Act Number:	09-146	
Bill Number:	785	
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can do this by consent.

THE CHAIR:

Okay. Here's the test. There's an item on the floor to be placed on consent. Without objection, it will be placed on consent. And the test goes forward.

Mr. Clerk.

THE CLERK:

Calendar page 32, Calendar Number 367, File Number 536, substitute for Senate Bill 785, AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS, favorable report of the Committees on General Law, Labor, Planning and Development and Government Administration and Elections.

THE CHAIR:

Senator Colapietro.

SENATOR COLAPIETRO:

Thank you, Mr. President. I move the joint committee's favorable report and passage of the bill.

THE CHAIR:

Acting on acceptance and approval of the bill, sir, will you remark further?

SENATOR COLAPIETRO:

Yes, Mr. President. Thank you. This bill has been brought on by the industry itself and agreed upon

by the industry itself -- sets up a system of who can notify and how they can notify for the matter of change orders.

And the Clerk is a possession of LCO 6417. I would ask the Clerk to call the amendment, please.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 6417, which will be designated Senate Amendment Schedule A. It is offered by Senator Colapietro of the 31st District.

THE CHAIR:

Senator Colapietro.

SENATOR COLAPIETRO:

Thank you, Mr. President. I move the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR COLAPIETRO:

The amendment requires the bill submitted for payment under a construction contract by a subcontractor or a supplier in state to state the status of all change orders, change directives and approved changes. The statement must include when the change orders were given, their costs and what has

been done. The application applies to private construction contractors, public works contractors exceeding $100,000, and it does not apply to public highway or bridge products, Department of Transportation products. And it also defines pending construction change order, or a pending change directive, as an authorized directive for extra work issued to a contractor or subcontractor. I move the amendment.

THE CHAIR:

Thank you, sir.

Will you remark on Senate amendment a? Remark further on Senate amendment a? If not, let me try your minds. All those in favor, please signify by saying, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill? Senator Witkos.

SENATOR WITKOS:

Thank you, Mr. President. I also rise in support

of the bill. It was some compelling testimony during the public hearing, especially those in the construction industry where folks would verbally authorize change orders and then they weren't receiving payment from them even though they were promised that in this, I guess, you would call it a gentleman's agreement. And it was more prevalent than I actually thought happened in that industry. And then those folks would be -- well, they would submit the bills for the material costs and hope to be paid expeditiously, however, that also did not occur. And so you had, often times, the subcontractors holding out for a long period of time before they received renumeration in the labor cost and also for the material costs.

So I think this is going to go a long way to make sure that those people that do the work are getting paid for the work that they do in a timely manner and I urge the chamber's adoption. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further on the bill as amended by Senate A? Will you remark further? Senator

Colapietro.

SENATOR COLAPIETRO:

Thank you, Mr. President. Mr. President, the amendment is a strike all, and therefore, becomes the bill. And going through it, there, I would just move this to the consent calendar, if there's no further discussion.

THE CHAIR:

Motion is on the floor to move the item to the consent calendar. Without objection, so ordered.

Mr. Clerk.

THE CLERK:

Mr. President, that completes those items previously marked go.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Mr. President. For some additional markings.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Yes. So first of all, Mr. President, the Clerk is in possession of Senate Agenda Number 2 for today's

Yes. Thank you, Mr. President. If the Clerk might move now to call the consent calendar, and read the items on that calendar and then call the calendar.

THE CHAIR:

Mr. Clerk, please call for a roll call vote on the consent calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber. Immediate roll call has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber.

Mr. President, those items placed on the 1st Consent Calendar begin on calendar page 1, Calendar 647, Senate Resolution Number 27; calendar page 2, Calendar 648, Senate Joint Resolution Number 77; calendar page 5, Calendar 381, substitute for Senate Bill 1079; calendar page 22, Calendar Number 114 substitute for Senate Bill 894; calendar page 23, Calendar 138, substitute for Senate Bill 817 calendar 144, substitute for Senate Bill 849; calendar page 29, Calendar Number 274, Senate Bill 824; calendar page 31, Calendar 321, Senate Bill 271; calendar 323, Senate Bill 497; and calendar 365,

Senate Bill 384; calendar page 32, Calendar 367, substitute for Senate Bill 785; calendar page 37, Calendar 490, Senate Bill 898; calendar page 40, Calendar 556, Senate Bill 1061; calendar 558, substitute for Senate Bill 1063; and calendar page 41, Calendar 328, substitute for Senate Bill 814.

Mr. President, that completes those items placed on the 1st Consent Calendar.

THE CHAIR:

Please call for the consent calendar. The machine will be open. Oh, Senator Looney. Yes, sir.

SENATOR LOONEY:

Yes. Mr. President, just for purpose of clarification. I believed I had earlier marked on calendar page 21, 2 items on the consent. Initially we had removed -- placed calendar 103, but I believe we also had Calendar 82 on page 21, Senate Bill 761.

THE CHAIR:

No, sir. Those are not noted here on our calendar.

SENATOR LOONEY:

Okay. We'd like to place that item on the consent calendar, Mr. President, calendar page 21, Calendar 82, Senate Bill 761.

THE CHAIR:

There's a motion to place that item on the consent here. Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

THE CLERK:

The Senate is now voting by roll call on the consent calendar. Will all senators please return to the chamber. The Senate is voting by roll call on the consent calendar. Will all senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be closed. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The consent calendar passes.

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Have all the Members voted? Have all the Members voted? Representative Fawcett, would you please vote. Thank you, ma'am. Have all the Members voted? Representative Merrill, will you please vote. Thank you, ma'am.

Have all the Members voted? If so, the machine will be locked. The Clerk will take a tally.

And the Clerk will announce the tally.

THE CLERK:

Senate Bill Number 754 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	9

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed in concurrence with the Senate.

Mr. Clerk, would you kindly call Calendar Number 628.

THE CLERK:

On Page 20, Calendar Number 628, Substitute for Senate Bill Number 785 AN ACT CONCERNING CONSTRUCTION

CHANGE ORDERS. Favorable Report of the Committee on Government Administration and Elections.

DEPUTY SPEAKER GODFREY:

The distinguished Chair of the General Law Committee, Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage in concurrence. Will you explain the Bill, please, sir?

REP. SHAPIRO (144th):

Yes, Mr. Speaker. Mr. Speaker, this is a Bill that would require a certain statement about change orders and change directives to be attached to payment invoices and contracts that are with public institutions or for commercial private contracts.

And the Clerk is in possession of Amendment "A", LCO Number 6417. I ask that the Clerk please call that Amendment and I be permitted to summarize.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 6417, previously designated Senate Amendment Schedule "A". Will the Clerk kindly call the Amendment.

THE CLERK:

LCO Number 6417, Senate "A", offered by Senator Colapietro.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there any objection? Hearing none, please proceed, Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker. Mr. Speaker, as I set forth before, the industry of construction has seen a problem in the area of getting payment down to subcontractors for a number of years.

Initially, this Bill was proposed to enhance that payment, but what we've also seen is that there is an explosion of change orders causing a spiraling of contracts and the cost therefore, and this movement is in order to bring people, to raise awareness about what the costs are and what changes are being made so we can more effectively administer our contracts, keep the costs down, and I move, I urge adoption of the Amendment.

DEPUTY SPEAKER GODFREY:

The question is on adoption of Senate Amendment Schedule "A". The distinguished Ranking Member of the General Law Committee, Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker, through you, a question to the proponent of the Amendment.

DEPUTY SPEAKER GODFREY:

Please frame your question, ma'am.

REP. BACCHIOCHI (52nd):

Thank you. To the Chairman of General Law, could you please explain the few components that the contractor or subcontractor would need to include with his invoice to the owner under the terms of this Amendment?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro, do you care to respond?

REP. SHAPIRO (144th):

Thank you, Mr. Speaker, and through you to my esteemed Ranking Member. The items in the statement would include the status of any pending changes, the associated costs, and a description of any work that was completed.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

And could you explain, I mean, basically why we're doing this, what the problem is that came before our Committee and how we hope this Amendment will resolve that problem? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Yes, thank you, Mr. Speaker. The problem that we envision was two-fold when they came and testified.

One, that subcontractors were having a difficult time getting paid for work done because they were saying that, you know, the ultimate owner of projects was unaware of the changes and their contractor hadn't made the owner aware, so it was difficult to get paid.

And the second problem was that the cost for the contracts was spiraling out of control because no one had a handle on all of the change processes.

So this is an attempt to address both of those problems by streamlining the change directive process and making everyone aware of what the costs are at

every given point in time when an invoice is requested.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker. Yes, I agree. At the public hearings that we held, I think the contractors and the subcontractors have legitimate complaints and problems.

What would happen, though, in the event that a subcontractor failed to include this new, I'm not sure what we're calling it, the change order directive. If that were not part of the invoice that was given to the owner, what would that do to the contract or the payment requests?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker. The Bill doesn't envision any specific penalty for a failure to attach this, but in practice what would happen is that the contractor's payment would probably be delayed because

the contractor or the owner would not see the change directives and would not necessarily have authorized them.

However, it wouldn't obviate any need to get paid because an agreement was reached. It would probably just delay payment. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you. And what type of public and private contracts would this Amendment address?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker. This would apply to all public contracts in excess of $100,000 except for Department of Transportation projects.

And the reason that DOT was excepted in this particular Bill is because they have such a volume of work and were expecting so much to come in through a stimulus fund that we didn't want to test this out while they were doing that.

We're going to test it out with all of the other public projects first, and if it works, I would envision that we would be back to include DOT in this.

On the private side, it's commercial private, so it's four unit developments or above. It would not apply to individual homes, and it would not apply to home improvements. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Through you, Mr. Speaker, I didn't hear the end. Could you define the home improvement part? Is there a threshold for that?

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, it would not apply to home improvement on a single home because it would apply only to developments of four units or more.

Through you.

DEPUTY SPEAKER GODFREY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker. I support the Bill as amended and I thank the Chairman for his answers.

DEPUTY SPEAKER GODFREY:

Will you remark further on Senate Amendment Schedule "A"? Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, if I may, a couple of questions.

DEPUTY SPEAKER GODFREY:

Please proceed, Sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I heard from the discussion we are excluding DOT, and I guess as an explanation my understanding is that it's because of the federal stimulus dollars, and I was just wondering if that could be elaborated with a little bit.

Are we concerned that there may be some federal requirements that could be interfered with if we do include them? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro, do you care to respond?

REP. SHAPIRO (144th):

Thank you, Mr. Speaker. No, the concern was not over the federal requirements and anything that would

be in the stimulus bill and how it would affect what we do here.

It's actually just through our own practices and procedures. This is a new procedure that DOT has not become familiar with and I didn't want to throw that, the current mechanism out of whack while we were expecting so many projects that are so important right now, and we thought that it would be best to try it out in areas that we're not experiencing or about to experience such an influx of money and projects.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, and through you. I see here that we, you know, there's two parts to it, where we're legislating for private contracts and legislating for public contracts, and as I read the procedures, they seem reasonable. They seem kind of almost codifying what the appropriate practices would be in the construction industry.

