



**HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.**  
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*Your Home  
Is Our  
Business*

February 16, 2010

To: Senator Tom Colapietro and Representative Jim Shapiro, Co-Chairs, and members of the General Law Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: RB 5137, AAC Home Improvement Subcontractor Liens

**The HBA of Connecticut is a professional trade association with 1,100 member firms** statewide, employing tens of thousands of Connecticut citizens. Our members are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. We estimate that our members build 70% to 80% of all new homes and apartments in the state.

**We oppose RB 5137 for three reasons:** 1. It is unnecessary to protect homeowners; 2. It would be impossible for subcontractors to comply with the language of the bill; and 3. It destroys the only leverage innocent subcontractors and suppliers have over general contractors who have failed to pay them.

**1. Homeowners already enjoy protection under the law if they have paid for their contractual obligations.** If a subcontractor (and we presume supplier) has performed work on, or supplied materials to, a home for a general contractor (i.e., with whom the homeowner has a home improvement contract) full payment to the general contractor is a recognized defense to a mechanic's lien. The lien in these circumstances is not valid and we are told by construction attorneys that liens filed in these cases are easily discharged by a homeowner and that courts act on such discharges relatively quickly. Moreover, if a homeowner has paid its general contractor in full and in good faith and so informs a subcontractor who has filed a lien on the home, the home owner can demand that the subcontractor immediately release the lien. If the subcontractor fails to do so, then the homeowner, by statute, can seek monetary damages for clouding the homeowner's title. Under current law, no homeowner has to pay "twice" to resolve such liens.

**2. Subcontractors and suppliers cannot comply with the language of this bill.** The language of the bill presumes that a subcontractor or supplier somehow knows whether a homeowner "has paid the home improvement contractor in accordance with the home improvement contract" and whether the "owner is disputing the home improvement contractor's compliance with the terms of the contract." There is no way for subcontractors or suppliers to know either of these two matters. How would they, therefore, comply with this proposed statute? Do they take the word of the homeowner, with whom they often have no direct contact? Do they take the word of the general contractor (home improvement contractor), with whom the subcontractor or supplier may have a dispute that is unknown to the homeowner? And, how does a subcontractor or

supplier even know whether the building is a “primary residence” of the owner, which is a prerequisite condition in the proposal for not being able to file a lien?

**3. The bill destroys the only leverage a performing subcontractor or supplier has in a home improvement job.** In the few cases where this becomes an issue, a subcontractor or supplier is the most “innocent” of all the parties. That is, presume they performed their work or supplied materials as required by their subcontract with the home improvement contractor. The homeowner is in a position of having received and enjoying the value of the improvements, and the general contractor has been paid by the homeowner. The ability to file a lien on a home for lack of payment is the only leverage a subcontractor has to receive the payment they are due. In most cases, the filing of such a lien shakes up the relationship between the homeowner and the home improvement contractor with whom they have a contract. More often than not, it generates payment to the subcontractor, the lien is released and the issue goes away. Without a right to file a lien, a subcontractor or supplier has no leverage to receive the payment they are rightfully due, and is left with only filing a breach of contract action in the courts against the general contractor. This is simply not a viable option, given legal expenses, for most home improvement subcontractor’s claims.

For all of the above reasons, we urge you to not pass RB 5137.

Thank you for the opportunity to comment on this legislation.