

Committee Name:

**Senate Committee – Economic Development, Job Creation and Housing
(SC-EDJCH)**

Appointments

03hr_SC-EDJCH_Appt_pt00

Committee Hearings

03hr_SC-EDJCH_CH_pt00

Committee Reports

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Clearinghouse Rules

03hr_SC-EDJCH_CRule_03-

Executive Sessions

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Hearing Records

03hr_ab0417

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Misc.

03hr_SC-EDJCH_Misc__pt00

Record of Committee Proceedings

03hr_SC-EDJCH_RCP_pt00

AB-417

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Stepp
Deadline: Wednesday, 3-3-04, 5:00 pm

Please return your vote via paper ballot to Senator Stepp's office by 5:00 pm, Wednesday, March 3, 2004.

Thank you.

Scott Berg, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation? *5-0*
 YES NO

Gary Gust, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation? *5-0*
 YES NO

Matthew Janiak, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation? *5-0*
 YES NO

Rosheen Styczinski, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation? *5-0*
 YES NO

Paul George, Southeastern Wisconsin Professional Baseball Park District Board

Recommend rejection? *S, R, B ✓ M, P*
 YES NO
3 - 2

Gregory Wesley, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

5-0

YES NO

Joseph Messinger, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

5-0

YES NO

The Bills:

✗ **SB 450** – relating to: apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Passage?

4-1 (Moore)

YES NO

✗ **SB 460** – relating to: manufacturing extension center grants and making an appropriation.

Passage?

5-0

YES NO

✗ **SB 497** – relating to: various modifications to housing loan programs and increasing the bonding authority of the Wisconsin Housing and Economic Development Authority

Passage?

5-0

YES NO

✗ **AB 417** - relating to: the retainage on public construction contracts.

Concurrence?

5-0

YES NO

AB 151 - relating to: changing the definition of industrial development project under the Industrial Development Law.

Intro and Adoption of Amendment 1?

YES NO

5-0

Concurrence as amended:

YES NO

5-0

SB 439- relating to: time-share licenses
Adoption of Amendment 2 introduced by Welch (Amendment 1 had a typo)

Adoption of Amendment 2?

YES NO

4-1 (Moore)

Passage as amended?

YES NO

4-1 (Moore)


Signature

Distributed 3-3-04. 1:15 pm

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Roessler
Deadline: Wednesday, 3-3-04, 5:00 pm

Please return your vote via paper ballot to Senator Stepp's office by 5:00 pm, Wednesday, March 3, 2004.

Thank you.

Scott Berg, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Gary Gust, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Matthew Janiak, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Rosheen Styczinski, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Paul George, Southeastern Wisconsin Professional Baseball Park District Board

Recommend rejection?

YES NO

Gregory Wesley, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

Joseph Messinger, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

The Bills:

SB 450 – relating to: apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Passage?

YES NO

SB 460 – relating to: manufacturing extension center grants and making an appropriation.

Passage?

YES NO

SB 497 – relating to: various modifications to housing loan programs and increasing the bonding authority of the Wisconsin Housing and Economic Development Authority

Passage?

YES NO

AB 417 - relating to: the retainage on public construction contracts

Concurrence?

YES NO

AB 151 - relating to: changing the definition of industrial development project under the Industrial Development Law.

Intro and Adoption of Amendment 1?

YES NO

Concurrence as amended:

YES NO

SB 439- relating to: time-share licenses

Adoption of Amendment 2 introduced by Welch (Amendment 1 had a typo)

Adoption of Amendment 2?

YES NO

Passage as amended?

YES NO

Cawla A. Roesler
Signature

Distributed 3-3-04. 1:15 pm

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Brown

Deadline: Wednesday, 3-3-04, 5:00 pm

Please return your vote via paper ballot to Senator Stepp's office by 5:00 pm, Wednesday, March 3, 2004.

Thank you.

Scott Berg, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Gary Gust, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Matthew Janiak, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Rosheen Styczinski, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Paul George, Southeastern Wisconsin Professional Baseball Park District Board

Recommend rejection?

YES NO

Gregory Wesley, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

Joseph Messinger, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

The Bills:

SB 450 – relating to: apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Passage?

YES NO

SB 460 – relating to: manufacturing extension center grants and making an appropriation.

