



National Association of Surety Bond Producers

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Delivered email via to judtestimony@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 William Tong
Legislative Office Building
Room 2502
Hartford, CT 06106-1591

RE: CT Senate Bill 1032, An Act Concerning the Applicability of the statutes of limitations to construction and design actions brought by the state or a political subdivision of the state

Dear Co-Chairmen Coleman and Tong 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 businesses employing resident and non-resident licensed surety bond producers placing bid, performance, and payment bonds throughout the United States, including the State of Connecticut, supports the conceptual framework of Senate Bill 1032, which establishes a statute of limitations period for actions brought by the state and its political subdivisions against architects, professional engineers and land surveyors. NASBP believes this is a step in the right direction, though only a partial solution, as a similar limitation period for construction contractors and their sureties needs inclusion in the legislation.

SB 1032 would partially 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 place reasonable limitations on the liability of those providing services to the state and its political subdivisions.

Without SB 1032, 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. While not currently addressed in SB 1032, 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 *Lombardo* 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 or place high contingencies in their pricing.

For the foregoing reasons, NASBP supports the spirit of SB 1032, but strongly encourages the committee to amend the bill to include the interests of construction firms and the sureties providing them bonding credit. We would be happy to work with the committee on an appropriate amendment.

We laud the committee's effort to establish a definite point in time after which the state and its political subdivisions cannot pursue businesses for stale claims. By enacting such legislation, the General Assembly will promote certainty of risk to those seeking contracting opportunities with the state and its political subdivisions, and it will encourage a more vibrant and competitive business environment in Connecticut.

Thank you for your consideration of the points set forth above. Please feel free to contact me at 202-686-3700 if you have any further questions.

Respectively submitted for your consideration,

A handwritten signature in cursive script, reading "Larry LeClair".

Larry LeClair
Director, Government Relations

cc: Mark McCallum, CEO, NASBP