



**The Surety & Fidelity Association of America
And
American Insurance Association**

Statement of Suggested Amendments to HB5328

The Surety & Fidelity Association of America (SFAA) is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the US. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.

The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 325 insurers that write more than \$127 billion in premiums each year. AIA member companies offer all types of property - casualty insurance, including surety and fidelity bonds, personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

SFAA and AIA recommend that HB5328 be amended to require that the minimum retainage on a public project not be less than 5%.

Suggested Amendment for Section 49-41 b of the General Statutes

As currently drafted, HB 5328 would reduce the required amount of retainage that can be withheld from the payments made to a general contractor under a public construction project from not more than 10% to not more than 5%. In today's economy, retainage of 10% from a contractor's payments may seem high, but in reducing that amount, the legislature also should set a clear policy on the value of retainage in public works contracts. We believe that the bill should be amended so that 5% becomes the amount of retainage withheld going forward. Under HB 5328, retainage at not more than 5% could result in a withholding of retainage anywhere from 0% to 5%. We urge the legislature to require the judicious use of retainage on public works projects in the state.

As such, we recommend the following amendment to ensure that retainage does not drop below 5% or become eliminated altogether:

(1) In the case of a contract advertised by the Department of Administrative Services or any other state agency, except as specified in subdivision (2) of the section, (A) the awarding authority shall not withhold ~~more~~ less than ~~ten~~ five percent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract.....

Retainage Provides Strong Financial Incentives and Readily Available Funds

We strongly believe that retainage serves a public purpose in two ways. First, withholding retainage gives the contractor a strong economic incentive to stay on the job, work until completion, and correct any remaining details. Near the end of a project, without retainage the contractor may find that it will cost more to complete the work than there remains in contract funds. The retainage is only a small percentage of the payments made to the contractor as the work progresses, but by the end of the job it provides a strong financial incentive to complete the project.

Second, it provides readily available funds to remedy a default. If a general contractor fails to complete a project, retainage provides an immediate source of funds for the owner to use to cure the performance default, particularly if it occurs at the latter stages of the project. Subcontractors and suppliers also benefit because retainage can be used to pay them if the contractor defaults.

For the reasons stated above we urge the legislature to amend HB5328 to require at least 5% retainage. We respectfully suggest that anything below 5% provides an economic disincentive to complete a project and reduces the funds available in the event of a default.