

H.B. 5328, An Act Concerning Public Work Contract Retainage and Enforcement of the Right to Payment on a Bond

General Law Committee

March 3, 2016

The Associated General Contractors (AGC) of Connecticut is the building division of the Connecticut Construction Industry Association (CCIA), representing 150 commercial, industrial, and institutional construction contractors, subcontractors, material suppliers, and professionals serving the Connecticut construction industry. AGC of Connecticut is a chapter of AGC of America.

H.B. 5328 would reduce the limit of retainage amounts on construction contracts administered by the Department of Administrative Services or any other state agency from 10 percent to 5 percent.

Reducing retainage to 5 percent would provide both a measure of fairness and financial relief on state public building projects, particularly for many subcontractors who go long periods of time without being paid the amount of retainage withheld after their work is complete and accepted. Small contractors, who need a consistent level of cash flow to operate, are particularly vulnerable to the withholding of a higher share of retainage.

Delay in an owner's final close-out of projects exacerbates the financial pressure of retainage for general contractors and subcontractors. When the owner delays release of retainage, some subcontractors, particularly those who have finished their work early in the project, have to wait extended periods of time to receive final release of retainage, in effect, operating at a loss while financing projects. This bill would limit that exposure.

By reducing retainage to 5 percent, the bill would provide a reasonable upper limit on the level of retainage across state procurement agencies, the private sector, and municipalities. Currently, retainage is set at different levels throughout the public construction market in Connecticut, which can have the unintended consequence of limiting competition. When considering which projects to bid, contractors must factor in their decision the level of retainage that will be withheld throughout the project. Setting retainage on a par with the rest of the construction market would remove a disincentive to bid state building projects thereby creating a more balanced, competitive marketplace.

The early release of retainage, bonds in lieu of retainage, and other methods have worked successfully to ensure proper performance on private commercial construction projects in the state. In many cases, withholding 10 percent retainage on contractors until the whole project is complete adds little value to the owner and is not in line with the rest of the marketplace. We therefore support a reduction in retainage from 10 percent to 5 percent, as proposed in H.B. 5328.

Please contact John Butts, Executive Director of AGC of Connecticut at 860-529-6855, if you have any questions or if you need additional information.