

Testimony of **William Flynn**
President, Connecticut Subcontractors Association
Raised Bill 131, An Act Concerning Construction Change Orders
General Law Committee
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My name is Bill Flynn. I am the President and a founding Board Member of the Connecticut Subcontractors Association, a trade association that represents all segments of the Connecticut construction subcontracting industry. I also am Vice-President of Electrical Contractors, Inc. of Hartford, one of the largest electrical contractors in the State. Our construction firm has performed hundreds of projects for the State Department of Public Works, Department of Transportation, many towns and cities, and a variety of large private owners in our state.

The Connecticut Subcontractors Association strongly supports Raised Bill 131, An Act Concerning Retainage. The CSA thanks this committee for raising the bill.

Presently under Connecticut law, retainage for towns and cities in Connecticut is limited to 5%. Retainage for the Connecticut Department of Transportation is limited to 2½%. Retainage is currently being withheld administratively by the Connecticut Department of Public Works at 5%. The present bill would bring the retainage level for private commercial, institutional, and industrial construction in Connecticut to an amount in line with these requirements for public construction.

Raised Bill 131 addresses a critical problem in our construction industry—paying contractors and subcontractors for the work they have properly performed, and that has been duly accepted by the owner and its representatives. “Retainage” is the amount of contract money that has been approved for payment for work performed, but is “retained” by the owner until the project has been completed and closed out. Oftentimes, retainage includes work a contractor has successfully performed one, two, or even three years before it finally gets fully paid for that work. Yet the contractor must pay its laborers every week, and must pay its material suppliers within a thirty to sixty day period.

Retainage is withheld primarily so that a contractor can be forced to partially finance construction of a project out of its funds, rather than from the owner’s funds. Even at the proposed 5% level, this means that 5% of the construction costs are being financed by the contractors and subcontractors until the final completion and acceptance of the project—oftentimes, many months after the owner has taken beneficial use of the project. Withholding large amounts of retainage over an extended period of time—especially in these very difficult economic times for the construction industry—imposes an unfair burden on contractors and subcontractors.

Oftentimes, owners argue in favor of higher retainage levels by claiming that it “guarantees that a contractor will complete its work.” But this argument is bogus. In actuality, contractors can’t, and don’t get paid regular contract payments until their work

is approved and accepted by the owner and its representatives. And then they get paid only for the amount of work that has been accepted. If work is not properly performed, it should not be paid for—period. But equally so, if work is properly performed, it should be paid for promptly. Owners should not be allowed to enjoy the benefit of the work completed by contractors and subcontractors, and also withhold large sums for this accepted contract work under the guise of “retainage”—simply so they can use those funds as leverage over a contractor for unrelated issues.

Raised Bill No. 131 should be approved because:

- It will bring the retainage levels for private commercial, institutional, and industrial construction in line with the requirements for most of the public construction being performed in Connecticut;
- It is critical that contractors and subcontractors be paid promptly for the labor and materials they have performed, and that has been duly accepted by the owner;
- Owners should not be allowed to enjoy the benefit of the work performed by contractors and subcontractors while withholding excessive amounts of “retainage” – as opposed to paying for that work in a timely manner;
- Contractors and subcontractors should not be forced to “finance” the construction costs of private projects.

Again, thanks to the General Law Committee for considering this important legislation.