



SUPPORT FOR H. 3266

An Act to Promote Fair Payment Provisions (aka “Pay if Paid” bill)

This bill is all about fairness, and getting paid for work performed. It strikes a blow at so-called “pay-if-paid” clauses in construction contracts, that can prevent subcontractors from getting paid for their work.

Right now, “pay if paid” provisions show up in most contracts, and can’t be negotiated out. “Pay if Paid” terms allow general contractors to avoid all responsibility to pay subcontractors if they don’t get paid by the owner, even if nonpayment has nothing to do with the subcontractor’s work.

“Pay if paid” provisions in a contract are very risky for subcontractors – because subs are on the hook for most of the costs of labor & material on a project.

H.3266 doesn’t prohibit “pay if paid” provisions altogether, however – as many other states do. **Our bill is a fair compromise:**

- It prohibits “pay if paid” in all situations where nonpayment is caused by problems with the general contractor’s work, or the work of other parties, and has nothing to do with the subcontractor’s performance.
- However, it allows “pay if paid” in the situation most general contractors are concerned about – owner bankruptcy – but **ONLY** if the general contractor takes steps to protect the subcontractors by filing a mechanics lien at the start of the project.

In short, if general contractors do everything possible under the lien law to see that all parties get paid, and there still isn’t enough money to go around, they can then enjoy the protection of a “pay if paid” clause and won’t have to pay the subs. Otherwise, if they don’t want to file a lien, they can’t rely on “pay if paid” and will have to pay the subs. It’s their choice, and fair to both sides.

The bill is supported by the Associated General Contractors and the entire construction industry, and we are not aware of any organized opposition.

In 2004, this bill passed unanimously, but was vetoed by the Governor.

We would like to know what is holding up the bill this year. If anyone has concerns about the bill, we would like to have the opportunity to address them.

We appreciate anything that can be done to help get this important bill passed.

Questions?

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