And I would assume that DOT would already follow these practices. Would I be correct in that assumption?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker. The distinguished gentleman raises an excellent point. One would hope that these were already in place in well thought out commercial projects, but in point of fact we learned that this does not always occur, and in fact, there are costs that people are not aware of at higher levels in the food chain and that causes problems in efficiency and also in subcontractors getting paid.

So while I support, you know, the industry using the best practices on its own, that has not always been the case and there was significant ground swell support for codifying this and making it always the case.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, and I agree with that. And certainly in the private sector, I think maybe people entering into contracts, they may not do so for

a (inaudible) on a regular basis, so I think this language might actually be helpful for all the parties.

And as it pertains to the section for the public sector, I could appreciate why we're excluding DOT, and I guess, in testimonies, I would kind of assume that this particular provision isn't really necessarily being drafted because we have problems in the public sector, that probably the testimony that you might have heard in public hearings applied more to the private sector.

Would I be correct in that? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you. And through you, Mr. Speaker, the Representative would be correct that the predominant complaint came from private sector but there was a significant minority that we're doing public sector work, and where this was not happening and there were payment issues, and also that engendered a financing of the project through the subcontractors because of this low payment.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And through you, were any of those complaints pertaining to the Department of Transportation?

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, in fact I don't absolutely recall them. My sense is no, they were Department of Public Works and perhaps some would be Higher Education facilities' contracts. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And just to be clear in Lines 118 through 119, we're excluding contracts administered by or in conjunction with DOT.

I'm assuming as I read this, the intent of this language is to exclude contracts that the Department of Transportation would be a party to those contracts,

so that if there is maybe a Public Works contract that DOT may be involved with in some indirect way, maybe they have a piece of the contract but they're not a party to it, that those contracts would be included under these provisions that we're seeking only to exclude contracts where DOT would be a party to the contract. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, and through you, Mr. Speaker. That is correct. The intent in these lines was to exempt projects where DOT was in a public/private partnership and there were a number of people and parties interested in the relationship, but it would not, if one of those was another public entity that's required to file under the other section, that portion would still be included.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, and I appreciate the answers. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Will you remark further on Senate Amendment Schedule "A"?

If not, let me try your minds. All those in favor signify by saying Aye.

REPRESENTATIVEWS:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, nay. The ayes have it. The Amendment is adopted.

Will you remark on the Bill as amended? Will you remark on the Bill as amended?

If not, staff and guests please come to the Well of the House. The Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members voted? If so, the machine will be locked. The Clerk will take a tally.

And the Clerk will announce the tally.

THE CLERK:

Senate Bill Number 785 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	9

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed in concurrence with the Senate.

The House will stand at ease.

(Chamber at ease.)

The House will come back to order.

Will the Clerk please call Calendar Number 645.

THE CLERK:

On Page 21, Calendar Number 645, Senate Bill Number 789 AN ACT CONCERNING THE SHARING OF INFORMATION BETWEEN THE DEPARTMENT OF CHILDREN AND FAMILIES AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES. Favorable Report of the Committee on Government Administration and Elections.

DEPUTY SPEAKER GODFREY:

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SENATOR COLAPIETRO: Close? No cigar though. No cigar?

CESAR MEJIA: Close enough.

SENATOR COLAPIETRO: Followed by Diane Henderson.

CESAR MEJIA: Senator Colapietro, Representative Shapiro, distinguished committee members, good morning. I am hear supporting Bill 785, An Act on Concerning Construction Change Orders. Again, my name is Cesar Mejia, and I am the executive director of the Minority Construction Council here in Hartford, also known as the MCC. We represent minority contractors from all four corners of the state and our mission is to promote the overall health and viability of the state minority contracting community. Our members buy materials, equipment, goods and services, provide opportunities to the unemployed, provide training to those who need it, create commerce and build bridges between both the private and public sector to create a better Connecticut.

We have over 150 members and independently our members are very engaged in the political process that affects their business, personal and professional lives. I am here today to speak on their behalf.

The MCC is in support of this legislation for two basic reasons. First, it is our belief that this legislation will help the state of Connecticut decrease its spending -- decrease its spending in the construction area. Within construction projects there are issues that can and should be solved as quickly as they develop that are being postponed to a later date. The state incurs additional costs due

to delays, claims that are derived from conflictings in interest accumulated.

Secondly, the individuals -- individuals that are presently funding -- financing the projects are the subcontractors. They have to -- they have to pay for material, labor, et cetera, before they get paid. This practice is unfair, compounded by the fact the change orders and/or payment issues are not solved in a timely manner. They are also mandated to proceed in performing work. Who and how this particular work is supposed to get paid have not been resolved.

In conclusion, we, the MCC of Connecticut engage you to keep supporting this legislation as it will save the Connecticut -- the State of Connecticut millions of dollars and the subcontractor will get a fair deal.

Thank you for your time. At this time, I was supposed to say, are there any questions?

In regards to the haulers -- in regards to the haulers issue which has just come to, everybody had a little time, so let me get mine too.

In regards to the haulers issue, this issue is humongous. This is a big problem out there out there. I am not prepared to say that I'm in favor or against it because I haven't read the -- the literature, but it is a big issue in regards to the smaller minority contractors.

Thank you. Are there any questions?

SENATOR COLAPIETRO: Any questions from the committee members?

Representative -- I mean, Senator Gomes.

SENATOR GOMES: I don't -- I don't really have a question, but I wholly agree with you. Before becoming a Senator, I was a chairman of a school building committee in Bridgeport where we built schools. And, as a chairman, I used to have to go through change orders and there was quite a few that would come through on the projects, and -- and as you said, the subcontractors and the small business people were the ones that got hurt because these -- there weren't inordinate amounts of money, not in the hundreds of thousands of dollars, but at 20,000 here, 30,000 there, and some of the minority contractors and the subcontractors theirselves had to wait for payment and it became a problem for them. I recognize what you're talking about.

SENATOR COLAPIETRO: Thank you, Senator Gomes.

Representative Shapiro.

REP. SHAPIRO: Thank you. And thank you for coming to testify, Mr. Mejia.

You said that currently you're experiencing delays in the projects because of the dysfunctional nature of the relationship between subcontractor/contractor and ultimate owner of the particular project. Can you tell me where that breakdown now lies? Why -- why aren't the change orders being communicated up to the owner and why are they not paying on time?

CESAR MEJIA: That is a complex -- that requires a complex answer. But I'm going to --

REP. SHAPIRO: I can listen to it.

CESAR MEJIA: But I'm -- but I'm just going to say that it has to basically do with who is going to pay for what. When you've got the general contractor signing a contract, when you got the subcontractor or prime contractor signing another contract, and you've got the sub to that sub to that sub signing all the contracts, at some point in time there is an issue having to do with work performed and who pays for it. Right there, this legislation would serve to put a halt to that. Let's solve it right now. Not, you know, two or three years down the road or when the -- the -- the -- now we got to go to arbitration or got to go to litigation, let's solve it now. What are issues? What are the problems? So, I don't think I've answered your question to the best of -- there would be others coming before me that you can ask that question that will have a better answer for me.

REP. SHAPIRO: Okay. Thank you very much for your time.

SENATOR COLAPIETRO: Oh, hold on. Thank you for your testimony. Diane Henderson followed by Tim Phelan.

DIANE HENDERSON: Thank you Senator Colapietro, Representative Shapiro, my name is Diane Henderson, and I'm here to testify in support of HB 5406, An Act Concerning Public Access to Information Regarding Pharmacy and Pharmacists' Prescription Errors.

As you may recall, I appeared last week to testify in support of SB 325. I'm extremely fortunate and very grateful that both Senator Looney and Representative Sharkey have introduced legislation on this important topic.

anything to do with you --

DIANE HENDERSON: Okay. Thank you.

SENATOR COLAPIETRO: I just made a mistake, and there's some scribbling here but there's Paul Dinto and there should be followed by David Boomer. Paul Dinto.

PAUL DINTO: Good morning, Senator Colapietro and Representative Shapiro, and the committee. My name is Paul Dinto. I'm President and CEO of Paul Dinto Electrical Contractors in Middlebury, Connecticut, and I'm in favor of Bill 785.

I've been in the construction industry for 46 years, and 24 years with a large electrical contractor and then as an owner for 23 years. We employ approximately 150 to 250 people on a yearly basis and we consumed 454,000 manhours last year. I am before you today to request the passage of this bill to help the contractors get paid for their work in a reasonable amount of time. There is a sickness within our industry that must be addressed. I have approximately $698,000 worth of change orders on 11 projects that is at least three months old and they haven't been approved, yet we've been directed to proceed, and many of them are completed already. We can't bill them before then.

There's a proceed with the work clause in almost every contract that is signed in the state of Connecticut today. But they will not let us bill these until the executed change orders are in our hands. It takes months, and as the other Representative said before, sometimes as much as a half a year to a year. It's a pathetic situation. It's been going on for a long time and it has to stop.

We have one large T&M contract change order for $150,000, but it was all T&M, given to the owners and everything. We waited six months for it. It's totally absurd. We have -- I'm sorry. We had on another project over a million dollars in change orders that was held back from us until the end of the project and then they wanted negotiate, plus they were holding our retainage of $500,000.

There are some unethical contractors out there that use this as a profit center to hold and use our money, and also owners that do the same thing. There was also a delay in payment till the end of the job and then they try to negotiate you down. We had to chase one contractor for a year and a half, and it was ridiculous, and finally he paid us at a discounted rate just to get us to leave him alone. We finally said that we would never work with that contractor again.

When the legislature reduced the retainers to 7 and a half percent, I commend you all because that helped us considerably. If things are put into law, we can use that as a -- as a -- for a good purpose. I want to thank you all for this opportunity.

Do you have any questions?

REP. SHAPIRO: Thank you for coming to testify. And I guess I do have a question that I had asked previously, but you seem like the kind of guy who could give the complex answer to it.

The hold up between subcontractor, contractor and owner, is it one of communication; is it one of miscommunication; is it one of they're trying to extend the payments as long as they

can because everyone wants to hold their money. What's causing what you see as payment delays?

PAUL DINTO: I say yes to all that you spoke. First of all, the way it operates is that you're given a request for price for a change order, but when you're given the request for price, you're given a proceed that you --

REP. SHAPIRO: I'm sorry. You're the contractor or you're the subcontractor?

PAUL DINTO: Subcontractor.

REP. SHAPIRO: Okay.

PAUL DINTO: Or contractor. It doesn't make any difference because that would come from up above. Contractors work for construction managers, too.

REP. SHAPIRO: Well, it makes a difference in the communication chain which we'll come to.

PAUL DINTO: I apologize.

You're given this request for change and you're told to proceed on it, and you're given a set of drawings and specifications to do this. You start and you proceed with the work. Now you send your construction change into the owner or to the construction manager or the contractor and he reviews it and then he sends it to the architect and/or owner or owner's representative and then it is approved with all the parties and comes flowing back down through. That's the way the system is supposed to work.

It breaks down on multilevels. And it's sad to say that you have some unscrupulous

contractors out there that hold these and then negotiate with the owner themselves and then beat you up or in plain English come down the pike.

