



MARYLAND ASPHALT ASSOCIATION



INFORMATIONAL

Senator William C. Smith, Chair
Judicial Proceedings Committee
2 East Miller Office Building
11 Bladen Street
Annapolis, Maryland 21401

January 29, 2021

RE: SB 189 – Courts – Prohibited Indemnity and Defense Liability Agreements

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) and the Maryland Asphalt Association (“MAA”) collectively represent tens of thousands of Marylanders who operate in the areas of transportation construction, production and engineering. Together, for nearly 100 years, these organizations have served as the voice of the transportation construction industry. The mission of both MTBMA and MAA is to encourage, develop, and protect the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry, and also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Our members have some questions related to this bill. Please see the following below:

1. Under the proposed law, wouldn’t the design professional have no duty to defend promises if there are allegations that they in any way caused the loss?
2. Wouldn’t this law limit the owner’s ability to re-allocate risk from the design professional to the contractor in the event of a design-bid-build contract?
3. For design-build contracts where the owner signs a contract with a contractor, who then hires the design professional, won’t the restrictions imposed by the proposed law impact the contractor’s ability to shift risk to the design professional, increasing the risk to the contractor in most cases?
4. In summary, this legislation is not generally favorable to contractors or those contracting with design professionals, and it is impossible to quantify the impact of such legislation at this time. If this law is passed, there is potential for an increase in contractors’ liability.

We appreciate you taking the time to address these questions.

Sincerely,



Michael Sakata
President & CEO, MTBMA



Marshall Klinefelter
President, MAA