Passage?

YES NO

SB 497 – relating to: various modifications to housing loan programs and increasing the bonding authority of the Wisconsin Housing and Economic Development Authority

Passage?

YES NO

AB 417 - relating to: the retainage on public construction contracts

Concurrence?

YES NO

AB 151 - relating to: changing the definition of industrial development project under the Industrial Development Law.

Intro and Adoption of Amendment 1?

YES NO

Concurrence as amended:

YES NO

SB 439- relating to: time-share licenses

Adoption of Amendment 2 introduced by Welch (Amendment 1 had a typo)

Adoption of Amendment 2?

YES NO

Passage as amended?

YES NO



Signature

Distributed 3-3-04. 1:15 pm

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Plale

Deadline: Wednesday, 3-3-04, 5:00 pm

Please return your vote via paper ballot to Senator Stepp's office by 5:00 pm, Wednesday, March 3, 2004.

Thank you.

Scott Berg, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Gary Gust, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Matthew Janiak, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Rosheen Styczinski, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Paul George, Southeastern Wisconsin Professional Baseball Park District Board

Recommend ~~rejection~~?

YES NO

Gregory Wesley, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

Joseph Messinger, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

The Bills:

SB 450 – relating to: apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Passage?

YES NO

SB 460 – relating to: manufacturing extension center grants and making an appropriation.

Passage?

YES NO

SB 497 – relating to: various modifications to housing loan programs and increasing the bonding authority of the Wisconsin Housing and Economic Development Authority

Passage?

YES NO

AB 417 - relating to: the retainage on public construction contracts

Concurrence?

YES NO

AB 151 - relating to: changing the definition of industrial development project under the Industrial Development Law.

Intro and Adoption of Amendment 1?

YES NO

Concurrence as amended:

YES NO

SB 439- relating to: time-share licenses

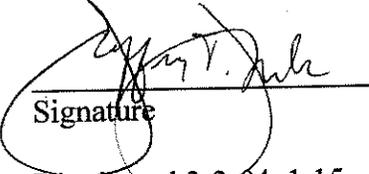
Adoption of Amendment 2 introduced by Welch (Amendment 1 had a typo)

Adoption of Amendment 2?

YES NO

Passage as amended?

YES NO



Signature

Distributed 3-3-04. 1:15 pm

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Moore
Deadline: Wednesday, 3-3-04, 5:00 pm

Please return your vote via paper ballot to Senator Stepp's office by 5:00 pm, Wednesday, March 3, 2004.

Thank you.

Scott Berg, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Gary Gust, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Matthew Janiak, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Rosheen Styczinski, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Recommend for confirmation?

YES NO

Paul George, Southeastern Wisconsin Professional Baseball Park District Board

Recommend rejection?

YES NO

Gregory Wesley, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

Joseph Messinger, Southeastern Wisconsin Professional Baseball Park District Board

Recommend for confirmation?

YES NO

The Bills:

SB 450 – relating to: apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Passage?

YES NO

SB 460 – relating to: manufacturing extension center grants and making an appropriation.

Passage?

YES NO

2.3672

AB859: companion
JFC - took
WDF #5

SB 497 – relating to: various modifications to housing loan programs and increasing the bonding authority of the Wisconsin Housing and Economic Development Authority

Passage?

YES NO

AB 417 - relating to: the retainage on public construction contracts

Concurrence?

YES NO

AB 151 - relating to: changing the definition of industrial development project under the Industrial Development Law.

*limits
scope
from
Auth*

Intro and Adoption of Amendment 1?

~~YES~~ YES ___ NO

Concurrence as amended:

~~YES~~ YES ___ NO

SB 439- relating to: time-share licenses

Adoption of Amendment 2 introduced by Welch (Amendment 1 had a typo)

Welch ✓

Adoption of Amendment 2?

___ YES ~~NO~~ NO

*NO FISCAL
Estimate*

Passage as amended?

___ YES ~~NO~~ NO

[Handwritten Signature]

Signature

Distributed 3-3-04. 1:15 pm

Testimony in opposition to Assembly Bill 417

Peter E. Hans
Director NSI Legal & Claims
West Bend Mutual Insurance Company

March 3, 2004

My name is Peter Hans. I am director of the surety claims department for National Specialty Insurance (NSI), a division of West Bend Mutual Insurance Company located in Madison, Wisconsin.

