



UTILITY CONTRACTORS ASSOCIATION OF CONNECTICUT

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House Bill 5328, An Act Concerning Public Work Contract Retainage and Enforcement of the Right to Payment on a Bond

General Law Committee

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The Utility Contractors Association of Connecticut (UCAC) represents the underground utility and site work construction industry in Connecticut. UCAC is comprised of contractors, vendors, suppliers and manufacturers who support the utility contracting and construction industry. UCAC contractor members perform work to improve and enhance the utility infrastructure.

UCAC **supports** House Bill 5328 and respectfully requests that the General Law Committee approve the bill.

House Bill 5328 would reduce the limit of retainage amounts in contracts advertised by the state Department of Administrative Services from 10% to 5%, and allow for collection of reasonable attorneys' fees and costs when a payment bond surety company does not respond in a timely fashion to a claim for payment.

Connecticut law caps at ten percent the maximum amount of a portion of a contractor's or subcontractor's earned funds that may be withheld from each progress payment until the project is complete on covered construction contracts. While the changes to amounts retained by state agencies or public owners by House Bill 5328 would not affect contracts advertised by the state Department of Transportation or contracts awarded by municipalities, UCAC would support a similar reduction of 50% in amounts retained by ConnDOT and cities and towns. The reduction in retainage should extend to all public projects, which maintain performance and payment bonds that adequately protect public owners.

House Bill 5328 would provide a reduction in the amount of funds that may be retained on most public building construction projects awarded by the state. It would provide a balance of fairness and accountability on these projects, particularly for many subcontractors who sometimes go long periods of time without being paid the amount of retainage withheld after fulfilling their contractual obligations. In this economic climate, where margins are thin and

contractors are competing for limited work opportunities, it would go a long way toward helping them. Additionally, the amendments would help stimulate the state's economy.

This reduction in the amount of retainage would provide additional relief. Delay in an owner's final acceptance of projects exacerbates the financial pressure of retainage for general contractors and subcontractors. When the release of retainage to general contractors is delayed, subcontractors often have to wait until after the owner releases the general contractor's retainage. This bill would limit that exposure.

Early release of retainage, bonds in lieu of retainage, and other methods have worked successfully to ensure proper performance on commercial construction projects in the state. In many cases, assurance of subcontractors' proper performance on projects does not hinge on a withholding of retainage until the entire project is complete. It would likewise work on public construction projects as well.

Section 2 of House Bill 5328 amends Conn. Gen. Stat. sec. 49-42(a) to allow a subcontractor or supplier on a public construction project to collect reasonable attorneys fees and costs if the payment bond surety company does not respond to a claim for payment in the time frames required by the statute, and the claimant is ultimately successful in collecting payment. It would encourage timely payment of a bond claim.

The statute already requires that "the surety '**shall** make payment under the bond' for all non-disputed claims within ninety days after notice of the claim, "and **shall** serve a notice on the claimant denying liability for any unpaid portion of the claim." Unfortunately, in a recent decision, *Electrical Contractors, Inc. v. Insurance Company of the State of Pennsylvania*, 314 Conn. 749 (2014), the Connecticut Supreme Court ruled that this language was "directory," not "mandatory." Therefore, the surety now faces no consequences of any kind for failing to meet the statutory requirement for prompt settlement of claims.

The bill would allow for attorneys fees and costs to reimburse a claimant that had to file a lawsuit when the surety did not follow the statutory requirement for a timely response to claims. It provides an enforcement mechanism for the time requirements that are already set forth in the statute.

The current statute provides that a court may award reasonable attorneys fees to either party if the original claim, the surety's denial of liability, or the defense interposed to the claim was without substantial basis in fact or law. But this provision does not promote the prompt settlement of claims.

The fundamental rationale for requiring a payment bond on public construction projects under Conn. Gen. Stat. sec. 49-41 is to guarantee prompt payment to the subcontractors and vendors who perform the work and provide the materials for these projects. (Mechanic's liens are not allowed on public construction projects.) House Bill 5328 advances the underlying purpose of that statute.

Please contact Matthew Hallisey, executive director of UCAC, at (860) 978-7346, if you have any questions or if you need additional information.