

August 24, 2018

To the Honorable Members of
The Illinois Senate,
100th General Assembly:

Today I veto Senate Bill 3052 from the 100th General Assembly, which would regulate private construction contracts by imposing rigid limits on retainage, a tool used by owners or contractors on construction projects to better guarantee on-time and high-quality project completion.

“Retainage” refers to an agreed-upon percentage of a contract amount that an owner or contractor withholds until the work is substantially complete or meets project milestones defined by the owner to ensure contractors or subcontractors satisfy obligations according to contract. The contracting entities negotiate and include the retainage percentage in their contracts.

This legislation severely restricts private entities’ ability to negotiate retainage amounts by codifying a 10-percent retainage cap prior to 50-percent project completion, and a 5-percent cap thereafter on private construction contracts except those pertaining to single or multi-family homes with 12 or fewer units. The retainage restrictions aim to alleviate cash-flow issues for contractors and subcontractors, but they consequently deprive owners of the ability to negotiate and withhold appropriate retainage due to poor and non-performance. Furthermore, retainage amounts often differ by project and these caps may be too low for retainage to adequately “insure” investments on certain projects, which may ultimately end in fewer approved construction loans or higher financing costs – especially when partnering with firms with less established track records, such as startups.

Owners and contractors should withhold as retainage only reasonable amounts and release that retainage as promptly as possible to prevent abuses that can leave contractors or subcontractors waiting too long for payment and cause them undue financial strain. While I acknowledge that some unscrupulous owners and contractors sometimes engage in improper retainage practices, the State should not regulate with legislation what should instead be negotiated between private parties and may differ from project to project, particularly considering this approach could potentially discourage economic growth, harm existing businesses, increase financing costs, and leave owners with no recourse to address performance issues on construction projects. My

position in no way precludes the private sector from doing everything that it can to root out unfair contracting practices that harm the state's most vulnerable small businesses and startups.

Our state could not prosper without our contractors and subcontractors, and we should encourage fair contracting practices in the public and private sectors. This governmental overreach, however, intrudes upon private entities' right to negotiate their own contracts, and it may constrain economic development.

Therefore, pursuant to Section 9(b) of Article IV of the Illinois Constitution of 1970, I hereby return Senate Bill 3052, entitled "AN ACT concerning business," with the foregoing objections, vetoed in its entirety.

Sincerely,

Bruce Rauner
GOVERNOR