Although I am not testifying on behalf of any particular municipality, I am president of a small village here in Wisconsin and I also look at this proposed legislation from the perspective of an elected official.

From both viewpoints, I urge you not to adopt the proposed changes to sections 16.855 and 66.0901 of the Wisconsin Statutes, reducing the amount of contract funds that state and local governments can retain on public contracts.

In my opinion, based on my 15 years of experience in the insurance industry, the proposed changes will increase costs to contractors, and state and local governments, because these proposed changes send a clear signal that in the future it will be more risky to do business in Wisconsin. To whom is that signal being sent? To out-of-state reinsurers.

The surety industry is backed by reinsurers, all of whom are domiciled outside the State of Wisconsin. Reinsurers have been taking a financial beating during the past few years, and especially after September 11, 2001, which has caused the market to contract and harden. At this time, only a few reinsurers even want to provide financial backing for sureties doing business in this state and their approach to reinsuring bonds has become extremely conservative. In addition, the downturn in the economy has resulted in contractor defaults and claims here in Wisconsin. The existence of those claims has tightened the screw even more. It is increasingly difficult for Wisconsin sureties to find reinsurance to provide financial backing for bonds on public projects in this state.

Retainage is an important device for sureties to manage and minimize their losses, and to keep from passing some of those losses on to the reinsurers. Decreasing the amount of contract funds that governmental bodies can retain will increase the size of the losses incurred by sureties and passed on to reinsurers. That in turn will result in a decrease in the availability of reinsurance, an increase in the rates that reinsurers charge to sureties for the business they are willing to support, and an increase in the rates that

sureties must charge to contractors. That last statement deserves repeating: The proposed changes will result in increased, rather than decreased, rates that contractors will need to pay for performance and payment bonds on public contracts in this state.

Decreasing the amount of contract funds held will have an adverse impact on project completion. The greater the percentage of retainage, the greater likelihood that the contractor who began the project will complete the project and will do so around the time of the original anticipated completion date. This is true whether or not a contractor is encountering financial difficulty. The proposed amendments will make it easier for some contractors to abandon projects. For other contractors, the financial incentive to complete the project will be diminished. If state and local governments are forced to declare defaults, simply because contractors are not completing projects, then the number of bond claims will unnecessarily increase. In that case, situations that right now never lead to claims will result in claims that ripple all the way to the reinsurers.

Decreasing the amount of contract funds retained will add to direct and indirect costs in the event that problems are encountered with a contractor. An example of direct expense is greater architect/engineer fees incurred by state and local governments as they try to cajole contractors and sureties to get projects completed. Experience tells me that 5% of the contract funds often will not be enough to cover that direct expense, in addition to the usual unpaid subcontractors and suppliers. An example of an indirect cost is the added time spent by public officials as they deal with delayed completion issues. Perhaps more important is the indirect cost to the public relating to the loss of use of property - a police station, a public library or a stretch of roadway - while everyone is scrambling to get the project completed.

Decreasing the amount of contract funds retained means that contractors may not need as much working capital to engage in business in this state. A thinning of working capital will ultimately result in more contractor defaults and bankruptcies, which will lead to more losses for sureties and reinsurers, which will lead to increased rates and decreased availability. This may sound like a slippery slope, but sometimes the slippery slope is more than merely a cliché.

Finally, decreasing the amount of contract funds retained means that state and local governments will be paying out contract funds sooner. Accelerating the cash flow needs of governmental entities makes little sense in an era of budget deficits and calls for controls on government spending.

Please do not adopt these proposed amendments.



TO: Members of the Senate Economic Development, Job Creation and Housing Committee

RE: AB 417, relating to retainage on public contracts

FROM: Joe Quick, Legislative Liaison, Madison Metropolitan School District

DATE: March 3, 2004

Madison Schools oppose AB 417 *unless* the measure is altered as intended by the compromise language offered by Rep. Luther Olsen. Without the change, we believe AB 417 does not protect local taxpayers.

Under current law, the district is allowed to retain up to 10% of the total cost of the project until 50% of the work has been completed. If the project is proceeding as planned, the remaining funds for the project are released to the contractor. However, if there are problems with work on the project, the district has the authority to retain up to 10% of the value of the work that still needs to be completed.