Other times, it's just they haven't got enough clerks, the clerical work, clerical people to handle this. On the larger projects, you have multi change orders. I was on one project where there were over 800 change orders in a year and a half. I mean, it's significant and sometimes it's because the owner changes his mind and changes his scope, or the architect has to move things or engineer or so on right down the line.

As an electrical contractor, I can tell you that we're involved in almost every change because whether it's architectural, structural or even carpentry, we're involved somehow or another.

REP. SHAPIRO: Okay. And so you noted that sometimes this happens because of poor communication and sometimes they're unscrupulous contractors or perhaps even owners in the -- in play.

Now, if you see the unscrupulous contractor or owner situation, I would think, as you mentioned earlier, you have at least one if not two forms of recourse. You said, you know, there are certain people you don't the work with any more and you also have recourse in the legal system. Why do you need this if you have the ability to not work with those folks and if you haven't been paid for work that's been performed and agreed upon, you can avail yourself of the courts.

PAUL DINTO: You can't always avail yourself to the courts. I've been in the business for 46

years and I've never gone into arbitration or never seeked a legal decision. Fortunately, we negotiated out.

I don't work for unscrupulous contractors. I try not to. Sometimes the owners hire these people and we are very friendly with the owners and we have an existing stake there because we do their work. It's relatively a small amount of unscrupulous contractors that I would work for, and if I know they're unscrupulous, I don't bid it out.

And yes, you can go to the courts, but the problem with the courts is that it costs you money. It costs you a lot of money and time, and they lock up your retainers, they lock up your requisitions, and it could be a horrendous task and lot of money.

REP. SHAPIRO: And the Legislature is free.

PAUL DINTO: I beg your pardon.

REP. SHAPIRO: And the Legislature is free.

PAUL DINTO: Well now, the Legislature isn't free. I'm a taxpayer too. But it is a good recourse and it is a good bill.

REP. SHAPIRO: Okay. Part of the bill that seems quite useful is the requirement to include a statement with every monthly payment that goes to the subcontractor and up to the owner. Is this not common practice now in the industry? I mean it seems to me like a well-managed project would have this in every case.

PAUL DINTO: It does not. And when you turn around and you try to bill the -- the extras on the job, they refuse to accept it and they'll knock down your entire requisition in some

cases. Other cases, they'll just cross it out and just pay you what they deem is -- is fair.

REP. SHAPIRO: Okay. But if it were required by law, then they would do it.

PAUL DINTO: They would have to do it, yes.

REP. SHAPIRO: Okay. One final question. And I didn't hear you say this, but perhaps you could respond. Mr. Mejia had said that this payment issue is causing delays in projects. Is that your opinion as well?

PAUL DINTO: It's a delay in recourse. It's a delay in cooperation. It's also a delay in coordination, and it costs more money to go back and do it after the fact. So, yes, there are delays because of this.

REP. SHAPIRO: Okay. But one of the primary recourses you're seeking in this legislation is to further delay these projects, by if you're not getting paid, then you don't have to perform more work which slows down the project.

PAUL DINTO: No, it actually would -- it would propel the project forward because, if you refuse to do that under law, they would be demanded to sit down and negotiate the decision, and to turn around and give you your money when it was due.

REP. SHAPIRO: Do you do most of your work on the nongovernment side or the government side, or a bit of both?

PAUL DINTO: I do about 75 percent to 80 percent of my business is in the private sector and 20 percent to 25 percent of it is in the public sector. As a matter of fact, I was low bidder

yesterday in the Mary M. Hooker School in Hartford.

REP. SHAPIRO: Okay, because we did request information from the public sector, the Department of Public Works and University of Connecticut, both of whom do a variety and multitude of building projects. Not all of them are on time, as it is and as you mentioned, delays make it more expensive. And both of them opposed this provision under the belief that it would cause them further delay and then incur and then incur greater expense. Do you have a response to that?

PAUL DINTO: I believe it would expedite the project and it would be fair where everybody got paid on time, including all of the subs and the vendors that providing the material and labor.

REP. SHAPIRO: Okay, thank you very much.

SENATOR COLAPIETRO: Just to add, I think, talk about delays, I mean that is a concern for everybody I think. And I think one of the delays would be if you had to order another 10,000 feet of electrical wire or something and you're at the mercy of the supplier and if the supplier says I don't have it yet and I'll get if for you, that could possibly delay the project as it is and no fault of yours or the construction manager.

PAUL DINTO: I agree with the specialty equipment more than the conduit wire. But the specialty equipment, if it's a change, whatever, has a time limit on it, and usually it could slow down a project, absolutely.

REP. SHAPIRO: Thank you. Any questions?

Representative Taborsak.

REP. TABORSAK: Thank you, Mr. Chairman. Thank you for your testimony.

I'm a little bit foreign to this subject matter. Maybe you can help me out with this. Why is it that the subcontractor can't protect himself during contract negotiation with -- from these issues? Can you kind of just elaborate on that and take that wherever it goes?

PAUL DINTO: In the contract it specifically would say that you will proceed when given the order to proceed, subject to your price and approval. So you're actually at a legal downturn by -- in breach of contract if you refuse to proceed. This bill allows that once the change orders become over $50,000 or 5 percent of the contract, you can refuse if they haven't sat down and resolved those matters. And what it does, it just draws attention and everybody knows we're serious about this, let's get this on the road.

REP. TABORSAK: You said in the contract. Why is -- explain to me, if you could, why that's nonnegotiable.

PAUL DINTO: If you refuse to accept that, they'll strike you out and go to another bidder. You're in -- and especially in the contracts with the state of Connecticut and with the public -- public forum, it's a nonresponsive bid if you cross out anything.

REP. TABORSAK: Okay, and in the private forum, is it just --

PAUL DINTO: It's just the same. It's pretty much the same. You -- you --

REP. TABORSAK: It's the accepted standard, and if you try to deviate from the standard, they'll just move on to the next bidder.

PAUL DINTO: That is correct.

REP. TABORSAK: Okay.

PAUL DINTO: That is correct.

REP. TABORSAK: Thank you.

REP. SHAPIRO: Representative Nafis.

REP. NAFIS: Hi. Thank you for coming. I -- I just -- this is really about just providing you with some teeth, so that you, in fact, are not having to finance work prior to being able to get payment, is that --

PAUL DINTO: You just said the magic word. We are financing the projects, and on top of it they are holding a retainage with that.

REP. NAFIS: Right.

PAUL DINTO: And a payment of performance bond on public work, by the way.

REP. NAFIS: So it sounds to me as though this is really about, you know, a fairness issue to smaller contractors who truly are carrying a lot of debt to, in fact, move forward some of these larger projects both in the private and the public sector.

PAUL DINTO: Smaller and larger contractors. As I stated, 454,000 manhours; those people got paid every week.

REP. NAFIS: Okay. I just wanted to make --

PAU. DINTO: It's a burden. It's a burden on all of us no matter what side you are on.

REP. NAFIS: Right. I -- it seems it's really a fairness issue.

PAUL DINTO: That's exactly right.

REP. NAFIS: And that would be the way I would view it. Thank you.

REP. SHAPIRO: If there are no further questions, thank you so much for your testimony.

PAUL DINTO: Thank you very much.

REP. SHAPIRO: Next would be David Boomer.

DAVID BOOMER: Senator Colapietro, Representative Shapiro and members of the committee, my name is David Boomer. I'm with the Kowalski Group, LLC, here in Hartford. We represent Central Boiler, Incorporated, which is a manufacturer of outdoor wood furnaces based in Greenbush, Minnesota. They make sales here in the state of Connecticut and have sales operations here.

On behalf of the company, I'd like to offer comments very briefly on Senate Bill 779, An Act Providing Consumer Protections to Purchasers of Outdoor Wood-Burning Furnaces.

As you heard earlier this morning when Commissioner Farrell testified, this bill would provide customer purchasers with an ability to cancel a contract within three days, if they have second thoughts on the purchase of an outdoor wood furnace. Our company can accept that provision. We believe most of the customers have done the research needed as far as how the payback will be on

like seven people testifying in favor -- in favor of the same bill, so if you could split it up, I'm sure the committee will have a couple of questions to -- and we -- I think we understand it pretty well. So there's six in a row and for the record, you could just put on -- just say your names and we can put it in the record.

SB785

STEVE KAPLAN: Thank you. Good afternoon Senator Colapietro, Representative Shapiro, members of the committee, I'm Steve Kaplan. I'm legal counsel for the Connecticut Subcontractors Association. With me is Bill Flynn who's the president. Bill is also vice president of Electrical Contractors, Inc., which is a large electrical contractor in Hartford.

Let me start and just very quickly summarize the real key points of this bill. The bill address a problem that Mr. Dinto pointed out a few minutes ago with contractors and subcontractors getting paid for authorized extra work that they've performed. I emphasize the word "authorize." We are not talking about a situation where there are disputes. That is not within the ambit of the bill. We were very careful to draft it accordingly.

It's also -- the other key part is that the contractor or subcontractor cannot get paid through no fault of their own. This addresses a specific problem, Mr. Dinto alluded to it, where a construct -- a construction changed directive, that is a term of our art, CCD. It's in almost every contract and every subcontract. Representative Taborsak was asking about that. It's in virtually contract I see. I've been doing this for 27 years as a construction lawyer. It's a given in the industry, and here's how it works, just to

make sure everybody knows what we're talking about. Owner or GC will say a -- tell a GC or a sub, do this work. We know it's an extra. We price it, okay, proceed. There's a written directive to proceed, in most cases, or a nonarguable, verbal directive, but let's deal with the written directive.

The contractor does that. Then he starts to say, okay, I need a change order, again a term are, a change order, which is defined in the contract usually to be able to bill for that.

Well, we don't have the change order processed yet, and I'm not casting a spurgence. It doesn't have to be a bad GC, a bad owner. There is a zillion reasons why this happens, but it happens and it happens all the time. We have a number of contractors here like Mr. Dinto who will be able to tell you about that.

When that happens, the GC and sub not only can't get paid for work they've performed, authorized, not in dispute, they also are getting more of these CCDs. They cannot refuse to do that work. They would be in breach of contract. That's what the contracts say.

On a public job, Mr. Dinto said, you bid it, you have a fat spec book; you live by that spec. If you try to change that, your bid is thrown out. Private jobs, they work pretty much the same way. Subs, even very large subs like Mr. Flynn's company, Mr. Dinto's company, who are very large businesses, do not have the kind of bargaining leverage to get those terms out of contract. They do not.

So what happens is, they become -- they are held hostage at the end of a job for

nondisputed work that's been authorized, but for -- again, dozens of reasons, they cannot bill for that. And that's what we're talking about. That's the issue and what this legislation does, it says if that amount of authorized work that cannot be billed for, through no fault of the contractor, exceeds 5 percent, they do not have to accept new authorized changed work. It does not affect the contract work. It does not affect work that has been through the process and change orders have issued. So that just is a very focused bill on a very focused problem.

Let me -- let me have Mr. Flynn perhaps flesh out, from the contractor's point of view, and I'm very happy to answer anybody's questions on that.

