

Support Senate Bill 1245 – The NC “Retainage” Reform Act

What is retainage?

- Retainage is the withholding from contractors or subcontractors of a part of each periodic payment earned, but that is not paid until a construction project is completed.
- It is a practice that originated in the 1840s with railroad construction when defaults of new construction entities were at an all time high.
- Currently in North Carolina, retainage is withheld at varying levels on virtually every public construction contract, including the construction of school facilities. To keep construction costs down, retainage levels should be reasonable and uniform.

Why retainage reform is needed

- The current system harms small businesses, especially small subcontractors and early finishing trades by tying up their capital for months and sometimes years, thereby threatening their ability to stay in business.
- Retainage increases construction costs by forcing some contractors and subcontractors to take out loans to absorb retainage costs, requiring them to partially “finance” the construction project.
- High retainage deters capable construction firms from bidding on contracts.
- Retainage can be as high as 10% of the payment due on some projects, even though contractors and subcontractors often have profit margins of much less.
- Performance bonds and warranties already guarantee satisfactory performance of the work.

Senate Bill 1245 changes retainage to make it fairer by:

- Creating a uniform system for all public construction projects.
- Prohibiting retainage on public projects costing less than \$100,000 – to help small business.
- Capping retainage at 5% on public construction jobs worth over \$100,000.
- Not permitting further retainage to be withheld, following completion of 50% of a project – but only if the contractor/subcontractor has performed their work satisfactorily and on schedule
- Allowing the owner or general contractor to reinstate retainage if a contractor/subcontractor does not continue to perform satisfactorily or on schedule
- Requiring full payment, including all retainage, be made within 45 days following substantial completion of a project, less authorized deductions.
- Allowing the owner to withhold sufficient funds to complete and/or correct defects in the project.
- Permitting line item release of retainage for early trades who have completed 100% of their contract by 50% completion of the job.

The following entities support S 1245:

American Fire Sprinkler Association Carolinas Chapter
American Subcontractors Association of the Carolinas
Carolina Asphalt Pavement Association
Carolinas Electrical Contractors Association
Carolinas Roofing and Sheet Metal Contractors Association
NC Heating and Air Conditioning Contractors Association
Painting & Decorating Contractors Association
Plumbing-Heating-Cooling Contractors of NC
NC Department of Administration, State Construction Office
NC 100

Associated Builders and Contractors
Carolinas AGC
Mechanical Contractors Association
Metrolina Wall and Ceiling Association
Steel Erectors Association of America
Waterproofing Contractors Association
University of North Carolina System
Specialty Trade Associations Council
NFIB
United Minority Contractors of NC

For more information, please contact Harry Kaplan at (919) 271-4660, Johnny Tillett at (919) 696-4071, Dave Simpson (919) 608-0683, Henry Lancaster (919) or Henry Jones (919) 828-2501.