

BUSINESS-TO-BUSINESS ACCOUNTABILITY

ASSESSING BUSINESS RISK

HF 590 (HOWES, LANNING, NELSON, HOLBERG, BUESGENS, JOHNSON)

THE PROBLEM

Construction Subcontractors – a diverse segment of Minnesota’s Small Business community – are investing time, money, and labor in projects that they may never be paid for.

A bad economy, reluctant lenders and perverse business incentives are harming the viability of Minnesota’s Subcontractors.

The perverse reality is that sometimes it is in the best interest for project lenders, owners and prime contractors to have Subcontractors do work even if they know that they cannot pay the Subcontractors for their work... And Subcontractors only find out after it’s too late.

THE SOLUTION

HF 590 Calls For **“Real Time” Business-to-Business Accountability** by facilitating honest communication between business partners so each can assess risk.

This can help keep business out of the courts, and the government out of business, by creating an identifiable channel of communication that allows businesses to assess risk, and making it more efficient to deal with financial problems upfront than going to court.

How HF 590 works:

I. Access to information – sections 1 & 2

- ❖ Informs parties as to whether there is financing for the project, identifies who is financing and working the project, and requires disclosure if there is a material change in financing
- ❖ Ensures parties will not be forced to waive the ability to access information

II. Red Flags if there is non-payment for work performed – section 3

- ❖ If financing is in place and has been allocated to pay for work, but the Sub is not paid for work performed, a Sub has the ability to raise a non-payment red flag to the lender, but does not require any action from the lender
- ❖ The bill notifies the defaulting party they will be liable for illegal retaliation

III. Adequate assurances after a default – section 4

- ❖ Requires the lender to notify Subs identified in the sworn construction statement if an owner defaults on the construction loan
- ❖ If the lender fails to provide notice, the Sub receives lien priority for the value of any work performed after the notice should have been given
- ❖ If there is default on the construction loan this gives the Contractor or Sub the right to suspend work until they receive adequate assurance or the default is cured