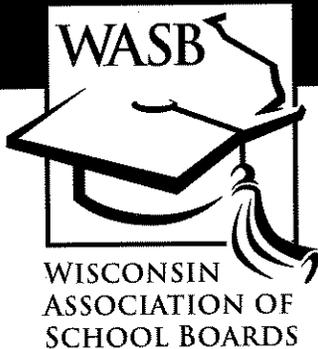
We believe retainage allows school district and other local government officials to protect taxpayers on public projects. Without the leverage of retainage, local government officials have no ability to protect the public purse.

In Madison Schools there are two recent examples of how retainage allowed the district to complete projects in a timely manner. In school instances of public projects, there typically is a small window of opportunity to complete projects during times when students are not in the buildings.

During the Summer of 2002, the district contracted to have the roof at Sandburg Elementary replaced at \$314,000. The contractor was not performing the work (he had overextended himself and had more work than was feasible to complete during the summer). The district used the retainage to find another contractor to complete the work in a short time frame (summer vacation).

During the Summer of 2000, the district contracted for \$134,000 to have the roof replaced at Orchard Ridge/Toki. The job entailed removing all the roofing material and replacing it. The contractor removed the material, but did not cover the roof. Following a hard rain, water leaked into the school damaging the ceiling, ruining lights, damaging tile and carpet and requiring asbestos abatement work. The cost to fix the damage caused by the contractor's negligence eventually caused the project's cost to increase three-fold. Retainage allowed the district to IMMEDIATELY fix the damage to get the school ready for the new school year. Eventually, the district recovered its costs through insurance claims.

We urge a "no" vote on AB 417, unless the bill is amended as intended by the compromise language offered by Rep. Luther Olsen. Please don't hamstring local government officials' ability to protect taxpayers on public projects. If you have any questions, please don't hesitate to contact me at 663-1902. Thank you for your consideration.



122 W. WASHINGTON AVENUE, MADISON, WI 53703
PHONE: 608-257-2622 • FAX: 608-257-8386

KEN COLE, EXECUTIVE DIRECTOR

TO: Senate Economic Development, Job Creation and Housing Committee
FROM: Sheri Krause, Legislative Services Coordinator
DATE: March 3, 2004
RE: Assembly Bill 417

The Wisconsin Association of School Boards opposes Assembly Bill 417, which would reduce the amount of retainage school boards would be authorized to maintain during construction projects and jeopardize taxpayer investments if the work is not properly completed.

Currently, local governments may retain 10 percent of the value of the work performed on a construction project until 50 percent of the value of the work is completed. After this point, they may continue to retain up to 10 percent of the value of the work performed if the project is not progressing satisfactorily. The total retainage may never exceed 10 percent of the value of the work.

AB 417, as originally written, would allow only five percent retainage and would remove the current statutory authority for local governments to retain up to 10 percent of the value of the work in the second half of the project if progress is not satisfactory.

Contractors argue that these changes will contribute to lower project bids, improve satisfactory job completion rates, and increase bidding on public projects. However, numerous school districts across the state have indicated that they need the retainage allowed under current law to ensure that ongoing construction projects will be completed in a satisfactory manner. Furthermore, there is no shortage of bidders for school district projects at this time.

An amendment (LRB 2286/1) to AB 417 was approved by the Assembly to restore current statutory language allowing local governments to retain up to 10 percent of the value of the second half of the contract if progress is not satisfactory. This language is very important to school districts. They need this authority to protect the integrity of their building projects and ensure that taxpayer dollars are well spent. Unfortunately, there was a drafting error in the initial amendment and a second amendment (LRB 0394/3) has been drafted to more accurately reflect the intent of the Assembly.

In order to ensure that school boards have the full authority necessary to protect taxpayers investments, we ask that you approve LRB 0394/3 or vote against AB 417. Thank you.



**Testimony Before the Senate Committee on Economic
Development, Job Creation and Housing on Assembly Bill 417
By**

An Alliance of:

Association of
Wisconsin School
Administrators

Wisconsin Association
of School District
Administrators

Wisconsin Association
of School Business
Officials

Wisconsin Council for
Administrators of
Special Services

**John Forester, Director of Government Relations
School Administrators Alliance**

March 3, 2004

The School Administrators Alliance (SAA) opposes Assembly Bill 417, as amended, relating to the retainage on public construction contracts.

