



OPPOSE SENATE BILL 3052
STATE INTERFERENCE IN PRIVATE COMMERCIAL REAL ESTATE CONTRACTS

Illinois REALTORS® **OPPOSE Senate Bill 3052**, which would dictate the terms of “retainage” provisions in a contract between a commercial real estate developer and businesses that contract to do work for the developer. A “Retainage” provision, if agreed to, allows the developer to hold back a certain amount of the contracted amount to ensure work is completed properly and on time by the contractor. **SB 3052** dictates a maximum of 10% retainage, to be reduced to 5% once 50% of work the work is completed.

Through this legislation, the State of Illinois is “putting its thumb on the scale” in favor of contractors (and against developers) in what is a private contract between two businesses in the marketplace who are fully capable of negotiating and understanding the contractual obligations which they enter into with eyes wide open.

The State has no business dictating the terms of private business-to-business contracts:

- This is NOT a David vs. Goliath situation, like a big corporation vs. an unknowing consumer, where the State might have an interest in protecting the consumer. We’re talking about sophisticated businesses that negotiate contracts every day. The parties are both well represented and know exactly what they’re contracting for when they enter agreements.
- The main argument of the proponents is that “retainage” is just “non-negotiable” – that they are “forced” to accept a 10% or greater retainage provision, without negotiation. **This is just not true.** There are big developers and small “mom-and-pop” developers, and likewise, there are big and small contractors, and those with specialty skills that are hard to find, and can dictate their terms. ***The parties to the transaction need to be able to negotiate the terms of the agreement that best suit their respective strengths, needs, and priorities given the unique project being developed, without State interference.***
- The proponents also argue that “retainage” provisions prevent contractors from collecting money that they are owed. Well, if the developer is not paying sums that are legitimately due per the contract, the developer would be in breach, and there’s a remedy for that. But, if the contractor **AGREED** to have X% of the contracted amount to be held back until all the work is done, the contractor should simply comply with the contract, and not complain on the back end that the contract they freely entered into is unfair.
- In our view, the proponents want this legislation so they don’t need to negotiate on retainage, giving them a leg up on other provisions with the help of the State.

PLEASE VOTE “NO” ON SB 3052