National Association of Surety Bond Producers
1140 19th Street NW, Suite 800. Washington, DC 20036-5104
Phone: (202)686-3700
Fax: (202)686-3656
Web Site: http://www.nasbp.org
E-mail: info@nasbp.org

March 14, 2014

Delivered by email to JUD.Testimony@cga.ct.gov

Joint Committee on Judiciary
Legislative Office Building
Room 2500
Hartford, CT 06106

Co-Chairman Eric D. Coleman
Legislative Office Building
Room 2500
Hartford, CT 06106-1591

Co-Chairman Gerald M. Fox
Legislative Office Building
Room 2502
Hartford, CT 06106-1591

Re: CT Raised Bill No. 5570, an Act concerning the applicability of statutes of limitations to actions brought by the state or a political subdivision of the state.

Dear Co-Chairmen Coleman and Fox and Members of the Joint Committee on Judiciary:

The National Association of Surety Bond Producers (NASBP), a national trade association of professional surety bond producers whose membership includes resident and non-resident businesses employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States, including the State of Connecticut, strongly supports Raised Bill No. 5570. This bill would overturn the effect of the Connecticut Supreme Court's decision in *State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al*., 307 Conn. 106 (2012). The Court held that claims by the state or its political subdivisions cannot be barred by statutes of limitation or repose due to the doctrine of *nullum tempus occurrit regi*. While the Court declined to abolish *nullum tempus*, it observed that the legislature has that authority; and NASBP applauds this effort to legislatively abrogate the doctrine.

Without this bill, the state and its political subdivisions could potentially pursue lawsuits against virtually anyone doing business with the state or its political subdivisions indefinitely. This violates a basic notion of fairness and equity. Such statutes are based on the legal principle that a potential defendant in a lawsuit should not be required to defend itself against "stale" claims. Allowing senescent lawsuits to move forward where faded memories, lost evidence, and absent witnesses are the order of the day smacks of unfairness and inequity and subverts the interests of justice.

Virtually all states have enacted or have recognized statutes of limitations and repose for limiting the time in which the state and its political subdivisions can seek legal redress. Connecticut should not be an exception; it would be alone among its surrounding jurisdictions. The *State of Connecticut v. Lombardo Brothers Mason Contractors,* a decision issued in 2012, already has upset the business community in Connecticut, as it ensures the continuing liability of firms doing business with the state and its political subdivisions, essentially, in perpetuity. The considerable testimony that we are

confident you will receive in support of this bill is a testament to the chorus of concern that has been generated by the *Lombardo* decision.

The *Lombardo* decision involved matters in which the state was permitted to pursue claims against a construction firm more than a decade after the state was aware of problems. Construction firms and other firms working on public projects should have a definite point in time by which they are certain that their liability has been extinguished. Such firms should not be subject to indefinite liability, especially where other factors, well outside the control of the original firm, cause, in whole or in part, the problem.

Certainty provides the greatest assurance to the business environment. It stimulates maximum competition, benefitting the public contracting authority, and ensures that business markets remain strong in those jurisdictions. When such certainty is removed, as with the Connecticut Supreme Court decision to uphold the doctrine of *nullum tempus*, the business market becomes unsettled; and the public contracting marketplace becomes less competitive. Businesses are in no position to price indefinite risks and, therefore, may remove themselves from the market.

Certainty is especially important to surety companies, which are in the regular business of prequalifying construction firms and furnishing guarantees on their behalf. Surety companies examine the qualifications of construction firms to fulfill their obligations successfully, looking at their credit history and financial strength, experience, equipment, management capability, risk management practices, and other factors to decide whether or not to issue surety credit in the form of performance and payment bonds. Risks that are impossible for the construction firm to manage or to price pose a special concern to surety underwriters. Sureties can have no certainty regarding their underwriting analysis about the construction firm's future viability and ability to meet its obligations that extend too far into the future. The surety does not expect to be a permanent guarantor for the bonded contract. With potentially unending bond durations, the surety may only issue, if at all, bonds for the largest, most well-capitalized companies. Such market uncertainty restricts competition in many ways, including negatively impacting the ability of small and disadvantaged businesses to pursue award of public contracts in Connecticut as a result of the higher risks entailed.

For the foregoing reasons, NASBP urges this Committee to support Raised Bill No. 5570. By establishing a definite point in time after which the state and its political subdivisions cannot pursue businesses for stale claims, the General Assembly will promote certainty of risk and encourage a more vibrant and competitive business environment. Construction firms and surety companies furnishing guarantees on their behalf should be protected from indefinite liability from the state and its political subdivisions.

Thank you for your consideration of the points set forth above.

Please feel free to contact Mark H. McCallum, NASBP's CEO, at 202-686-3700 if you have any further questions.