BILL FLYNN: Very simply, whenever -- whenever we're performing work, somebody, as Mr. Dinto said, has to pay for it. And there are number of motivating factors for people not wanting to pay for things that everybody agrees should be paid for. You may have -- you may have flaws in the design and it's recognized right out of the gate, a change order, not a change order but a directive to -- to address that design flaw is issued to us. We price it. We move forward. We're doing the work. But the owner doesn't want to pay for it because it's his architect's goof. His architect doesn't want to pay for it because he just want to pay for it.

A GC may have bid the job and missed part of the scope so he owes me, but he doesn't want to pay for it or he wants to disguise it. You may have construction managers who get a percentage back from the entity if they can save money or keep the project under budget. They're motivated to disguise a lot of this

stuff from the owner because they don't want him to know that his project is not only is going to be under budget; it may be over budget.

You may have owners who have -- who have financial difficulties and they agree. Yeah, you need to do this extra work, but they don't know how they're going to pay for it. Well they disguise that fact by extending us on and on and on as their bank, until we get to the end of the job, and as everyone here has stated before, here we are with a million dollars worth of extra work that no one has disagreed with throughout the process of the project, but now all of a sudden you're being offered 75 cents on the dollar.

Or, as Representative Shapiro suggested we can sue and we can probably eat up 25 percent or 30 percent of the money that is owed to us by paying our attorneys and gambling that some day down the road, two or three years from now, we might see that check. Everybody on the other side of the table knows that. We have your money, and we're going -- and if we're allowed to stretch you out to the end of the job, guess what, they've got the completed project; they're using it, and they still have your money and they are negotiating with you now, where there was no negotiation in the middle.

This bill forces everyone to play fair during the course of the project. It doesn't -- it doesn't put anymore additional -- it doesn't make -- give us an advantage. It doesn't give them an advantage now. It makes everybody play honest.

And for the owners who claim that they don't know what was going on or whatever the

reporting part of this bill will enlighten everyone. It will require everyone to be enlightened throughout the job so that, therefore, an owner or a construction manager can't say he didn't know. So it's a fairness bill. And it's not fair -- in these times, with contractors, subcontractors out there who can't borrow money from our banks but have to be forced to finance public projects, you're not going to have many more of us out there much longer if the economy stays the way it is and we keep running our projects this way, because you're going to bankrupt a lot of very good contractors.

STEVE KAPLAN: I'd just like to add something about the notion of delays because I know there's been a lot of discussion. The subcontractors have worked with AGC, Associated General Contractors, and many other groups for about nine months now to work on this concept and present this bill, and through that group, that joint group through AGC and the CSA, we have talked with virtually everybody in Connecticut on this -- this concept. And most people who were originally negative to this have come around and either supported and say we understand it, many large owners understand it. Many large owners have said to us, why do you need this, this is what we do anyway. And we said because not everybody does it this way, and they sit there in disbelief.

Some owners, some large public owners who we've talked to oppose this. And when you really get down it -- I'm not throwing sticks and stones at anybody -- but when you really get down to it, it's an abdication of the owner's responsibility to run a job properly. When you boil down any -- any kind of owner complaint about this, that's what it comes down to because they don't want to monitor the

job and make sure that changes are being handled in a proper fashion.

If we go back to the way it was 30 years ago, I'm getting old now, but when I got out of law school, when you had to have a written change order before you did any work. That was what it was like when I was, you know, coming into this business. You have to have a written change order before you have any work. You guys have put that in the Consumer Protection Statutes for the homeowner, home improvement. A contractor can't get paid without a written change order in the home improvement side.

If you put that in here, my guys would go up and say, thank you very much. We are thrilled. See you all later. But the construction industry can't work that way. It can't be that black and white. You need these change directives to keep jobs going and avoid delays. But at the same token, these guys have to be able to get paid. I'm doing that authorized work and it really is a way of avoiding delays cause you avoid problems. Cesar said you avoid these problems, you keep the job going.

I don't know if you folks have any questions or not.

REP. SHAPIRO: Any questions from the committee?

We have one. Representative Taborsak.

REP. TABORSAK: Thank you, Mr. Chairman. Thanks for that explanation.

So if I understand this and to try to even simplify it a little bit more, the system doesn't work very well. But you're willing to work under the system that doesn't work very

well up to 5 percent, and then at that point you think that we need to do something and give subcontractors or contractors greater rights, greater leverage to kind of stop the bleeding. Is that pretty much what this -- this does?

STEVE KAPLAN: Very much so. It really says look, we know there's -- and this an optional thing. If a job's being run properly, subs, GCs, might say, yeah, we're not concerned. We know things are in the pipeline. They're getting down. No problem. It gives them the discretion to say, wait a minute. No moss. We've got to sit down. We've got to talk. We're over this 5 percent threshold. I'm not comfortable, I'm going to get paid here, or going to get paid before next sukus, for any of you who understand Yiddish, we have to sit down and talk. And that's really what it does.

REP. TABORSAK: And was that 5 percent number that was taken from the state standard for public school construction. Is that how you came up with that number? You just figured it worked there; let's use it here.

STEVE KAPLAN: Absolutely. We were wrestling with that because the group, and again, very broad spectrum of contractors and different construction people. What's -- you know, is 5 percent enough? 10 percent; what do we do? We have in the statutes, towns and cities cannot get 100 percent authorization for change orders on school projects that exceed 5 percent by statute. They get 50 percent of their authorization after 5 percent. How many towns and municipal building committees on the XYZ elementary school next year are going to know that when they're going 10 percent or 15 percent over on change orders, and you're

issuing CCDs, and contractors say, Wait a minute. How are we going to get paid? That's going to be a very real issue. I think that legislation is about two years old, as I recall.

So again, yes, we've specifically plugged that for that reason. I thank you for bringing that up.

REP. TABORSAK: Okay. Thank you for your testimony.

STEVE KAPLAN: Thank you very much.

REP. SHAPIRO: Actually, a follow up to that question, because the 5 percent rule for schools is not working particularly well. And can we break it down to what that would mean on an actual project? Because it can be 5 percent of any subcontractor, right, so you could have someone who's doing a million dollars worth of work and you could have someone who's doing $10,000 worth of work. So for a very small amount of money, but you guys are pros in the industry, I've seen this on a personal level, if the electrician can't do something then the plumber can't do something and the carpenter can't do something. And it all rolls, you know, uphill or downhill, as the case may be. So if you have someone doing at 5 percent what could $500 worth of work and he doesn't have the change order, which is the change to the change directive, and hasn't been paid for it, and he stops all those other people from working, how does that affect the project?

BILL FLYNN: Well, number one, it wouldn't. In the real world, it wouldn't. You're talking about a change order that's very time related, and you're talking about undisputed work because

that's all this bill addresses.

So if you've got a school building project that has a very small subcontractor that has a change order for which he's done the work, and everybody agrees he's entitled to payment, and you saying, but then if don't fill out our paperwork that allows him to bill us and it hurts us, we can't let you do that. Isn't that kind of ridiculous? I mean, it's within their power immediately to issue the change order to have no delays.

The other thing is that I can't imagine any school building committee would allow that to happen to themselves anyways.

And, yes, any change order can hold up somebody else's work, but I doubt you would ever see anything like that happen. But, I mean, it's in the -- it's in the power of the entity that's paying the bill to not let this happen, and the only reason it would happen is that they've fallen down on the job and simply not issued a piece of paper that allows the individual to bill for the work they told him to do and accepted his price for.

STEVE KAPLAN: I think that at the risk of getting lynched by some of my compatriots here, the notion of putting in some minimum thresholds I think would be -- would -- are certainly -- is certainly not foreign to the kind of payment statutes we have on the books. Payment bond statutes have minimum thresholds. The notion of putting in a minimum threshold for a subcontract exceeding $25,000 is something, so you avoid the I haven't gotten paid for my new hammer problem. I don't think anybody in our group, though we haven't specifically discussed it, I don't know that anybody would be particularly, you know, problematic with

that.

REP. SHAPIRO: The number was chosen in connection with the school number, but that number was, to a certain extent, arbitrary and to a certain extent this one is too and --

STEVE KAPLAN: Well, also, don't forget, most subs -- the problem is not on the $25,000 subcontract. The problem is on DCI Dental Electric Sullivan Mechanical Acoustics $2 million subcontract. That's where the problem is. It's not on the very small contract.

REP. SHAPIRO: Okay. Thank you very much.

STEVE KAPLAN: Thank you for asking.

REP. SHAPIRO: Representative Aman.

REP. AMAN: Yes, can you just further explain what the real difference between a change directive and a change order is and then tie into that, if you've gone ahead on a change directive, can they refuse to sign a change order? What actually both legally and practically happens since it, to me, appears to be exactly the same thing, except for one, you need the piece of paper to get paid and the other one you need so you're authorized to do the work.

STEVE KAPLAN: You're absolutely right. You've pretty much answered your own question. The change order is usually defined in the contract. It's certainly a standard term of art within the construction industry. It means the change to the contract has been issued. It actually changes the contract terms in terms of scope and price. The contractor can bill to get paid as he does that work under that change order, it's now part of the contact. That's a change order.

That's certainly not the problem.

A change directive is also a term of art defined in most contracts as an order, authorized order, to proceed. You do the work. We either agree on price or, if you can't agree on price, you get paid on time and material basis. That's basically what that clause says.

The problem is when the contractor does that work under the change directive, they can't bill for the work under the contract terms until the change order has been processed. That's boilerplate in construction contract law. And that's just the way it works. And so that's the anomaly we're trying to address. That's really the issue. You have the change directive, you have your authorized work, you've proceeded, you want to start to get paid for it, but for some reason the change order hasn't been processed, you don't have the vehicle to pay for it. And -- and a lot of times you get this horrific leveraging accumulating of these issues to the end of the job, and as you heard, the contracts just start to get clubbed like baby seals. That's what starts to happen.

REP. AMAN: If the construction manager gives you a change directive and you both sign off on it and you proceeding to do the work, he then proceeds to give that to give that to the owner and says, this is what we should do, and the owner says, no, I don't think we should have done that. What happens at that point?

STEVE KAPLAN: That's a great point. The contractor has got a legally binding directive, but he can't get paid until it's signed off by the owner. The owner may have a bone to pick with the construction manager, in

the example you just gave, and that could be the reason the change order's getting held up. But guess -- guess what? My innocent, well-performing contractor is sitting there going, why can't I get paid? Nobody -- I have an authorized directive that I did the work under, why is this now my problem? It sounds like Twilight Zone, but that's a reality. And that's -- that's really one of the major problems we're trying to address here.

REP. AMAN: Does this also work down that the subcontractor who, you know, traditionally you maybe resub things down two or three times 'til you get to the person that's actually doing the work, how much of this goes on, you know, down the levels, would this law apply to basically the subcontractors of the subcontractors or just on the initial subcontract to the general or the owner?

STEVE KAPLAN: Well, the way we have it worded, Representative Aman, is it would be applicable to a contractor or subcontractor. And again when we mentioned having some minimal price amount of a subcontractor contract to make a threshold on this, I don't think that concept is foreign. You could have it within one or two tiers. We have that in the bonding statute, a subcontractor who's in direct contract with the general contractor or CM. We're really trying to address the larger problem here.

