

April 5, 2019

The Honorable Lyndon Carlson, Chair
House Ways and Means Committee
479 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, MN 55155

Dear Chairman Carlson,

Thank you for the opportunity to comment on HF2208, the Omnibus Jobs and Economic Development Finance bill. Retainage is an important tool that public entities use to ensure that taxpayer dollars are protected and contract obligations are met on construction projects. The Department of Administration values its partnerships with the contractors and subcontractors working on public infrastructure projects. Integral to that partnership is prompt payment for satisfactorily completed work. The responsible oversight of retainage is an essential component of prompt payment, of which we are particularly mindful.

The Department of Administration is concerned the retainage language in HF2208, Article 8, Sections 1 and 24 will result in public construction projects not being fully and successfully completed and will inhibit the responsible stewardship of taxpayer funds utilized to pay for public construction projects.

In Subdivision 2, paragraph (c) retainage is required to be released 60 days after substantial completion, regardless of whether or not work has been satisfactorily completed in accordance with contract documents and other contract obligations have been met. This requirement would be in direct conflict with other statutory requirements.

In paragraph (f) retainage that can be withheld after substantial completion is significantly restricted beyond the current limits in statute. It can be difficult to estimate the value of unfinished work, so the ability to withhold retainage of 250% of unfinished work is not a solution for ensuring disputed work is completed. For example, building pressure or temperature control issues potentially involve many different components and subcontractors. The cause is often not readily apparent and could be a faulty sensor, failed piece of equipment, a software programming issue or something entirely different.

Furthermore, the cost impact for failure to provide final paperwork, such as as-built drawings and owners and maintenance manuals can be significantly more than one percent of the value of the contract. The project close-out documents are contract obligations that were agreed to be provided and are being paid for with taxpayer funds.

Additionally, the limit of \$10,000 is too low for retainage on large projects. This amount is not adequate to ensure that contractors have the incentive to complete their contract obligations and does not reflect the cost impact for failure to fully and satisfactorily complete work on construction projects.

Lastly, the bill requires implementing a new definition for substantial completion than currently utilized in State contracts, which is in place to ensure work is completed in accordance with contract documents. If implemented, the definition in the bill would likely result in an increase in disputes on projects.

Retainage is an industry standard tool for ensuring work is satisfactorily completed. If public entities do not have the option to withhold a reasonable amount of payment, other more punitive actions will be required to ensure projects are properly finished. These are blunt instruments with the potential to devastate the livelihood of contractors and subcontractors but there is a fiduciary responsibility to protect the public's investment. There are shared goals around this matter and the department and our public partners have offered suggestions to make the legislation more balanced between the various interests. We are committed to continuing the conversation to find an acceptable solution.

Thank you for your consideration. Please do not hesitate to let me know if I can provide additional information.

Sincerely,

A handwritten signature in black ink that reads "ARobertsDavis". The letters are cursive and connected, with a large initial "A" and "D".

Alice Roberts-Davis
Commissioner
Department of Administration

Cc: Rep. Mahoney
Rep. Hortman, Speaker