



# Connecticut Subcontractors Association

1131-O Tolland Turnpike, # 272 | Manchester, CT 06042-1679 | (866) 995-3919 | [www.connecticutsubcontractors.com](http://www.connecticutsubcontractors.com)

## House Bill 5328 General Law Committee Public Hearing March 3, 2016

TO: MEMBERS OF THE GENERAL LAW COMMITTEE  
FROM: CONNECTICUT SUBCONTRACTORS ASSOCIATION  
DATE: March 3, 2016

### ***PLEASE SUPPORT HOUSE BILL NO 5328 -- AN ACT CONCERNING PUBLIC WORK CONTRACT RETAINAGE AND ENFORCEMENT OF THE RIGHT TO PAYMENT ON A BOND***

The Connecticut Subcontractors Association (CSA) is a Connecticut trade association that represents 40 local businesses that employ thousands of workers in Connecticut. Our member companies provide a complete range of building services for the construction industry in our state. Our member companies employ several thousand workers in Connecticut. Our members are both union and open shop companies, and regularly perform work on public construction projects for the State and cities and towns of Connecticut.

The CSA strongly supports the passage of House Bill No. 5328, An Act Concerning Public Work Contract Retainage and Enforcement of the Right to Payment on a Bond.

**Section 1 of HB 5328** amends Connecticut General Statutes section 49-41b(1) to allow the State DAS, or other state agencies, to hold back 5% on periodic payments for work performed and accepted in state construction contracts. The current law allows the State a 10% hold-back (retainage) on contract amounts that have been earned for work completed and accepted. The current 10% retainage is out of step with the longstanding provisions in subdivision (2) of the statute, which allows for 2.5% retainage for CDOT and subdivision (3), which allows for 5% retainage on municipal projects. Please note also that retainage on most private projects is limited to 5% as well, per Conn. Gen. Stat. section 42-158k.

The 10% retainage for state projects is also out of step with nearly all of the other eastern states. Most of our neighboring states permit only the lower 5% retainage amounts, including MA, NY, RI, NJ, ME, DE, VA, NC, & SC. All public construction projects require performance and payment bonds to ensure both completion of the work and payment of all subcontractors and suppliers. Excessive retainage is totally duplicative and unnecessary for either purpose.

The primary benefit of decreasing retainage to 5% on State projects will be to enable our construction businesses to have more available funds to pay their bills, and to expand their businesses and payrolls. Contractors must pay for all labor and materials expended on state projects in real time as these costs are incurred.

It is unreasonable to require contractors to finance state construction projects by waiting until the end of a project to be paid for 10% of the completed contract amount for the work previously performed and accepted by the owner, oftentimes one or more years earlier. This also will eliminate a very substantial disincentive that prevents many talented and able contractors from bidding on state construction projects.

**Section 2 of HB 5328** amends Conn. Gen. Stat. section 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 subcontractor/vendor claim for payment in the time frames already required by the statute, and the claimant is ultimately successful in collecting payment. (The statute requires sureties to “pay or deny claims,” in whole or in part, within ninety days.)

The current statute already provides that a judge in a court judgment may award reasonable attorneys fees to either party if either the original claim, the surety's denial of liability, or the defense interposed to the claim was without substantial basis in fact or law. So, the current law allows a judge to award attorneys fees to “*punish*” a party that did not take a reasonable position in the case. The current proposal allows for attorneys fees and costs to “*reimburse*” a business that had to file a lawsuit when the surety did not follow the statutory requirement for a timely response to claims. It simply provides an enforcement mechanism for the time requirements already set forth in the statute.

The language for this proposal is copied *verbatim* from the American Institute of Architects (AIA) Payment Bond A312 (par. 7.3) for awarding attorneys fees. (Note: the proposal also provides for reasonable “costs” as well.) This AIA Payment Bond form is widely used in most private, and many municipal construction projects across the nation and in Connecticut. CSA respectfully contends that the same language should be applied to all public building projects in our State.

Please note that the fundamental rationale for requiring a payment bond on public construction projects under Conn. Gen. Stat. section 49-41 is to guarantee prompt payment to the subcontractors and vendors who perform the work and provide the materials for the project. (Mechanic’s liens are not allowed on public construction projects.) This proposal advances the underlying purpose of that statute.

Thanks very much for your support of HB 5328.

Regards,

A handwritten signature in cursive script that reads "Catherine C. Flaherty".

Catherine A. Flaherty  
Executive Director