It's not really a trickle down -- it is a trickle-down problem, because it affects sub-subcontractors, it affects vendors, because they're not going to get paid for stuff they've done until these change orders are processed and the guys up the ladder can bill and get paid. But the subcontractor is always going to have a primary interest in

getting this stuff processed and getting his guys paid. He's not trying to stiff them for what they've done, most of the time anyway. He wants to get them paid.

REP. AMAN: Has this procedure been a problem more on government financed or government run projects or on private financed, private run projects, or is it about equal, or is it just completely random?

BILL FLYNN: It's equal. I mean, it's like I was saying before, you have certain -- can have construction managers or general contractors that -- that are motivated to play this game. And you also have certain owners, including public entities, because of financing, budgetary concerns, so it can happen on any job public and private.

REP. AMAN: Yeah, I know from working with our public building commission and when they meet and if you have August change orders, when they don't meet, all of a sudden, for no fault of anybody, you can have 60 or 90 days go by that the change order everybody agreed to just hasn't gone through the -- through the channel to be -- to be finished.

STEVE KAPLAN: Right. The department of Public Works administers public projects for client agencies, they get it -- I've had cases, more than one time, they get into the same type of disputes with their client agency about change orders. The contractor is done, and he's sitting there going, well we can't process it yet because we're having a dispute with our client agency. This is dickey-dovey.

So again, because it can be done, it gets done, because it can happen, it happens.

BILL FLYNN: Yeah, literally, we've had projects for the DPW where their client agency doesn't agree with them, and there's a squabble going on between the public entity that's going to end up with the building and the DPW about who's paying for something. But again, we've performed the work legally, accurately, it's done, we've incurred all the costs, and we're sitting on the sidelines begging for somebody to please pay us, and we can't get paid because the state agencies can't agree amongst themselves.

REP. AMAN: So this is no question the work had to be done, the work was done correctly, and it's which public pocket the money is going to come out of.

BILL FLYNN: Absolutely, positively correct.

REP. AMAN: And under this legislation, you feel that because a project would basically stop, if they didn't get around to doing it that they would proceed to get that paperwork issued.

BILL FLYNN: Representative Aman, that's not really true. It would never stop a project. I mean, we're talking about stopping any future change order work beyond that point. In other words, it's just -- it's a place where we can say, we're never going to stop the construction of the main contract work. All of the -- all of the change orders that have already been approved and there is a change order for them, are under way. None of that is ever going to come into play with this bill. This is strictly to say I've had enough of your change order work going forward, because you haven't paid me for now 5 percent of my contract value for change order work that I've performed and should be able to bill against but can't.

So it's only for any more additional work above and beyond that that would stop the project. And the entity in control could open the floodgates up and cure that problem in a minute by simply paying, issuing the paper to pay for the older change order work that's been performed but wasn't billable just by pushing out the change order, so you now could bill it. We remove your ability to have any reason to say no more.

So it's a real -- what it does is it just forces -- it forces the people on the other side of the table to process their paperwork more quickly. Otherwise, you won't do any more new change order work for them.

REP. AMAN: Okay. And this would not address the problem of when you submit a change order request for funding plus part of your contract and they send you back a check just for the contract price and say, sometime in the future we'll pay you for the change order.

BILL FLYNN: Yeah. It won't cure that. Right. I mean, if you've got all your paperwork in and you got a right to bill for it and then they still don't pay for that, then that's when we have to call Mr. Kaplan.

REP. AMAN: Okay. Unfortunately, I've seen that happen too many times.

Thank you, Chairman.

REP. SHAPIRO: Thank you.

I have just one quick follow-up question because I know we've been at this a while. In your conversation with Representative Aman, you discussed a key point where what happens

if there's a dispute between and owner and a GC, the GC has authorized work without talking to the owner and sent you the directive. The subcontractor has done the work, done everything he's supposed to do and you said, now why it his problem? The converse of that is now why is it the owner's problem because he did what he was supposed to do too, but under this bill, now you have the ability to stop his project, it's now his problem. He didn't do anything wrong either.

STEVE KAPLAN: Yeah, the -- the owner owns the project. The owner holds the hammer. Nobody else holds the hammer. The owner holds the hammer. If the owner doesn't know what's going with his project with significant change orders being issued, or change directives rather, being issued, the owner's not doing what he's supposed to do. This project's going to blow up eventually anyway in the situation you just described. And what this does is it brings the owner in right away to say, look, we've got an issue that's got to be resolved. And however it gets resolved, it gets resolved.

Now what's going to happen is the owner, if it -- usually what will happen is that they'll resolve it. That's usually what's going to happen. And most of the contractors who come to table on this thing, we need some relief, say we need some attention getting to address these issues, so we're just getting ignored. Now, in the -- if the owner and the GC get into a dispute about scope and who owns that problem, that's got to be addressed. The subs are financing this work because the owner has got a problem with his GC. The owner is the only person who can address that. The sub has got his hands tied behind his back. He has no leverage, no way of addressing that ever

really.

So what this does is it brings people to the table to say, look we've got to address this. And my own guess would be, if that's an irreconcilable problem, it will be handled some way on the side and everybody will continue with the work and owner authorized change orders will continue to get -- change directives, will get processed and they'll get paid.

Just my own practical experience tells me that's what will happen.

REP. SHAPIRO: I appreciate your response.

BILL FLYNN: Representative Shapiro, one other thing, when you foster unfairness on any kind of a business relationship in a construction project and you're forcing contractors to work without being paid properly, there's obviously -- you're obviously forcing people to now become nitpickers too. This is what's generating, I believe, the failure -- the failure for the public entities and the private entities to make proper payment fosters disagreements throughout the project. It creates issues that, in other cases, would go away. So it -- you're -- the flawed process generates more adversarial relationships on a project that generate delays and generate claims, that all arrive on the owner's desk at the end of the job and cause litigation, arbitration and prices of construction projects to skyrocket. If these projects were forced to be -- everyone was treating each other fairly and openly throughout the project, I doubt you would have half as many claims and delays that you have now.

REP. SHAPIRO: Okay. Thank you very much.

BILL FLYNN: Thank you very much.

REP. SHAPIRO: Representative Taborsak.

REP. TABORSAK: Thank you, Mr. Chairman.

Just briefly --

STEVE KAPLAN: Sure.

REP. TABORSAK: -- in the interest of saving time, I'm going to rattle off just a few last thoughts and if you can address them to the best of your ability. In Connecticut do we have kind of an industry standard construction contract. Do we use, you know, the AIA?

STEVE KAPLAN: Yes.

REP. TABORSAK: That is yes.

STEVE KAPLAN: Standard, and if not the AIA, there are standard terms. These change order and change directive terms are in virtually every -- every private and public contract that will be out there now.

REP. TABORSAK: And the contract that you're speaking of in those terms, do we kind of adopt in Connecticut the national industry standard in construction contracts? Are we -- is that your opinion?

STEVE KAPLAN: Yes. Yes.

REP. TABORSAK: So if we were to pass this bill into law, would we be creating a new standard? Would we be kind of making Connecticut a different place to do business, at least on that aspect. Would we be deviating away from

this kind of construction industry standard contract, and if -- if so --

STEVE KAPLAN: I haven't canvassed law in other states, so I just can't answer what other states do specifically on that issue.

I would think though, as we've done with Senator Colapietro in the Fairness In Construction Financing Act that last six or seven years, and we've worked closely with him on that and the construction industry thanks him immensely for that work. We would -- we'd be setting a new -- a new and terrific standard of fairness in the construction industry by doing this, whether or not anybody else in the country does it or not. And I sincerely believe that. It would be something which would really be extremely beneficial to the industry here overall, I mean, all aspects of the industry.

REP. TABORSAK: Okay. And it's your opinion that it wouldn't make Connecticut a more hostile place to come develop and things like that?

STEVE KAPLAN: Oh no. In fact, you would have -- competition breeds quality and breeds price, I firmly believe. And when you have a fair set of rules governing the construction industry, you're going to have more and better contractors wanting to business in the state and that's what private and public construction really is based on is healthy competition. And I really think it would promote that.

REP. TABORSAK: Thank you.

STEVE KAPLAN: Thank you.

SENATOR COLAPIETRO: Thank you Representative

Taborsak. Thank you, Steve.

I don't know whether I should name these next three or four as the unholy alliance or just call them separately over here. It's got the union, nonunions. If you want to, you can come up together. There's five left on the samme -- the very same bill. Dan Filomeno, Glenn Marshall and Joe Epifano, and there's one more on that and that's Mike Miconte. If you all want to come up, it's okay.

Glenn, you don't have nothing to do, is that what you want to do? Do you want to sit down and stay there?

DAN FILOMENO: Good afternoon Senator Colapietro, Representative Shapiro. My name is Dan Filomeno. I am on the board of the AGC Connecticut and the Subcontractors of Connecticut. I am an interior contractor, subcontractor for a union company. We do acoustical ceilings, dry wall and carpentry work. I employ between 80 and 200 employees. And let me say this, this whole thing started in December of 2007. Talking to several subcontractors and everybody was becoming very, very frustrated in the system and how things are progressing in our business. Subcontractors are the people that build buildings. We built this building. We build our hospitals. We build our schools. We are the ones that spend the money. We employ the people. We pay our payroll weekly. We pay our benefits weekly. We buy materials. We keep the economy moving in Connecticut.

The biggest -- so what we did is we asked subcontractors to come in and talk about issues in our business that hamper our business. We've had 80, 90 subcontractors and contractors come in and the biggest problem

that we see in our industry is the processing of change orders.

Change orders 10, 12 years ago were one-tenth the amount they are today. I don't know if it's the quality of the drawings today, the speed at which the jobs have to be completed, but there's a lot of gaps in the construction process and in the drawings. In our contracts it tells us that we have to proceed with change order work, a CCD, time and material, change order, whatever nomenclature they like to call it, that we have to proceed and do that work. That's fine. That prevents a project from being held up and it was meant to fill the small cracks in between jobs that fall through the creases.

What's happened because of the lack of drawings and the speed at which we have to do these jobs, that crack is now the size of a -- you can drive tractor trailers through that crack. It's massive. The amount of change orders -- I have a person in my office and all they do is process change orders. Trust me, I don't want change orders. I want to get in, I want to build the building, I want to get out. We don't make money on change orders. Change orders come to us and the contractors have this thing nailed down. You have to show them your payroll. You have to show them your material supply slips. Then they tell you you're only allowed 10 percent markup on it. Overhead on jobs run roughly between 15 and 20 percent. I'm losing money right off the bat. So this is a huge, huge problem.

Attorney Kaplan pretty much explained it, and Mr. Flynn, of the nuances of how this really works. But, for example, I was on a major job. Within 15 months we racked up a million three in change orders that I wasn't getting

paid for, because they haven't processed the paperwork saying change order and hand it to me. What happens is, at the end of the project, they sit you down and I call it extortion. What happens is, well, we'll give you a million one. We can pay it right away. You know some of these things might not qualify. I don't know if I can get it by the owner. But in the meantime they've told you to do it and they had you spend your money. The extortion comes out and it's for their own profit a lot of them.

