

ALASKA STATE LEGISLATURE

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HB 389

Sponsor Statement

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Retainage is a common practice in the construction industry in which project owners withhold a portion of a project contractor's payments until the project is satisfactorily completed. Currently, retainage on a project is determined between the owner and the contracting community through construction contracts, and the rate typically ranges from 2.5% to 10% of progress payments. The underlying reasons for retainage make sense: by withholding a small amount of the contractor's fees, the owner incentivizes completion of the project as they intended and reduces the risk of a contractor walking away from an unfinished job.

However, retainage can also place undue financial burdens on contractors. Many contractors operate with a profit margin of less than 10% or even 5%, meaning that retainage not only accounts for profit but also some of a contractor's expenses. Expenses, such as materials, employee wages, and required employee benefits, need to be paid regardless of whether the contractor has been paid. This situation can force direct contractors and subcontractors to seek costly lines of credit during projects, creating an unnecessary burden for project development.

HB 389 addresses the burden placed on contractors by excessive retainage. This legislation limits retainage to no more than 5% of payments and the total contract price for both public and private projects. It also modifies the timelines and treatment of retainage payments, adding increased penalties for delinquent retainage payments. HB 389 mirrors legislation in many other states that have already capped retainage rates. The most recently passed legislation, California's SB 61, similarly caps public and private retainage rates at 5%.

This legislation is particularly critical for small businesses and emerging contractors who have limited access to capital and thus are disproportionately harmed by high retainage. By implementing a fair 5% cap, HB 389 supports job growth, promotes financial stability, and fosters a fair and sustainable business environment for Alaska's construction industry.