



Connecticut Subcontractors Association

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Testimony of **William Flynn**

President, Connecticut Subcontractors Association

Re: Raised Bill No. 70

“An Act Concerning Fairness in Certain Commercial Construction Contracts”

COMMITTEE ON GENERAL LAW-- February 21, 2012

My name is Bill Flynn. I am the President and a founding Board Member of the Connecticut Subcontractors Association, a trade association that represents all segments of the Connecticut construction subcontracting industry. I also am Vice-President of Electrical Contractors, Inc. of Hartford, one of the largest electrical contractors in the State. Our construction firm has performed scores of projects for the State DPW/DCS, many towns and cities, and a variety of large private commercial and institutional owners in our state.

The Connecticut Subcontractors Association strongly supports Raised Bill No. 70, An Act Concerning Fairness in Certain Commercial Construction Contracts. The CSA thanks the General Law Committee for raising the bill.

Raised Bill 70 addresses a critical problem in our construction industry—paying contractors and subcontractors for labor and materials provided to a project. The bill includes two new components:

- (a) the issue of payment for authorized extra work that has been properly performed, but for which the contractor/sub cannot bill because a written “change order” has not been issued “through no fault of their own.”
- (b) A clarification of the statute’s original intent to permit subcontractors to demand that owners establish an escrow account when they fail to pay for labor and materials supplied by the sub.

Section (a) Regarding Extra Work: Without written change orders, contractors and subs cannot bill or get paid for authorized work they already have performed. The bill provides that if those “bottlenecked” change directives exceed 5% of the contract amount, then the contractor or subcontractor does not have to perform additional extra work under new change directives until the current, pending change directives are processed and can be billed. The bill does NOT apply to approved change orders or to original contract work. The bill does NOT apply to DISPUTED work. Also, the 5% threshold tracks the current change order limits for state funding on public school construction projects per Conn. Gen. Stat. §10-286(c), which eliminates additional funding for all change order work on school building projects that exceeds the authorized project cost by 5%.

The proposed legislation would require all parties to manage the project properly and process payment for authorized extra work in order for additional changed work to be performed. Owners and contractors will be required to timely process payment for extra work

that has been authorized and performed, but cannot be billed for payment through no fault of the subcontractor.

This portion of the proposed legislation will:

- Protect against owners running out of money during the course of the project;
- Increase transparency;
- Help to eliminate payment disputes on projects;
- Reduce the unfair shifting of project financing burdens from owners to trade contractors; and .
- Enable Contractors and Subcontractors to get paid promptly for all authorized extra work performed.

Most import, this legislation will prevent the unfair and unethical practice of an owner, or contractor, batching unprocessed change directives and then “leveraging” them against the subcontractor for payment purposes at the end of the project.

Section (c)4(B) Regarding Escrow Accounts: This provision closely tracks the mechanism already included at §(a) of the statute regarding contractors, and now allows a subcontractor to demand that the owner establish an escrow account when it has failed to pay for labor and materials supplied to the project by the sub. This language reflects the original intention of the statute, which always meant to provide unpaid subcontractors with a direct right of action against the owner for failure to pay for work performed by the sub. It is limited in scope to “first tier” subcontractors to protect the owner from remote demands.

This legislation is critical to enable subcontractors to procure payment for their work directly from the owner when the normal requisition and payment process has broken down. It also protects the owner by limiting the owner’s overall payment obligations in accord with payments it has made to either the contractor or the sub for the work performed.

Again, thanks to the General Law Committee for considering this important legislation.