I'll say this, the contractors that are very above board that do run the jobs correctly have no problem with this. Also the owners, we've talked to several owners. We've brought owners in. We've brought contractors in. We've brought a lot of people in to discuss this bill. This isn't something we just about over night. This has been going for a year, year and a half, and we've tried to make it as fair as possible. But when we're asked to spend our and perform work, we'd like to know when we're going to get paid and how we're going to get paid and how much we're going to get paid.

I don't think there's any other business out there that people are required to spend their money not knowing when they're going to get paid, if they're going to get paid, and how much they're going to get paid. And this law, although it doesn't solve all the problems out there, it does at least help address problems, bring them to the table right away and solve the issue and keep the job flowing and keep cash flowing. With the tight credit limits today and the credit market, what's going to happen now is, you know, We can't go out and borrow money like we used to. And, you know, at the end of the year, you're holding $2

million in unapproved change orders that you can't bill for, and although you expense for them, your financials don't look too well, you're not going to get proper bonding and you're not going to be able to get lines of credit to keep your business going. It's going to put us in perils. We're going to be out of business, and we're the ones that are building the buildings.

Thank you.

SENATOR COLAPIETRO: Any further questions?

I think we got that pretty well down pat.

Anybody else have anything to say?

BILL CASARELLI:: Good afternoon. At the risk of having everybody's eyes glaze over on this one because we've kind of beat this one to death on you. I'd like to offer just a few more points if I may please, to address some of the issues that came out in the discussion.

Now, there was a discussion about how -- could this bill possibly encourage delays. We as subcontracts don't see how that is possible. As a matter of fact, what we find is that by the lack of payment to subcontractors, in fact, the owner and the entities that pay us encourage delays. Now how do they do that? Well they stretch our organizations to the breaking point. That's not right.

There's a few other little things that they do that don't help us. By not paying us, we can't increase our staffing, which Dan just mentioned, to be able to manage these projects. Because it's not just one change order that comes out. It's 20, it's 30, it's 40, and you have to add staff in order to be

able to manage that and if you can't get paid for it, you can't add staff. And that really doesn't help the project to move along either. All right.

One of the other problems that we have is that when we don't get paid, it attenuates the project closeout. We don't -- we don't really respond all that well to these little final punch lists that seem to keep cropping up. That doesn't help you guys get your building and it certainly doesn't help us get paid because they hold these punch lists over our heads at the risks of receiving retainages and outstanding change orders. By not paying, you're hurting yourself a lot more than as if you did pay and you got the cooperation of your subcontractors.

There is another issue that came up about whether some of our public entities, UConn, DPW, they seem to be somewhat opposed to this. And I personally have to tell you, I'm a mechanical contractor, my office is in New Britain, Connecticut. I've done work, as Dan has, and as Joe has, and as Mike has, and as Paul Dinto and Cesar has pointed out, even with his own subcontractors, we've all done work for the state privately and for the federal government. Now look, our taxes pay for UConn and DPW to be there. If you go out and hurt us and you don't pay us, you hurt our organizations. You're going to put our organizations out of business. That's not very good for an economy where you need taxpayers in order to be able to support these entities. I truly think that they should support these things because it's a fairness item, and if you guys could do something to help us to get this passed, it would not only help you guys as State Representatives with your own buildings, but it will also help you

constituents so that we can continue to pay taxes and so that we can continue to support these things.

I thank you for your time. I hope I beat the three minutes.

SENATOR COLAPIETRO: Thank you. Thank you for your testimony.

Anybody else have any questions?

Thank you for your testimony and thank you for your concern.

Glenn, did you have something?

GLENN MARSHALL: I just would to add, Senator. I have my testimony, it was brief, but I'll just talk from my perspective as District Manager and President of the Carpenters Union, and we have over 1600 contractors, many of which are small companies. They're not highly capitalized, and they put a lot of carpenters and construction workers to work. And, I'm very concerned in these tough times right now to repeat what Dan Filomeno said, it's very difficult. We're hearing it from our small contractors that they can't get credit lines and money from the bank to put the money out to pay the workers, pay the vendors and pay the benefits.

My concern is, it's about fairness and if something isn't done, we're seeing more and more contractors defaulting, not paying the benefits, you could potentially have a lot of small businesses and companies out of business and also a lot of workers who don't have health care and retirement benefits that will be paid and they'll go without it. And we know what a problem that is. So it's all

interconnected. And it is a fairness thing. And I think in a lot of ways the system isn't working, and these are the only guys, they're at the bottom of the totem pole. They put the money out. There's a lot of unscrupulous contractors out there too, I won't get into names, but I've seen were they go in and they do this purposely knowing at the end, well, you know what, I'll get 50 cents -- I'll give them 50 cents on the dollar. They don't have the resources to hire attorneys. It'll cost them too much.

And we had that happen at one of our mill cabinet shops, do an install on a school down in Milford a few years ago. And that was the beginning of the end for him. Within a short amount of time he ended up going out of business. He burned our funds and it really wasn't any fault of his own, but he ended up going bankrupt and those people were without pension credits and monies in their annuity accounts and their health. So it is interconnected.

And, by the way, Joe Epifano and I sit on our funds and deal with this all the time and it is a problem. We hope that you'll take this into account and we could come up with some bill that give relief to these subcontractors.

Thank you.

SENATOR COLAPIETRO: The point is well taken. Anybody else have any questions?

Thank you very much. Appreciate it.

GLENN MARSHALL: Thank you very much.

SENATOR COLAPIETRO: Anybody else?

JOE EPIFANO: Are we done?

SENATOR COLAPIETRO: Are we done? I thought we were.

JOE EPIFANO: My name is Joe Epifano. I'm with Epifano Builders. I'm a cofounder of the company. We started back in 1986, my brother and I. Actually, I'm a tradesman myself, coming from a carpentry background. We've been in business for 25 years or so. We sell -- we're a major subcontractor and small general contractor, and we self-perform just about any trade you can think of except mechanical, electrical and plumbing.

We're a union contractor, signatory with six unions. And I happen to sit on the -- like Glenn said, the trust funds the Connecticut carpenters health, pension and annuity trust fund, where I see the effects of the nonpayment, what it has on the families and on the funds.

I'm not going to talk about all the notes I have here because I think everybody has already hit on them. But, Representative Shapiro, asked a couple of times to a couple of the people that came up here where is the breakdown? And after a year and a half of going through this with the group, what we decided to do as part of the bill, as you see, is to implement a monthly statement. And I think by the implementation of this monthly statement would just cure a lot of the problems.

What this really comes down to, to me, is a personal accountability issue, I think we see it in society today, people are just not performing their jobs. They're not coming to work in the morning and doing what they're

charged and paid to do and we all pay for it. Subcontractors especially, because we're funding the job.

This monthly statement to me is a piece of the bill that will introduce a level of personal accountability that doesn't currently exist. Construction managers don't use it; general contractors don't use it. The statement, the monthly statement would be a vehicle to track the status of cost changes on the job that would be submitted and attached to our monthly requisitions for everyone to see, anyone who's involved on the project, subcontractor, architect, engineer, construction manager, GC, whatever have you and the owner. So if there's any disputes, they're flagged and they're pulled off of this statement. Okay. We're not looking to -- to include the disputed items on the statement, as Mr. Kaplan stated. He explained basically what this is, this bill is is extra work as authorized by the owner, by the construction manager or GC, the subcontractor performs the work and we have no vehicle to get paid. That vehicle, that only vehicle to get paid is an executed change order and that's were the breakdown is. That's really essentially what it is.

By having the monthly statement, I think the net result is an improvement in the project schedule. The quality of the work would be controlled. The sequence of the work performed would be controlled. Submittal processes for products would come under control because everybody's looking at this sheet and saying, you know, who's court is the ball in? Where is the hurdle? Who's holding -- what is the hold up here? How do you get this job processed? How do we get this schedule moving and so on. So I think that this sheet, that monthly statement is

just an essential piece of this that gets rid a lot of the problems and litigation.

Thank you.

SENATOR COLAPIETRO: Thank you. Anybody else? Anybody got any questions?

MIKE MACONIE: I'm sorry. Just let me --

SENATOR COLAPIETRO: Go ahead.

MIKE MACONIE: -- have a few moments here and I promise I'll be very short. My name is Mike Maconie and I'm the executive director of the National Electrical Contractors Association here in Connecticut. I represent a number of electrical contracting firms who employ a couple of thousand people here in the state, and again, I certainly can't be a eloquent as the previous speakers and they've gone over a lot of the details surrounding why we need this bill.

And I think just in summary, I'd like to emphasize again that really we believe this is all about accountability and fairness, fairness for the owner, fairness for the contractors, fairness for the subcontractors and certainly fairness for the employees that work on these jobs. So, certainly we believe if you enact this piece of legislation, that's going to go a long way in bridging that fairness issue that's out there and certainly that is a big item that is discussed in the industry a lot today and in the world in general today.

So we do ask for your support and I do appreciate you giving us the opportunity to speak here today.

JOHN BUTTS: Senator Colapietro, members of the -- distinguished members of the committee. My name is John Butts. I'm the assistant executive director of the Associated General Contractors of Connecticut. We are a division of the CCIA, the Connecticut Construction Industries Association. I'm here to testify in favor of SB 785. Somehow I didn't get into the holy alliance, but I wanted to register our support for the bill anyways.

As an organization that represents general contractors and construction managers, as well as subcontractors, we wanted to lend our support, our wholehearted support, for this bill.

I thank you very much, and I'd be willing to answer any questions you may have.

SENATOR COLAPIETRO: Thank you.

Any questions from the committee?

Hearing none, thank you very much.

JOHN BUTTS: Thank you.

SENATOR COLAPIETRO: Appreciate it. Mike Monarat from my hometown. Mark, did you use to play little league for me?

MIKE MONARAT: No, that's (inaudible).

SENATOR COLAPIETRO: Okay. Mike. Mike, right, I'm sorry.

MIKE MONARAT: Hi, yeah, I'm Mike Monarat. My brother's Mark. He principal of St. Joes Grammar School in Bristol.

A VOICE: (Inaudible.)

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Testimony of Attorney Steven B. Kaplan
Legal Counsel to the Connecticut Subcontractors Association
Senate Bill 785, An Act Concerning Construction Change Orders
General Law Committee
February 11, 2009

My name is Steve Kaplan. I am a partner with Hartford law firm of Michelson, Kane, Royster & Barger PC in Hartford, where I have concentrated in the area of construction law for 27 years. I routinely represent contractors, subcontractors, construction managers and owners in virtually all matters involving contracts for public and private construction. I am Legal Counsel to the Connecticut Subcontractors Association, as well as Vice-chairman and a founding member of the Executive Committee of the Construction Law Section of the Connecticut Bar Association.

The Connecticut Subcontractors Association **supports** Senate Bill 785, An Act Concerning Construction Change Orders. The CSA thanks this committee for raising the bill. The proposed legislation would amend Conn. Gen. Stat. §42-158j (private construction) and §49-41a (major public construction, but excluding CDOT projects.) The amending language for both statutes is virtually identical.

