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Massachusetts new retainage law â€” a classic win-win

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Two months ago, in our last message here, we spoke briefly about a bill ASM was working on at the time, to limit to 5% (down from 10%) the amount of retainage withheld from payments to contractors and subcontractors on private projects, and to speed up the release of that money. It was a ground-breaking bill that represented a fair compromise with Associated General Contractors of Massachusetts (AGC), achieved at the urging of legislators after more than eight months of negotiation.

With two weeks to go in formal legislative sessions, the bill was a long shot, facing stiff opposition from the commercial real estate community. However, together with AGC, we pressed our case with legislators, and today are thrilled to say that fairness won the day! It is now six weeks since the bill passed and was signed into law, as chapter 276 of the Acts of 2014, Relative to Fair Retainage Payments in Private Construction. And it is now just six weeks until the new law takes effect, on November 6, making our victory complete!

A lot has already been written about the new law in the past 6 weeks - and there will no doubt be a lot more to come in the weeks ahead. Not all will be favorable, as there are some who have concerns about potential negative effects. However, that was the same reaction after the passage of the construction Prompt Pay law in 2010. Yet we all quickly saw then that the sky did not fall, and the industry adjusted easily to the new law.

We are confident the same will happen with the Retainage Law - and with good reason: It is a fair law, which benefits all parties to the construction process, owners included. It does not eliminate retainage. It just reduces it to a more reasonable amount, providing sufficient security without unduly squeezing contractors. It does not call for release of retainage within 30 days of substantial completion, as some other states do. It stretches that time to 90 days, to assure work is complete, yet also sets up a process to speed up close out so owners can move in and contractors can get paid - i.e., everyone wins.

And that's just the beginning. There is much more to the law - with plenty of built-in protections for building owners.

So, our message today is: Let's learn about the law, and give it a chance - because it's not just a law to help contractors, it's a law to change the entire building industry for the better.

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