



WHY H.4721 IS NEEDED

An Act Promoting Fairness in Private Construction Contracts – aka “Prompt Pay”

- In the construction industry, chronic slow payment has become the single most important business issue (after getting work), for general contractors and subcontractors alike. Payments are routinely delayed 2-3 months, and often 6 months or more, simply because there is nothing to prevent it, and no recourse. In construction, the party with the power calls the shots and controls the payments.
- Waiting so long for payment can create serious cash flow problems for any small business. It is a serious problem for subcontractors in particular, because subcontractors pay most of the costs for labor and material on a construction project.
- For all the time they are not paid, the subcontractors essentially finance the project out of their own pockets. This can only continue so long.
- This is a problem even in the best of times, and has been for years. But in today’s economy, which has hit construction especially hard, the problem is even worse. Margins are thin or nonexistent, and cash is already scarce; even more so when payments are not received. As payment receivables mount, banks stop counting them as collateral, and subcontractors have a harder time getting credit, at a time when getting credit is already hard enough. And without cash or line of credit, the subcontractors can’t buy materials or pay workers, and are constantly on the brink of failure. In fact, failures are increasing – which means lost businesses and lost jobs.
- The current system is broken, and recognizing this, subcontractors are urging support of H.4721, which will restore fair balance between all parties and speed up payment at all levels. It corrects problems that can’t be fixed any other way.
- Massachusetts is not the first state to consider such legislation. “Prompt Payment” bills have already been passed in at least 29 other states, including New York, Connecticut, Oregon, Arizona, Kansas and Illinois, among others.
- H.4721 is short, simple and respects private right of contract. It is not nearly as restrictive as the laws in most other states. It has just four key elements:
 - 1) It provides reasonable “not to exceed” times for approval or rejection of regular payment requests, AND similarly...
 - 2) It provides reasonable times for approval and payment of change orders, which always present the greatest payment challenge.
 - 3) It sets restrictions on the use of “pay if paid” provisions, which are often used to avoid having to pay altogether.
 - 4) It allows a contractor or subcontractor to stop work if not paid in a reasonable time, which is virtually impossible to do now.
- This bill does not give subcontractors special advantage. It applies equally to contractors and subcontractors at all tiers – the same parties covered by the mechanics lien law – and sets up procedures that are fair to all parties equally.
- By ensuring fair payment practices, the bill promotes the survival of small businesses and the preservation of jobs which is so important to the Massachusetts economy.

For more information, contact:

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