Retainage is the practice of withholding a portion of the payment earned by a contractor until the end of a contract to ensure that the job is completed, completed satisfactorily and completed in a timely fashion. Given that public school districts generally have a very narrow window of opportunity to complete construction projects, ensuring the satisfactory and timely completion of school construction projects is vitally important.

Under current law, as work proceeds on a state or local building project or a contract for the furnishing of supplies or materials, the state or the local governmental unit makes payments to the contractors, but retains 10% of the value of the work performed until 50% of the value of the work is completed. After this point, there is generally no retainage unless progress is not satisfactory. If progress is not satisfactory the state or the local government can retain up to 10% of the value of work performed on the second half of the contract as well, but the total retainage may never exceed 10% of the value of the work.

On Tuesday, February 24th, the Assembly passed an amended AB 417 that, if enacted, would:

- Require that the state or the local governmental units retain not more than 5% of the value of the work performed, **until 50% of the value of the work is completed.** After this point, there would generally be no retainage unless progress is not satisfactory. It is on this provision of the amendment that mistakes were made, including a drafter's error. The author of the amendment, Representative Luther Olsen, clearly intended for the public owners to retain not more than 5% of the value of the work performed **until 100% of the value of the work was completed.**

Representative Olsen clearly articulated this intention to his Assembly colleagues. The amendment proponents, including the SAA, based their support for the amendment on this intention and on what we thought the amendment said. Unfortunately, we failed to detect the drafter's error until after 87 members of the Assembly had voted in good faith to pass the amended bill. The SAA believes that neither the proponents nor the opponents of AB 417 should benefit because of an obvious drafter's error. Therefore, the SAA urges the Committee to correct this unfortunate error as a matter of professional courtesy. Representative Olsen has taken the liberty of having an amendment "fix" drafted. It is important to note that this amendment "fix" would also create a viable compromise between current law and the original AB 417.

- Retain the current statutory language allowing the state or local governmental units, once 50% of the value of the work is completed, to retain up to 10% of the value of the work completed if progress is not satisfactory. AB 417 would have removed that statutory authority.
- Severely limit a school district's authority to protect the local property taxpayers' investment.

The proponents of AB 417 advance several arguments why the state and local governmental units should support this legislation. I would like to comment on two of them.

- Lower required retainage will lead to more bidders on public projects. This argument ignores the fact that we currently have no shortage of bidders on school construction projects.
- Higher retainage is unnecessary to ensure satisfactory job completion when all major construction projects are required to have performance and payment bonds. While bonding is a project requirement, it is a long and painful process to invoke the bond and secure successful completion of unfinished or unsatisfactory work. Again, I would like to emphasize that timely completion of school projects is critical due to the limited time that a school is not in full use.

I would like to provide four examples of why higher retainage than that allowed in AB 417, as amended, is necessary to encourage contractors to stay on the job and complete all work in accordance with the plans and specifications including proper remediation of unsatisfactory work.

- The Antigo School District is currently finishing a more than \$4 million aquatic center project. About six months into the project, the general contractor filed for reorganization. The contractor ultimately returned to the job, but was distracted thereafter. The district retained 10% on the first half of the contract and 5% on the second half. They are using the retainage to satisfy suppliers, to ensure subcontractor payment and to protect the integrity of the project. In the opinion of the school district officials, invoking the performance bond in this case would have significantly delayed the project.
- The Germantown School District is currently retaining 10% of total payments for an out-of-state bleacher company. The company installed bleachers at the district football field this past summer. As part of the project, the company installed an asphalt pad under the bleachers. After the bleachers were installed, the asphalt caved in around the pilings because the company failed to compact the stone base adequately. The district is delaying remediation efforts until this spring to make sure there are no further problems. District officials believe that even 5% retainage would have been inadequate to get the company to return to Wisconsin and finish the project.
- The Baldwin-Woodville Area School District is currently having difficulty getting contractors to complete work in a timely fashion. The district began a three-phase, \$22.3 million building project in December of 2000 and they are still waiting for punch list items to be completed on Phase One and Phase Two of the project. They hope the entire project will be completed in June 2004. School officials believe the only leverage they have to ensure timely completion of the project, is to retain as much payment as the current law allows.
- Mr. Larry Sommerfeld, architect with PMSI Architects in Eau Claire, has extensive experience in providing architectural and construction management services for school districts in Wisconsin. Mr. Sommerfeld has worked with more than 150 contractors in the past four years. On several occasions, he was forced to get a second contractor to finish work not completed by the primary contractor. Even with 10% retainage, there were instances in which the retainage was not sufficient to cover the costs of corrective action. As an architect, he believes he needs more, not less, leverage to ensure that the public owner is protected. Finally, he believes that a lower retainage level may make it easier for the contractor to walk away from the project rather than finish it up.

