



Connecticut Subcontractors Association

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Testimony of Catherine Flaherty

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Raised Bill 1032, An Act Concerning the Applicability of the Statute of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State

Judiciary Committee | March 5, 2015

My name is Catherine Flaherty and I am the Executive Director of the Connecticut Subcontractors Association, the trade association that represents all segments of the Connecticut construction subcontracting industry.

Thank you for the opportunity to submit this written testimony.

CSA supports of Raised Bill, Raised Bill 1032, An Act Concerning the Applicability of the Statute of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State

CSA and its members are very concerned about the Connecticut Supreme Court's 2012 decision in State of Connecticut v. Lombardo Brothers Mason Contractor, Inc. et al., 207 Conn. 412 (2012). In Lombardo, the Supreme Court held that there is no time limit by which the State of Connecticut may initiate claims against a contractor or designer for alleged defects on public works projects. The Court's decision means that every time a contractor or designer performs work under a state contract, that party is incurring exposure for an infinite period of time to allegations that its work was defective.

There are many problems with the Lombardo decision. Statutes of limitations exist for good reasons. It is impractical, and in some cases, fundamentally impossible, to bring a claim against a construction or design firm 15, 20, 30, or even 50 years after the completion of a construction project. With the passage of time, it would be challenging, not to mention costly and/or impossible, to obtain documentation and records, and to locate key stakeholders. Moreover, public owners could, years after the completion of a project, assert claims that are more likely arise from maintenance, life span or other factors not caused by the original design or construction team.

Significantly, state insurance carriers say that as a result of the Lombardo decision, contractors may not be able to purchase completed operations coverage, or tail coverage, on state projects because carriers may not offer it because they can't quantify the risk. Furthermore, bonding carriers and agents have asserted that the decision will have a chilling effect on the ability of some bonding companies to provide surety coverage on state projects. Some contractors may not be able to bid projects because their sureties may say they won't provide a bond on projects for which there is open-ended liability.

Raised Bill 1032 would effectively invalidate the foundation of the Lombardo decision by establishing a seven-year statute of limitations by which the State could bring a claim against a designer or contractor for defects on state construction projects.

CSA encourages the Judiciary Committee members to favorably support Raised Bill 1032. Thank you.

About CSA

The Connecticut Subcontractors Association (CSA) strives to enhance and promote the Connecticut subcontractor through education, information, networking, and legislative involvement at the national, state and local levels and all other means available to successfully accomplish these objectives. The CSA seeks to increase harmony within the industry through communication and liaison with all Connecticut based construction trade groups.

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