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## Testimony in Support of H. 3022

### AN ACT TO LIMIT LOSSES OF SUBCONTRACTORS IN PRIVATE CONSTRUCTION

Before the Joint Committee on State Administration

June 18, 2009

In the construction industry today, the number one concern of all subcontractors is getting paid for work performed. Slow payment has become a systemic problem in the industry, and the effect is to make subcontractors responsible for financing construction projects for extended periods of time, often stretching to months, using their own credit resources. Until they get reimbursed, subcontractors must pay the weekly costs of labor and material out of their own pockets – a very heavy burden, since subcontractors do most of the work and are responsible for more than 80% of the costs on a project.

Failure to pay a subcontractor for work performed is by law a breach of contract, and theoretically gives the subcontractor the right to stop work. However, it is now commonplace for provisions of a construction contract to make suspension of work a breach of contract also. The subcontractor is therefore caught in the middle, unwilling to stop work for fear being held in breach of contract and thereby forfeiting all rights to payment for the work performed. Instead, the subcontractor continues to work and incur increasing financial liability, with no assurance of ever getting paid.

H. 3022 corrects this unfair imbalance, by prohibiting any provision that would require a subcontractor to keep working after an extended period of nonpayment, provided nonpayment is not due to deficiencies in performance.

The bill does not guarantee fast or timely payment, but that should be the beneficial result. In the event nonpayment continues, however, it provides the subcontractor with some relief, in time to avoid financial ruin. In other words, it won't necessarily guarantee payment, but it will allow the subcontractor to stop losing money if he doesn't get paid.

Our goal is to restore balance and fairness to a payment system that is often skewed against the subcontractors who do most of the work and bear most of the financial risk on private construction projects. H. 3022 is an important step in that direction, and we urge the Committee to give the bill a favorable report.

Respectfully,

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