



TESTIMONY

Senate Business, Labor & Technology

HOUSE BILL 21-1167: PRIVATE CONSTRUCTION CONTRACT PAYMENTS

April 26, 2021

Lindsey Vigoda

Small Business Majority

Dear Chairman Rodriguez, Vice Chairwoman Danielson and Members of the Committee:

My name is Lindsey Vigoda and I'm the Colorado Director for Small Business Majority, a national small business organization whose mission is to empower entrepreneurs to build a thriving and inclusive economy. I am here to express my support for House Bill 21-1167, which would cap retainage for all public and private entities at 5% and allow small construction and subcontract firms to be more competitive against larger firms.

Retainage is part of a construction contractual arrangement where payment for a percentage of the value of completed work is withheld until completion. In Colorado, that amount is typically 10% of the total contract for private work. In essence, subcontractors can complete their work, but only get paid 90% of what is owed until the entire project is complete. On average, subcontractors wait five months after work completion to receive their full payment, but in some cases, they can wait as long as three years. It is not unusual for subcontractors to carry hundred or even thousands of dollars in retainage at any given time. Meanwhile, they continue to be responsible for the full costs of wages, health insurance, taxes and other project costs.

For small contractors, profit margins are already thin and cash management is essential, especially during the pandemic. While larger firms can absorb the costs of these profit delays, withholding retainage can create a significant financial strain on small contractors and subcontractors. This is particularly challenging for small businesses that are struggling to access capital and stay on top of their bills and debt repayments as a result of the pandemic. A recent Small Business Majority survey found that nearly 1 in 5 small business owners say they have missed a loan or other debt payment during the pandemic, and 18% are currently behind on business loans or other debt payments. Entrepreneurs of color are even more likely to be struggling with their loan or other debt payments.¹ Additionally, a more recent survey found many small businesses are still facing financial setbacks from the pandemic, and 3 in 10 may not survive the next few months without additional assistance.²

Lowering retainage caps will not only support individual business owners, but it will also support our entire construction ecosystem here in Colorado. Other states have found that in reducing retainage they have also lowered overall construction costs. Additionally, a reduction in retainage caps will free up funds for subcontractors to pay their workers better wages and take on new projects more quickly.

Leveling the playing field for Colorado's small businesses is important now more than ever, and I urge you to vote in favor of HB 21-1167 to support Colorado's small business community.

¹ Small Business Majority, February 2021, "Small businesses struggling to access capital, harming their financial recovery." <https://smallbusinessmajority.org/sites/default/files/research-reports/National-small-business-poll-access-to-capital-and-COVID-19.pdf>

² Small Business Majority, February 2021, "Survey: 3 in 10 small businesses won't survive past the next three months, need immediate grant assistance." <https://smallbusinessmajority.org/our-research/access-capital/survey-3-10-small-businesses-won-t-survive-past-next-three-months-need-immediate-grant-assistance>

Thank you,

Lindsey Vigoda
Colorado Director, Small Business Majority



KEY VOTE

HB 21-1167 – Private construction contracts

Position: Support – Please vote Yes

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. **Currently, retainage for public projects is capped at 5 percent.**

However, in an industry where profit margins are thin and cash management is essential, withholding retainage can create a significant financial strain on small to medium sized subcontractors.

Small subcontractors face periodic financial crisis's when contractors take several months to release retainage payments. Some small subcontractors carry thousands of dollars in retainage.

These small businesses are not allowed to use retainage amounts withheld by contractors as assets on financial forms. This often prevents a subcontractor from taking on other projects and hiring additional workers.

A subcontractor remains 100 percent responsible for payroll, fringe benefits and healthcare, taxes, fuel, equipment, all materials and supplies, and any other sub labor that must be contracted.

NFIB Colorado requests you align the retainage cap for public and private entities – capping retainage at 5%.

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