SENATE RESOLUTION

WHEREAS, State law forces contractors who do construction for government agencies to lend money back to their government clients at a zero percent interest rate pursuant to retention laws; and

WHEREAS, Under retention laws, for every pay period after the project bill is approved, the government agency pays only 90% of the bill; and

WHEREAS, The government agency keeps 10% of the bill, which is known as the retention or retainage; and

WHEREAS, The government agency will pay back this forced loan months or even years after the contractor has performed the work and paid for all the supplies and labor required; and

WHEREAS, The forced loan of retainage has an enormous impact on contractors' ability to grow; and

WHEREAS, Instead of improving access to capital, the retention law drains capital from employers; and

WHEREAS, Defenders of retention laws argue that without the leverage of keeping the contractors in debt from the costs they have incurred for doing the approved work for agencies, the agencies wouldn't be able to require contractors to perform to the agencies' satisfaction; and

WHEREAS, Agencies have many other tools to manage contractors, including, but not limited to, their existing vigorous approval and verification process for every pay period or invoice, liquidated damages clauses if a contractor doesn't perform, warranties on all work performed by contractors, and a more nuanced contract for those few circumstances where the quality of the work needs to be verified later; and

WHEREAS, Retention takes 10% of the contract value from all contractors as a forced loan from everyone, whether the subcontractor simply delivered materials or the prime contractor is working on a complicated project that needs some later examination; and

WHEREAS, Under State law, this forced loan drops to 5% of the contract value halfway through the project until close out, a paperwork exercise that can take months after the work is performed; and

WHEREAS, Sometimes, government agencies are understaffed and aren't able to close out a project in a reasonable period of time, or some required paperwork isn't in from one vendor, leading all the contractors to suffer with a forced loan until the agency is satisfied; and

WHEREAS, Retention is a punishing, blunt, and expensive policy; and

WHEREAS, Subcontractors will regularly and successfully complete major work, fronting all the money for supplies and labor, only to be caught waiting for the prime contractor to pay out while they muddle through a retention dispute with a government agency, putting the subcontractor in debt; therefore, be it

RESOLVED, BY THE SENATE OF THE ONE HUNDRED THIRD GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we urge all stakeholders and policymakers to collaborate and consider how to best upgrade public works law in 2024 from the across-the-board, capital-draining policy of retention that takes money from all contractors on all projects to a more efficient, nuanced, and tailored approach that protects government agencies without forcing cash-strapped contractors to go into debt by providing no interest loans to their government clients.