Senate Bill 785 addresses the critical problem of procuring payment for a contractor or subcontractor who has performed **authorized** extra work, but cannot get paid for that work through no fault of his own because a "change order" has not been issued. The bill establishes a 5% threshold on the amount of authorized change directive work that can be imposed upon a contractor, or a subcontractor, without processing change orders for that work that can be billed and paid. When that 5% threshold is reached, the contractor or subcontractor does not have to perform **additional extra** work under new change directives until the current, pending change directives are processed as approved, billable change orders.

The bill covers only **pending** change directives; it does NOT apply to approved change orders or to original contract work. The bill does **NOT** apply to **DISPUTED** work. The 5% threshold also tracks the current change order limits for state funding required on public school construction projects. Per Conn. Gen. Stat. §10-286(c), the State reduces its funding by 50% for change order work on school building projects that exceeds the authorized total project cost by 5%.

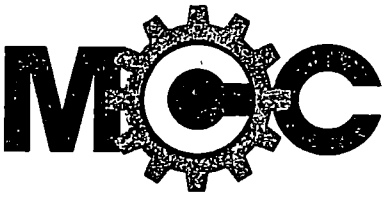
The bill also requires that every contractor and subcontractor include a statement with each monthly payment requisition indicating the status of all pending and approved change

orders and change directives. This provides a necessary method for all parties—the owner, the contractor, and the subcontractors—to track the status of change orders and change directives.

Senate Bill No. 785 should be approved because:

- **Typical contract provisions, and the current law, forces contractors and subcontractors to perform authorized extra work without any means of getting paid when a change order has not been issued—"through no fault of their own."**
- **The bill will force all parties to address in a timely fashion problems arising from unprocessed change orders.**
- **The bill would prevent owners from imposing unlimited, authorized extra work directives upon contractors and subcontractors without also addressing payment for that work.**
- **Contractors and subcontractors would no longer be forced to finance the performance of excessive, authorized extra work for unlimited time periods.**
- **Owners and contractors would be required to properly manage projects involving significant, authorized extra work, rather than ignore paying for this work at the expense of the subcontractors who perform the work.**

Again, thanks to the General Law Committee for considering this important legislation.



MINORITY CONSTRUCTION COUNCIL

Meeting the Challenges of Construction with Excellence & Diversity

Friday, February 13, 2009

Topic: An Act on Concerning Construction Change Orders

Where: The State of Connecticut General Assembly General Law Committee @ 10:00 A.M.

From: Cesar Mejia: Executive Director of the Minority Construction Council (MCC)

Good Morning representatives of the General Law Committee:

My Name is Cesar Mejia and I am the Executive Director of the Minority Construction Council here in Hartford, also known as the MCC. We represent minority contractors from all four corners of the state and our mission is to promote the overall health and vitality of the states minority contracting community. Our members buy materials, equipment goods and services, provide opportunities to the underemployed, provide training to those who need it, create commerce and build bridges between both the private and public sector to create a better Connecticut. We have over 150 members and independently our members are very engaged in the political process that affects their business, personal and professional lives and I am here today to speak on their behalf.

The MCC is in support of this legislation for two basic reasons. First, it is our belief that this legislation will help the State of Connecticut decrease its spending in the construction arena. Within construction projects there are issues that can and should be solved as quickly as they develop that are being postponed to a later date. The State incurs additional cost due to delays and claims that are derived from conflicts in interest accumulated.

Secondly, the individuals that are presently financing the projects are the sub-contractors. They have to pay for materials, labor, etc. before they get paid. This practice is unfair compounded by the fact that the change order and/or payment issues are not solved in a timely manner. They are also mandated to proceed in performing work. Who and how this particular work is supposed to get paid have not been resolved.

In closing, we, the MCC of Connecticut encourage you to keep support this legislation as it will save the State of Connecticut millions of dollars and the sub-contractors will get a fair deal. Thank you for your time. Are there any questions?

Respectfully Submitted this day as Testimony:
Cesar Mejia
Executive Director
Minority Construction Council

www MCCCT.org 15 Lewis St., Suite 302 Hartford, CT 06103 Main 888-MCC-CT11 Local 860-882-0675 Fax 860-527-1102

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC WORKS
165 Capitol Avenue, Hartford, Connecticut 06106-1606

RAEANNE V. CURTIS
Commissioner

TESTIMONY OF DEPARTMENT OF PUBLIC WORKS BEFORE THE GENERAL LAW COMMITTEE

FEBRUARY 13, 2009

S.B. No. 785 (Raised) An Act Concerning Construction Change Orders.

The Department of Public Works (DPW) is **not in support** of S.B. No. 785, the repealing of the general statues in order to limit the amount of unapproved change order work imposed on contractors and subcontractors in its current form.

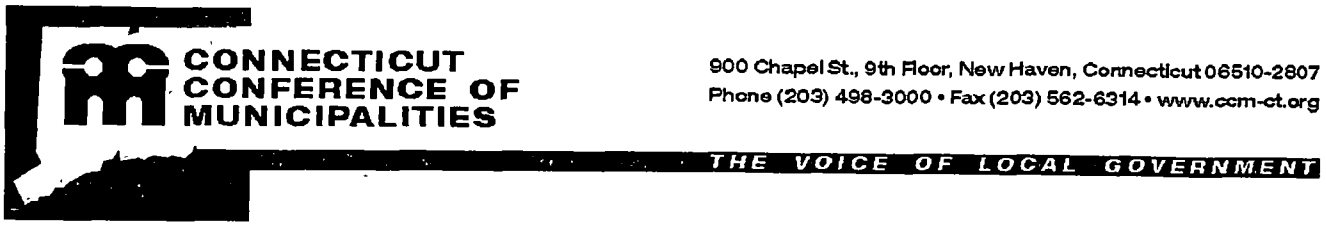
DPW is working with the industry to have all subcontractors properly and promptly paid on our DPW construction projects. We have taken the following steps: a) Contractor Payment Process posters in each project job trailer; b) the payments the subcontractors are considered in the DAS Contractor Evaluation, and c) considered in the DPW Objective Criteria used in the award decision for each project's general contractor. If a subcontractor has a problem they should document the problem to the DPW and Department of Administrative Services (DAS).

The Change Order process requires cost back up materials that includes the subcontractor's costs and signature in the package. Therefore, the subcontractor knows the Change Order costs as submitted to the owner. And, in the project trailer and office, DPW maintains the monthly contactor invoices on file and available for review by the subcontractors. This record shows what work, and or Change Orders have been paid to date.

DPW desires that all contractors and subcontractors be paid for all work completed in a timely fashion. Also, DPW desires to have the total value of all change orders on any project total to less than 5 percent of the construction projects contract amount. From the perspective of DPW; current contracting laws were written to protect the public interest, not the special interest of the contractors as in the proposed language.

This language has the potential to cause significant delays to other trades and cause an overall delay in the completions of public projects. This wording is apparently written around both the general contractor's overall contract for the project and also for the subcontractor's contract with the general contractors. When viewed from the perspective of a specific subcontract a 5 percent change in that subcontract value could be a very small change to the overall contract. For example; if there was a building addition that included the installation of 18 new windows. The addition of one additional window could trigger this clause.

The Department of Public Works, if requested, is available to meet to discuss the information contained in this testimony. Please contact Doug Moore, DPW Chief of Staff, at (860) 713-5800 with any further questions.



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TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

GENERAL LAW COMMITTEE

February 13, 2009

CCM is Connecticut's statewide association of towns and cities and the voice of local governments - your partners in governing Connecticut. Our members represent over 93% of Connecticut's population. We appreciate this opportunity to testify before you on issues of concern to towns and cities.

CCM appreciates the opportunity to submit testimony regarding Raised Senate Bill 785 "*An Act Concerning Construction Change Orders*".

CCM is uncertain about the necessity of such legislation, regarding construction change orders, and is working to determine its implications on municipalities.

CCM urges the committee to obtain a fiscal note on, Raised Senate Bill 785 "An Act Concerning Construction Change Orders," to ensure this proposal does not complicate existing procedures.

##

If you have any questions, please contact Donna Hamzy, Legislative Analyst
via email dhamzy@ccm-ct.org or via phone (203) 498-3000.

Testimony of **Catherine Flaherty**, CAE
Executive Director, Connecticut Subcontractors Association
Senate Bill 785, An Act Concerning Construction Change Orders
General Law Committee
February 11, 2009

My name is Catherine Flaherty. I am the Executive Director of the Connecticut Subcontractors Association, which represents the construction subcontracting industry in Connecticut. The Connecticut Subcontractors Association strongly supports Senate Bill 785, An Act Concerning Construction Change Orders. The CSA thanks this committee for raising the bill.

Many of CSA's members routinely experience the same problems on private and public projects: they are ordered to perform authorized, extra work, they properly perform that work, but they cannot get paid because a "change order" has not been issued "through no fault of their own." Senate Bill 785 addresses this problem by placing a 5% cap on the amount of new, authorized change directives—for which a change order has NOT been processed-- that a contractor or subcontractor can be required to perform. This does NOT include DISPUTED work, or original contract work.

The bill also requires that every contractor and subcontractor include a statement with each monthly payment requisition indicating the status of all pending and approved change orders and change directives. This provides a method for all parties—the owner, the contractor, and the subcontractors—to track the status of change orders and change directives.

The proposed legislation is necessary because:

- It limits the unfair shifting of financing burdens to trade contractors who are forced to perform authorized, extra work without any means of ensuring timely payment for that work;
- It requires owners, contractors and subcontractors to track and process authorized change directives in a timely and responsible fashion;
- It reduces delays and unanticipated disputes on projects by eliminating irresponsible "processing" deficiencies by owners and contractors;
- It promotes ongoing communication and attention to change directives and processing of change orders.

Again, thanks to the General Law Committee for considering this important legislation.

THE ASSOCIATED GENERAL CONTRACTORS OF CONNECTICUT, INC.
A Division of Connecticut Construction Industries Association, Inc.

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Senate Bill 785, An Act Concerning Construction Change Orders
General Law Committee
February 13, 2009

CCIA/AGC/CT Position: Support

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in Connecticut and is committed to working together to advance and promote a better quality of life for all citizens in the state. CCIA is comprised of more than 350 members, including contractors, subcontractors, suppliers and affiliated organizations representing all aspects of the construction industry. Associated General Contractors of Connecticut (AGC/CT), a division of CCIA, represents commercial, industrial, and institutional construction contractors, subcontractors, material suppliers and professionals serving the construction industry. AGC/CT is the Connecticut chapter of the Associated General Contractors of America, a national contractors trade association.

Senate Bill 785, An Act Concerning Construction Change Orders, would relieve a contractor or subcontractor of any express or implied duty to perform any future changes to the work once the cumulative sum of "pending construction change orders" or "other pending change directives" exceeds 5% of the contract or subcontract. Pending construction change orders or pending change directives are authorized written directives for extra work that have been issued to a contractor or subcontractor but the payment amount cannot be processed through no fault of the contractor or subcontractor who performed the work. The definition does not include change orders that are in dispute.

