



Sen. Willie Preston

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10400SB0074sam001

LRB104 05978 JRC 24619 a

1 AMENDMENT TO SENATE BILL 74

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 74 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the State  
5 Agency Retainage Act.

6 Section 5. Definitions. As used in this Act:

7 "Retainage" means a portion of moneys withheld from the  
8 payment of a contract for a specified period of time to ensure  
9 that a contractor or subcontractor completes a construction  
10 project in the manner specified in the contract. "Retainage"  
11 does not include (i) moneys withheld due to violations of  
12 local, State, or federal laws or (ii) moneys withheld from  
13 grants to entities for capital improvements to non-State  
14 property.

15 "Satisfactory progress" means the advancement of project  
16 work without deficiency and in accordance with industry

1 standards and the contractual schedule and budget.

2 "State agency" has the meaning given in Section 1-7 of the  
3 Illinois State Auditing Act.

4 Section 10. Determination of satisfactory progress.  
5 Subject to the limitations in Section 15, a State agency may  
6 withhold as retainage a portion of the moneys from the payment  
7 of a contract that is entered into on or after the effective  
8 date of this Act if and only if the State agency determines  
9 that satisfactory progress has not been achieved by a  
10 contractor or subcontractor during any period for which a  
11 payment is to be made. If the contractor or subcontractor has  
12 displayed unsatisfactory performance on previous State agency  
13 projects resulting in a low performance score or suspension of  
14 prequalification, the State agency may apply retainage from  
15 the beginning of the project. Retainage may not be used as a  
16 substitute for good contract management, and the State agency  
17 may not withhold funds without cause. Determinations to retain  
18 and the specific amount to be withheld must be made by the  
19 State agency on a case-by-case basis and must be based on an  
20 assessment of past performance and the likelihood that such  
21 performance will continue. The State agency shall re-evaluate  
22 its determination at subsequent project milestones.

23 Section 15. Limitations on the amount of retainage. The  
24 amount of retainage withheld may not exceed 10% of the amount

1 of the draw amounts submitted and approved under the terms of  
2 the contract until the contract is 50% completed, may not  
3 exceed 5% of the amount of the draw amounts submitted and  
4 approved under the terms of the contract for the duration of  
5 the contract, and may be decreased as the contract approaches  
6 completion to recognize better than expected performance, the  
7 ability to rely on alternative safeguards, and other factors.  
8 Upon completion of all contract requirements, amounts retained  
9 under this Act must be paid promptly.

10 Section 20. Limitations on retainage from subcontractors.

11 (a) Notwithstanding any other provision of law, if a State  
12 agency has not withheld retainage from a payment to a  
13 contractor on a project, then that contractor may not withhold  
14 retainage from a payment to a subcontractor for the same  
15 project.

16 (b) If a State agency has withheld retainage from a  
17 contractor in accordance with Section 10, then the contractor  
18 may withhold retainage from a payment to a subcontractor, but  
19 only to the extent that the amount retained from payment to the  
20 contractor by the State agency is attributable to a failure on  
21 the part of the subcontractor to make satisfactory progress  
22 with respect to the subcontractor's contractual obligations.

23 (c) This Section applies only to subcontracts entered into  
24 on or after the effective date of this Act in connection with a  
25 State construction contract that is subject to the provisions

1 of Section 10.".

2 Section 99. Effective date. This Act takes effect July 1,  
3 2026.".