



## ABC OPPOSES HOUSE BILL 566

### *Bill Summary*

House Bill 566 amends the Contractor and Subcontractor Payment Act of 1994 to provide for suspension of performance without penalty. The bill also prescribes sufficient notice to initiate work stoppage after failure to provide timely payment and prohibits the waiver of rights under the Contractor and Subcontractor Payment Act via contractual agreement.

### *ABC Position*

**ABC opposes House Bill 566 for the reasons listed below. We ask that you vote in opposition to this legislation.**

- **Eliminates a subcontractor's ability to negotiate favorable terms.** In an effort to afford subcontractors more leverage during the construction contracting process, House Bill 566 sets forth a process for allowing suspension of performance without penalty. The unpaid entity must submit a letter requesting payment no less than 30 days after the end of the billing period, then a subsequent letter no less than 30 days after the initial letter, and then wait another 10 days before physically suspending work. This process locks unpaid entities into no less than 70 days of work in good faith without any indication of forthcoming payment. Under HB 566, subcontractors would be prohibited from negotiating any terms that could be more favorable.
- **Undermines existing contract law.** The United States judicial system has long defended the ability of parties to negotiate and enter into contracts at their own will. In 1902, the United States Supreme Court found in *Lochner v. New York* that "the right to purchase or to sell labor is part of the liberty protected by this amendment." HB 566 undermines the ability of parties to negotiate the best possible terms for payment and instances of non-payment, thereby weakening the legal standing of construction contracts and a party's ability to assert his/her most favorable terms.
- **Ignores payment term trends, exacerbating non-payment issues.** While HB 566 provides a process for suspension of performance as a remedy for non-payment, it overlooks payment term trends. Under the current process, a project owner is free to insist on lengthy billing periods that could financially strain contractors. If an owner insisted on a standard 90-day billing cycle and did not remit payment for work performed, *a contractor would ultimately provide work for no less than 160 days without payment before asserting legal remedy under HB 566.*