The bill also requires that each contractor and subcontractor include a statement with every monthly payment requisition indicating the status of all pending and approved change orders and change directives. CCIA and AGC/CT **support** Senate Bill 785 and we respectfully request that the General Law Committee approve the bill.

Contractors and subcontractors are often exposed to crippling financial risk when they are authorized to perform changes to the work, they properly perform the work, but they can't get paid – simply because the paperwork is not processed. Meanwhile, they are in financial jeopardy because they have paid for the extra labor and materials that went into performing the changed work and are effectively operating at a loss. The problem often escalates to the point that it cripples the unpaid contractor or subcontractor when the owner has no knowledge about the changes to the work, doesn't make financial arrangements to provide for it, and has no financing left to pay for the work at the completion of the project. This leaves the well-performing contractor or subcontractor no

choice but to accept a fraction of what it is duly owed months or years after the work is performed. Senate Bill 785 provides a relief mechanism that would resolve this problem.

Senate Bill 785 is necessary because:

- Contractors and subcontractors cannot continue to finance changes in the work on their own and should not have to negotiate for less than the value of the work at the end of the project.

- It would encourage the settlement of problems related to unprocessed change orders during the project rather than having them fester until the end of the project when the subcontractor is often the victim.

- The statement that would be required with every requisition would keep all members of the construction project updated, including owners, on the status of all change orders, so that owners are not surprised at the end of the project by the costs of unanticipated extra work that has already been performed.

- Contractors and subcontractors should be relieved of any duty to perform extra work when the undisputed amount due and owing to them under unprocessed change orders exceeds 5% of their contract value.

For more information, please contact John Butts, Assistant Executive Director, AGC/CT or Matthew Hallisey, Director of Government Relations and Legislative Counsel, Connecticut Construction Industries Association (CCIA) at 860-529-6855.

CSA
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Testimony of **William Flynn**
President, Connecticut Subcontractors Association
Senate Bill 785, An Act Concerning Construction Change Orders
General Law Committee
February 11, 2009

My name is Bill Flynn. I am the President and a founding Board Member of the Connecticut Subcontractors Association, a trade association that represents all segments of the Connecticut construction subcontracting industry. I also am Vice-President of Electrical Contractors, Inc. of Hartford, one of the largest electrical contractors in the State. Our construction firm has performed dozens of projects for the State DPW, many towns and cities, and a variety of large private owners in our state.

The Connecticut Subcontractors Association strongly supports Senate Bill 785, An Act Concerning Construction Change Orders. The CSA thanks this committee for raising the bill.

Senate Bill 785 addresses a critical problem in our construction industry—paying contractors and subcontractors for authorized, extra work that they have properly performed, but for which they cannot bill because a "change order" has not issued "through no fault of their own." If those "bottlenecked" change directives exceed 5% of the contract amount, then the contractor or subcontractor does not have to perform additional extra work under new change directives until the current, pending change directives are processed and can be billed. The bill does NOT apply to approved change orders or to original contract work. The bill does NOT apply to DISPUTED work. The 5% threshold also tracks the current change order limits for state funding required on public school construction projects under Conn. Gen. Stat. §10-286(c), which reduces State funding by 50% for change order work on school building projects that exceeds the authorized project cost by 5%.

The bill also requires that every contractor and subcontractor include a statement with each monthly payment requisition indicating the status of all pending and approved change orders and change directives. This provides a necessary method for all parties—the owner, the contractor, and the subcontractors—to track the status of change orders and change directives.

In summary the proposed legislation will:

- Protect against owners running out of money during the course of the project;
- Increase transparency;
- Match the change order limits mandated for public school construction;
- Help to eliminate delays and unanticipated disputes on projects; and
- Reduce the unfair shifting of project financing burdens from owners to trade contractors.

Senate Bill No. 785 should be approved because:

- Owners and Project Managers will utilize a standardized procedure to keep track of the status of all extra work on the project, whether per approved change orders or pending change directives;

- Owners will be able to follow the project needs and commitments, so they can stay currently apprised of their financial obligations. It provides full transparency for all extra work – including cost, dates and status;

- Contractors and Subcontractors will be able to track their extra work in terms of the status of each approved and pending change order or directive;

- Contractors and Subcontractors will get paid promptly for all authorized extra work performed, and will not have to finance the cost of authorized extra work indefinitely.

The proposed legislation would require all parties to mange the project properly and move forward with approvals for previously performed work in order for new changed work to be performed. Both public and private owners and contractors will be required to acknowledge outstanding extra work that has been authorized and performed, but cannot be processed for payment through no fault of the subcontractor.

The proposed legislation will benefit the Owners on public and private projects. It shines a light on authorized change directives that need to be processed for billing and payment, rather than delaying the processing and payment of change orders until the end of the job. This will avoid unexpected disputes when the growing amount f authorized, but unpaid change directives reaches a "boiling point." It also will prevent the unfair and unethical practice of an owner, or contractor, batching all unprocessed change directives that is then "leveraged" against the subcontractor for payment purposes.

Again, thanks to the General Law Committee for considering this important legislation.

NEW ENGLAND REGIONAL COUNCIL OF CARPENTERS

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Good morning, Chairman Colapietro and Chairman Shapiro. My name is Glenn Marshall, and I am the President of Carpenter's Local 210, as well as District Business Manager for the carpenter's union in Connecticut. I am here to make some brief remarks in support of Raised Bill 785, An Act Concerning Construction Change Orders.

You might not think a bill regarding change orders would have an impact on rank-and-file construction workers, but it does. The New England Regional Council of Carpenters is signatory with more than 1,600 contractors. A vast majority of these companies are small businesses. The slumping economy and tightening credit market have made it extremely difficult for many of our small contractors to compete and survive.

A small subcontractor often verbally commits to a change order from a construction manager, but, in some cases, is not paid for many months. Or after the job is completed, they are only paid for a portion of the actual cost. If a general contractor or construction manager is not doing his job in processing the order for one reason or another, it could hold up payments for months or years which could put small contractors out of business and, in turn, put many workers—and their families---at risk with no health coverage and unpaid retirement benefits.

Thank you for your time and consideration.

TESTIMONY
BOB MACCA
LEGISLATIVE CHAIR
CT PLUMBING, HEATING & COOLING CONTRACTORS ASSOCIATION
BEFORE THE
GENERAL LAW COMMITTEE
FEBRUARY 13, 2009

RE: SUPPORT – SB-785. AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS

The Connecticut Plumbing, Heating & Cooling Contractors Association (CT-PHCC) *supports* **SB-785, An Act Concerning Construction Change Orders, which caps unapproved change orders to 5% of the project cost until an approved change order has been issued.**

This bill addresses concerns that arise when modifications to the terms of the construction contract are made and price details are worked out later. This sometimes makes it difficult to negotiate a fair price for the work and leads to litigation or arbitration, which is costly for everyone. This bill will force owners and project managers to process change orders before the contractor and subcontractor have to complete the project, which will ensure that we get paid in timely manner.

CT-PHCC urges your support for this bill.

CT-PHCC is a not-for-profit trade association that represents the professional plumbing, heating and cooling contractors in the State of Connecticut. CT-PHCC and its members are committed to protecting the health and safety of the public. Contractors who belong to the association have demonstrated reliability and trustworthiness and are licensed by the state of Connecticut.

Testimony
Connecticut Water Works Association (CWWA)
Before the
General Law Committee
Public Hearing
February 13, 2009

The Connecticut Water Works Association (CWWA) expresses the following concerns relative to SB-785, An Act Concerning Construction Change Orders, as currently drafted.

As we understand it, the bill establishes a 5% cap on the amount of unapproved change orders that will be performed by the contractor or subcontractor until an approved change order has been issued. This would apply to commercial contracts exceeding $25,000 in scope and public works contracts exceeding $100,000.

As a practical matter, change orders are often required due to necessity, such as unforeseen circumstances or regulatory compliance issues. Recognizing this, standard industry contract forms already include a mechanism for owners and contractors to agree to an equitable price for change orders as well as a process for resolving disagreements. Contracts also require that all changes be given in writing so if a dispute arises, there is evidence that the contractor/subcontractor was directed to perform the work.

These provisions protect contractors and subcontractors while allowing important public and private projects to move forward without delay. CWWA is concerned that the provisions in SB-785 may stall the completion of important projects, such as water service extensions and pump stations, until price details can be negotiated. As a practical matter, municipal change orders can take months to formalize. Idling a full construction crew, on the clock, while the administrative process moves to act, is inefficient, and expensive.

In addition, under these circumstances, contractors and subcontractors would have considerable leverage in negotiating the price to continue the work, to the detriment of customers and taxpayers. On most public projects, the public's best interest is in the work proceeding, with price details to be worked out later.

Although we understand that this bill is intended to track similar limits for public school construction, SB-785, as currently drafted, applies to projects costing as a little as $25,000 while the public school construction provisions only apply to projects exceeding $10,000,000.

The Connecticut Water Works Association, Inc. (CWWA) is an association of public water supply utilities serving more than 500,000 customers, or population of about 2½ million people, located throughout Connecticut. Membership in the Association is open to all Connecticut water utilities: investor-owned, municipal and regional authorities. As purveyors of public water supplies, our members have an obligation to provide sufficient quantities of high-quality water at a reasonable cost to consumers of the communities served.

GENERAL LAW COMMITTEE PUBLIC HEARING
FRIDAY, FEBRUARY 13, 2009

Re: SB 785 – AAC Construction Change Orders

Testimony Presented by: Joyce A. Wojtas, Lobbyist
Mechanical Contractors Association of Connecticut

The Mechanical Contractors Association of Connecticut (MCAC) supports the concept of this bill, which is intended to speed up the payment and/or actually effectuate payment to subcontractors for extra work that is performed under a change order authorized by the General Contractor or Construction Manager for a project. Any changes in the law would not involve work that is in dispute.

The MCAC members include mechanical contractors who perform plumbing, process piping heating, piping and cooling work and generally work as subcontractors on major projects.

In today's contracting world, the subcontractors are the people actually constructing a project and employing the many trades people necessary to construct a building or other facility. They are the ones that have to meet weekly payroll, health insurance, workers compensation insurance, unemployment compensation and pension benefit payments for the thousands of workers on a construction site. The subcontractors are also the ones that have to pay their suppliers on time (often when material is delivered to a site) for the materials and supplies that go into a project. In view of the fact that the subcontractors are, in reality, bankrolling each and every project, it is incumbent that they be paid in a timely fashion, whether it is for the regular work performed or for extra work that is required of them. Far too often, payment to the subcontractor is held up for such a long time that that he or she is forced to accept a smaller payment than the actual value of the extra work and materials that were required by the written, authorized change order.

Formal complaints to awarding authorities about non- payment for change orders or non-payment of any progress payment or retainage will not happen because everyone is nervous about getting the work and complainers are just not going to be awarded contracts.

Although the state contracting agencies do not like the language in this bill, there should be some resolution to the problem that will get the subcontractors paid for work performed satisfactorily. I am certain that the many proponents of this bill will work out some acceptable compromise.

Thank you for your consideration in this matter.

For additional information, please contact Joyce Wojtas 860-280-4623 or jawojtas@myway.com