Finally, it is clear that the expertise on this issue lies with the building contractors and their representatives. My members, on the other hand, have little expertise in this area. The average school business manager or superintendent may build one school in their entire career. The law should protect those with little expertise in this area, because they are the very same people responsible for protecting the local taxpayers' interests.

Thank you for your consideration of our views on this issue. If you have any questions regarding the SAA's position on AB 417, please contact me at (608)242-1370.



The Associated General Contractors of Wisconsin

4814 East Broadway, Madison, WI 53716 • (608) 221-3821 • Fax: (608) 221-4446

**Senate Committee on Economic Development, Job Development and Housing
March 3, 2004**

AB 417 – Retainage on Public Construction Projects

Testimony of Associated General Contractors of Wisconsin
Presented by: Jim Boullion, Director of Government Affairs

Thank you for the opportunity to speak to you today. My name is Jim Boullion; I am the Legislative Director for Associated General Contractors of Wisconsin. AGC represents most of the large commercial general contractors and many of the small to medium size general contractors who do public construction work in the State of Wisconsin.

I am here to testify in favor of AB 417 and ask for your support in changing Wisconsin's current law regarding retainage on public projects.

Retainage is the practice of withholding a portion of the progress payments earned by a contractor for work that they have completed until the end of a construction project to insure that the entire job is finished correctly.

Wisconsin Statute 66.0901(9) (b) currently requires public owners to hold back ten percent (10%) of the money earned by the contractor until the project is 50% completed. The statute does not require any retainage on the second half of the project if satisfactory progress is being made.

The amount of retainage that is withheld was intended to be the contractor's profit margin. By holding only the "profit" portion of their payment the contractor could still afford to pay all of his workers and suppliers, but his profit would be "on the table" until the job is finished.

Studies show that on average contractor pretax profit margins vary from 2% to 4%. In the last two years of the economic downturn those margins have gotten even lower! Holding back retainage above this level forces contractors to borrow money simply to meet their weekly payroll and material expenses. This is a particularly tough financial burden for smaller and specialty contractors whose bank lines of credit are limited and can be more costly.

As amended in the Assembly, AB 417 would change the retainage on public projects from 10% on the first fifty percent of a project to 5%. If a problem is detected and certified by the architect or engineer the public entity has the right to withhold up to 10% of the entire project.

This compromise amendment was worked out over a long day of discussion that in the end provided a benefit to the contractors, who don't have to carry as much of the financing burden on these projects, and to the government entities who retained the additional "hammer" they felt they needed in the event that a project was starting to go badly.

**Testimony of AGC of Wisconsin
AB 417 – Retainage
Wednesday, March 3, 2004
Page 2**

The taxpayers should also benefit because more contractors will be interested in bidding on public projects if the retainage is lowered and they should get lower bids because the cost of financing these projects is lower for the contractors.

Before I close, let me point out that under our bill, in addition to the 5% retainage on progress payments and the 10% hammer if things start going badly, construction owners also have several other tools to insure that their jobs are completed properly:

- During the projects, “progress payments” are made on a regular basis for “work completed.” If the owner does not feel that portions of the work have been completed satisfactorily, payments for this part of the work are not made.
- If problems are detected near the end of a project the final payments can be withheld.
- Most public projects of any size are bonded, which insures money will be available for completion of these projects.

We think that AB 417 as it currently stands represents a fair balance and will benefit the taxpayers of Wisconsin through lower costs and more bidders on public construction projects.

I hope that you to will support this important change and pass AB 417!

Thank you for your attention and I will be happy to try and answer any questions.