

February 17, 2023

The Honorable CT. Wilson
House Economic Matters Committee
House Office Building, Room 231,
6 Bladen St., Annapolis, MD, 21401

RE: Opposition of HB 1097 State and Private Construction Contracts – Prompt Payment Requirements

Dear Chairman Wilson:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 1097 State and Private Construction Contracts – Prompt Payment Requirements**. MBIA **opposes** the Act in its current version.

This bill requires a private construction contract to include a provision requiring the owner to pay the contractor within a certain period of time or, if the owner withholds all or part of an amount invoiced, to send a certain notification to the contractor. MBIA opposes this measure. The requirement of the Contractor to pay a subcontractor within 60 days of receipt of invoice or seven days after receipt of payment from the Owner for work performed by that subcontractor is contradicted by (c)(4), which says our receipt of payment by the Owner may not be a condition of payment of a subcontractor. However, if a contractor selects seven days after receipt of payment by the Owner, and the Owner doesn't pay us on time, then are we required to pay within 60 days or after 67 days?

While retainage is allowed, it is unclear whether we would have to notify a subcontractor for any payment request for which retainage will be withheld. There is nothing that provides that any payment provision in violation of the statute is void and unenforceable. Likewise, there is nothing that states that the interest provision couldn't be contracted around to provide for a lower interest amount notwithstanding the statute. **Furthermore**, if a general contractor provides a reason for withholding, for instance, the wrong HVAC compressor was installed, but fails to state that the mechanical subcontractor was responsible, is the general contractor still liable for payment and interest? If so, how far down the contractual chain does this requirement go? If it is the supplier's error and the general contractor only names the subcontractor, is that a violation of the statute since supplier is excluded from the definition of subcontractor?

This bill could potentially put our industry in a deep hole in regards to final payment requisitions submitted by subcontractors on cost plus projects, particularly CDA projects, where final approvals of cost certifications can take as long as a year after the project is completed. It also puts us in a position to have to notify our owners that they are in violation of this statute for not paying our final invoice within 60 days from receipt even when we know that their hands are tied from that standpoint when CDA is involved.

For these reasons, MBIA respectfully requests the Committee give this measure an **Unfavorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the House Economic Matters Committee