



Connecticut Construction Industries Association, Inc.

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House Bill 7214, An Act Concerning Express Trusts for the Payment of Claims for Materials Furnished or Services Rendered in Building Projects

Judiciary Committee
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Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in Connecticut and is committed to working together to advance and promote a better quality of life for all citizens in the state. CCIA is comprised of approximately 400 members, including contractors, subcontractors, suppliers and affiliated organizations representing all aspects of the construction industry. Associated General Contractors of Connecticut (AGC/CT) is a division of CCIA representing general contractors, subcontractors and suppliers.

House Bill 7214 would create an express trust when a contractor or subcontractor is paid pursuant to a contract for a building. The contractor or subcontractor must hold the payment in trust for payment of all claims due and owing by him. The trust does not terminate until all claims are paid, even if the contractor seeks federal bankruptcy protection. The bill specifies that if a business entity is the recipient of the trust, its owners are responsible for making payments under the trust.

CCIA and AGC/CT commend the proponents of this legislation, the Lumber Dealers Association of Connecticut, and its representative, for their willingness to work with interested parties to build consensus on the bill. We understand that the bill is intended to enable creditors such as lumber dealers to secure payment or obtain some form of recourse from a person who fraudulently forms a business entity, obtains materials on credit and later goes out of business and declares bankruptcy without paying for them. As drafted, however, HB 7214 would be extremely dangerous to general contractors and subcontractors because it would subject them to exposure to allegations accusing them of violating a fiduciary duty as a way to gain leverage in a traditional contract dispute. This legislation could be easily misused by nonperforming subcontractors and suppliers that provide nonconforming materials to intimidate general contractors into making payments for work not properly performed or materials that do not comply with specifications.

Creating an express trust running in favor of the unpaid supplier may create additional security in the rare event of a bankruptcy proceeding, but the dangers of the expressly created trustee relationship must be weighed against the potential misuse in everyday contract disputes.



Connecticut's mechanic's lien statutes, and prompt payment statutes afford protection to unpaid subcontractors and suppliers. Also, contracting parties can always negotiate payment terms in contracts to limit risk, or choose not to enter into contractual relationships if risk cannot be controlled. For example, state law provides a remedy for untimely or nonpayment of commercial construction contracts. Conn. Gen. Stat. §42-158j sets forth a process and provides an adequate remedy for contractors and subcontractors on building projects. An owner must pay a contractor, subcontractor or supplier following a demand for payment.

House Bill 7214 should be clarified to indicate that its provisions are not triggered unless an owner files a petition for bankruptcy protection under the federal bankruptcy code.