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**HB 5142**  
**An Act Concerning the Failure to Pay Subcontractors on State Contracts**

**Government Administration & Elections Committee**  
**February 21, 2007**

House Bill 5142 requires that the Department of Administrative Services (DAS) collect and post on its website complaints made by subcontractors against contractors regarding the failure to pay the sub for labor or materials provided to the contractor on a public project. The proposal further states that such subcontractor complaints may be considered by DAS when it is evaluating a contractor's prequalification application.

**DAS has a number of questions and concerns regarding this proposal that it would like to bring to the Committee's attention.**

HB 5142 is silent regarding whether the complaints filed by subcontractors must be substantiated before being posted on the DAS website or considered against a contractor in its prequalification application. It would seem unfair to collect and publish unsubstantiated complaints brought by one party to a contract against another party, and to potentially penalize a contractor applying for contractor prequalification with DAS because of the unsubstantiated complaints.

In most cases, payment to a subcontractor is withheld or delayed because of a dispute between the contractor and the sub. Perhaps there is a dispute about the timeliness of the work, whether the work was performed satisfactorily according to the contract between the two parties, whether the materials used were approved, or if there were change orders that were not executed properly. If the legislature contemplates that DAS would investigate complaints of non-payment to determine which party is correct in the dispute, this expectation would require DAS to become an arbiter in the contractual relationship between a general contractor and a subcontractor. How would the agency proceed in making such a determination and what standard of proof should DAS use? DAS respectfully submits that it does not have the expertise or resources to investigate or pass judgment on payment disputes between contractors and subs.