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Associated Wall & Ceiling Industries Colorado
Colorado Roofing Association
National Utility Contractors Association Colorado
Rocky Mountain Steel Construction Association
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VOTE YES ON HB 1167 PRIVATE CONSTRUCTION CONTRACT PAYMENTS
Representatives Monica Duran & Perry Will and Senators Julie Gonzales & Ray Scott

PROTECT SMALL- & MEDIUM- SIZED BUSINESSES VIA CONSTRUCTION RETAINAGE CAPS

BACKGROUND

Retainage is part of a construction contractual arrangement where payment for a percentage of the value of completed work is withheld until completion. Typically, in Colorado, that amount is 10% of the total contract for private work. The practice is commonly perceived to provide a level of financial protection to the party withholding retainage as well as an added incentive for proper and timely performance of the work. However, in an industry where profit margins are thin and cash management is essential, withholding retainage can create a significant financial strain on contractors and subcontractors.

IMPACTS & INFO

- Subcontractors commonly carry hundreds of thousands of dollars in retainage and wait on average more than five months, and often up to a couple years, for payment of retainage. During that time, those tied up funds result in a subcontractor being unable to take on new projects, hire new employees, buy new equipment and more. They must borrow money to make up for delayed capital while expending overhead resources on collection of the owed retainage.
- The subcontractor is responsible for 100% of project costs, including: wages, fringe benefits, health insurance, taxes, fuel, equipment, all materials and supplies, and any other sub labor that must be contracted.
- Banks and annuities do not count retainage as an asset when calculating receivable assets which results in subcontractors being unable to access alternative cash flow to make up for funds held up in retainage.
- The warranty under the contract provides assurances that the job is satisfactory, thereby making the practice of retainage withholding obsolete. Subcontractors can only bill for work that has been accepted by the owner and general contractor, if work is unacceptable the subcontractor cannot bill for it.
- Businesses are required to pay taxes based on the percentage of their completed work, regardless of whether they have been fully compensated due to retainage withholding; effectively paying taxes on money they have not yet been paid.
- In Colorado, public entities are only allowed to retain up to 5% of contract costs.
- Reductions in retainage caps in other states have lowered construction costs (about 1-1.5% cost reduction based on a decrease in retainage from a 10% to a 5% cap).
- Reducing retainage caps will free up funds for subcontractors to pay workers better wages and take on new projects more quickly.
- 13 other states have already instituted similar 5% (or less) caps on retainage for private contracts.

SOLUTION

Align the retainage cap for public and private entities – capping retainage at 5%. This would not require changes to the public retainage statutes and would only affect Title 38 - Real and Private Property (contracts between private entities).