



## **TESTIMONY IN OPPOSITION TO SB 333**

To: Members of Senate Commerce Committee

From: Scott Parker, Public Works Administrator

Date: February 15, 2007

Subject: SB 333

The City of Lenexa agrees that the prompt distribution of undisputed requests for payment on capital projects is of utmost importance. Our city strives to make timely payments and has crafted procedures to assure this takes place. Nevertheless, the City of Lenexa is opposed to Senate Bill 333 because we believe that the mandatory release of retainage at Substantial Completion poses an unnecessary risk to our citizens.

Our experience tells us that one of the most demanding aspects of a project is the completion of final punch list items. Releasing all retainage at substantial completion would hamstring the city in its attempts to assure that its citizens receive a quality product for the public investment in capital building projects. Due to the complexity and specialization required in most of these projects, it is almost inevitable that certain details will be overlooked and need to be addressed even after the terms of substantial completion are reached. The city has experienced several instances where the enforcement of this legislation would have negatively affected projects. For example, in one instance a contractor was hired to replace the heating, ventilation, and air conditioning system at one of its facilities, and while substantial completion, as defined in the contract, was reached, more than 70 items remained to be done before the project could be considered complete. Due to personnel changes that occurred with the general contractor and other extenuating circumstances, these items could not be addressed for several weeks. If the city had been forced to release retainage within the 30-day time frame, however, it would have no leverage to compel the contractor to complete their work and assure a quality product. This is an unacceptable risk that falls to the city.

In summation, we believe that without retainage, the Owner has no expedient means of requiring the contractor to complete final punch list items. For this reason, we feel retainage as it is currently administered is the best incentive for the contractor to complete and finalize a construction project, and oppose any effort to restrict the withholding of it.