



ASSOCIATED SUBCONTRACTORS OF MASSACHUSETTS

## **An Act Promoting Fairness in Private Construction Contracts aka, Prompt Pay bill, H.1804**

### **TALKING POINTS**

- In the construction industry, slow payment has become the single most important business issue, for general contractors as well as subcontractors.
- Waiting 2-3 months or more for payment can create serious cash flow problems for any small business. It's a serious problem for subcontractors in particular, because subcontractors pay most of the costs for labor & material on a project.
- It is a problem that is getting worse every year, and for that reason, members of ASM decided it was time to do something about it. The result is H.1804, the "Fair Payment Practices in Private Construction Act" – simply known as the "Prompt Pay" bill.
- Massachusetts is not the first state to consider such legislation. Similar bills have already been passed in 30 other states, including New York, Connecticut, Oregon, Arizona, Kansas, and Illinois, among others.
- The bill respects private right of contract, and does not go as far as the most of the laws in other states.
- The bill simply requires that all contracts have reasonable payment terms, negotiated by the parties – but doesn't mandate what the terms should be.
- It also requires that everyone adhere to the payment terms in the contract, or face consequences.
- If any party is not paid in accordance with the contract, then they have a right to suspend work (with plenty of notice), without being held in breach of contract. This is virtually impossible to do now.
- If they still aren't paid, they have a right to terminate without being in breach of contract – also virtually impossible to do now.
- Getting paid for change order work is one of the most difficult challenges on any project. This bill requires timely payments for all extra work as well, as long as it was approved in writing.
- This bill does not give subcontractors special advantage. It gives the same rights and responsibilities to everyone – from owner on down – and sets up procedures that are fair to all parties equally.
- In short, it is a bill that restores balance to the system and corrects problems that can't be fixed any other way.
- By ensuring fair payment practices, the bill promotes the success and growth of small businesses in Massachusetts, which are fundamental to a healthy economy.