



## Spring 2023 Legislative Issues

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## **SUPPORT SB 133 (Asst. Majority Leader Linda Holmes)**

### **Public Construction Bond Act – Retainage Reduction**

Illinois construction contractors are required by law to provide surety bonds when performing work for local governments to ensure their work is completed well and on time. **On top of the bond requirement, those same local governments typically withhold 10% retainage from contractors after payment is due for work completed – some contractors wait for more than a year after completing work until retainage is fully paid.** The combined detrimental effects on contractors of: i) paying the bond premium; ii) providing security to the insurance company to issue the bond; and iii) the prolonged delay before payment of 10% retainage on work completed – negatively impacts profitability and cash flow for all Illinois contractors performing public work. Some local governments, such as the City of Chicago and Cook County, have already reduced or eliminated the withholding of retainage on their projects. In addition, some state agencies, including the Illinois Capital Development Board, have voluntarily reduced retainage. Many other states restrict the amount of retainage that can be withheld on public projects, but Illinois is not among them.

#### **Issue:**

The combination of withholding a high percentage of retainage plus requiring a surety bond is excessive and creates unnecessary cashflow burdens and profit drain. A barrier to entry into the construction industry is the inability to acquire sufficient operating capital. Illinois has well-intentioned laws to promote the awarding of public construction contracts to minority and women owned businesses, but when newer and smaller companies lack sufficient operating capital to bid on public projects, they cannot participate in those opportunities.

#### **Solution:**

We are asking for your support and a “**yes**” vote on **SB 133**. This legislation amends the Public Construction Bond Act and addresses retention on public construction projects. **SB 133 provides that a local government entity may not withhold more than 5% retainage when a contractor has furnished a surety bond or its equivalent.** SB 133 will ensure local governments are protected, while easing contractors’ cash flow burdens and encouraging participation in the competitive bidding process for local government construction projects.



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## **OPPOSE HB 2492 (Rep. Williams/Sen. Gillespie)**

### **Financing of Guaranteed Energy Savings Contracts**

**HB 2492 as amended amends the School Code to grant school districts specific permission to issue bonds or certificates to finance energy performance contracts.**

“Energy Performance Contracting” is a process that bundles together the design, construction, financing, and continued maintenance of energy efficiency projects for public buildings. A vendor’s proposed energy cost savings are used to pay for upgrades. **The entire energy performance contracting mechanism is designed to finance energy conservation projects with energy savings earned over a specific timeframe – which begs the question – *why do these projects need to be financed with bond funds and certificates?*** If approved, HB 2492 will allow these projects to be directly financed and repaid with property tax dollars, resulting in an expanded use of these types of projects.

**These projects circumvent nearly every existing state law governing construction in Illinois including the Procurement Code, Prevailing Wage Act, Minority and Female Business Enterprises Act, architect and engineer selection laws, and many more.** Energy performance contracts have resulted in significant failures due to lack oversight of the procurement process, lack of oversight ensuring that the promised savings are achieved, failure to ensure that the firms performing this work are following licensing and procurement requirements and failure to ensure that all Illinois contractors and design firms have the opportunity to compete for the work.

Energy conservation is a worthy goal, but there are much better ways to achieve it. Simply put – these are construction projects involving public buildings and therefore, should follow the same laws that apply to other construction projects in Illinois. **More accountability, oversight and verification should exist before expanding this method any further.** For these reasons, we respectfully ask for your “no” vote on HB 2492.