners/developers can reduce the overall risk of completing the project.

By decreasing the statutorily allowed amount of retainage, as S. B. 131 proposes, the risk profile of construction loans will increase for borrowers, and the banks that lend to them. That increased risk on construction loans will raise safety and soundness concerns for banking regulators, who are giving Commercial Real Estate Loans (CRE's), ever increasing scrutiny. The most likely results of this bill will be more expensive loans (e.g. larger down payments), and/or a tightening of industry wide underwriting standards on this type of credit throughout the state. This proposed bill if passed, will only make it tougher for borrowers to get credit.

When a lender makes a construction loan in Connecticut, that lender underwrites the loan on the assumption that the borrower (i.e., the owner/developer of the property) will be able to: (1) manage the construction project so that improvements are completed in a manner that will support loan advances; and (2) manage cash flow to ensure timely completion of the project and repayment of the loan. Banks regularly require retainage clauses as a condition of the loan, to reduce the risk profile and thus the cost. This bill would impair an owner's or borrower's ability to manage these two concerns.

Connecticut statute already provides a strong existing system of contractor remedies for mechanics liens, (strengthened by the Fairness in Construction Contract Act several years ago), for contractors and subcontractors. Those remedies, versus reducing retainage amounts, should be used to resolve any disputes between owners/developers and contractors.

We respectfully urge your opposition to the bill.