

SB453 Support.pdf

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Position: FAV

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION No. 24

AFFILIATED WITH:

Baltimore-D.C. Metro Building Trades Council — AFL-CIO
Baltimore Port Council
Baltimore Metro Council — AFL-CIO
Central MD Labor Council — AFL-CIO
Del-Mar-Va Labor Council — AFL-CIO
Maryland State - D.C. — AFL-CIO
National Safety Council



AFL-CIO-CLC

BALTIMORE, MARYLAND 21230

C. SAMUEL CURRERI, President
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JEROME T. MILLER, Financial Secretary
MICHAEL J. McHALE, Business Manager

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Written Testimony of

Rico Albacarys, Assistant Business Agent, IBEW LOCAL 24

Before the Senate Finance Committee On

SB 453 State and Private Construction Contracts - Prompt Payment Requirements

Support

February 22, 2023

Madame Chair Griffith and Committee Members,

I am writing to express my **support** for **SB 453**. This legislation is particularly important for small and minority contractors, who often face challenges in receiving timely payments for their work. While larger contractors may be able to weather these delays, it can be a major factor in driving smaller contractors out of business.

SB 453 would require a provision in private construction contracts that establishes a period of time for payment and provide notice requirements in the event of payment delays or withheld payments. This provision would offer protections to subcontractors, ensuring that they receive payment for their services in a timely and fair manner.

The lack of standardized payment terms often puts small and minority contractors at a disadvantage, leaving them vulnerable to delayed or reduced payments. This bill would help to level the playing field and provide greater stability to these contractors, who are critical to the health and growth of our economy.

Therefore, I strongly urge you to vote **favorably** on **SB 453**, to ensure fair payment practices and support small and minority contractor statewide.

Sincerely,

Rico Albacarys

Assistant Business Agent IBEW Local 24

SB 453.pdf

Uploaded by: Christopher Madello

Position: FAV

Journeyman Pipe Fitters and Apprentices



Local Union No. 602

8700 ASHWOOD DRIVE • 2ND FLOOR • CAPITOL HEIGHTS, MD 20743

TELEPHONE: (301) 333-2356 • FAX: (301) 333-1730

AFFILIATED WITH AFL-CIO

Chris Madello, Business Manager and Financial Secretary / Treasurer

UA Steamfitters Local 602

SB453 - State and Private Construction Contracts – Prompt Payment Requirements

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

On behalf of the UA Steamfitters Local 602, the more than 5000 Journeymen, Apprentices and Helpers we represent, and the roughly 200 signatory contractors under the Mechanical Contractors Association of Metro Washington with whom we work, I write today to thank Senator Kramer for sponsoring SB453 to ensure prompt payment of all contractors, both union and non-union, and to ask the committee for a favorable report.

Senate Bill 453 mirrors bi-partisan legislation (SB 550) passed in the Virginia General Assembly in 2022, and is now law. That legislation was supported by both management and workers, and by both unions and non-union contractors. These include hundreds Prime and Sub contractors, suppliers, unions, and a number of trade associations, including:

- Associated Builders and Contractors (ABC VA)
- Alliance for Construction Excellence (ACE)
- American Subcontractors Association (ASA)
- Hampton Roads Utility and Heavy Contractors Association (HRUHCA)
- Heavy Construction Contractors Association (HCCA)
- Iron Workers Employers Association (IWEA)
- Old Dominion Highway Contractors Association (ODHCA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- Precast Concrete Association of Virginia (PCAV)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Richmond Area Municipal Contractors Association (RAMCA)
- Virginia Asphalt Association (VAA)

In addition to the hundreds of contractors and many trade associations who supported Virginia's almost identical SB550, Maryland's SB453 has the support of hundreds of local contractors, a small portion of whom include:

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chapelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.
- CRW Mechanical
- Densel Company, Inc.
- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services
- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls
- Saia Plumbing and Heating Company
- Seneca Balance of Maryland Service Mechanical, Inc.
- Siemens Building Technologies
- Southland Industries
- Systems 3 Service
- The Poole & Kent Corporation
- The Severn Group, Inc.
- Thornton Service, Inc.
- Total Refrigeration Services, LLC
- W.E. Bowers, Inc.
- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
- Weather Control, Inc.
- Welch and Rushe, Inc.

- Tidewater
- Concrete Visions
- SMC HVAC
- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- CALVERT CONTROLS
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services

This legislation is quite simple. It ensures financial stability, predictability and continuity of work in the construction field, such that all levels of the construction stream, from Owner, downstream to the Prime (general contractor), and to the Subs, are paid promptly, within 60 days. The bill does so by banning so called “pay-if-paid clauses” from most construction contracts. These onerous provisions shift all of the risk for payment by the Owner downstream to Prime or upper-tier Subs, and downstream further to lower-tier Subs. In essence, these clauses state that the Prime is not required to pay the Subs unless the Prime gets paid by the Owner.

When the Owner doesn’t pay the Prime, it wreaks economically destabilizing havoc downstream, ultimately impacting the bottom-tier Subs the most, since they are usually those most vulnerable to cashflow and credit shifts. Maryland’s SB453, like the Virginia bill, appropriately place the ultimate responsibility and liability for non-payment and the related construction timeframe disruptions, at the initial point of non-payment, at the highest non-paying actor in the system.

The one issue unaddressed in both the Virginia bill and the Maryland bill, is that the definition of “Owner” specifically excludes all levels of government. One argument for this exclusion is that Maryland requires a 9 percent interest rate on unpaid contractor fees. However, given the level of worksite disruption and economic carnage wrought by non-payment of all Owners – both private sector and governmental public sectors – the exemption for governmental Owners should be appropriately repealed. If not a repeal, while the bill, as drafted, does not address this issue, we believe that an appropriate incentives for prompt payment by governmental actors / Owners might be treble damages, or 27 percent. That’s something for the committee to consider, in its infinite wisdom.

Either way, SB453 goes a long way in restoring predictability and efficiency in the construction field, and for those reasons, we respectfully as for a favorable committee report.

Sincerely,

Christopher Madello

Chris Madello

Business Manager and Financial Secretary / Treasurer

ACETalkingPointsHB1097.SB453.pdf

Uploaded by: Ike Casey

Position: FAV



Subcontractor Protections SB 453 / HB 1097

The major risk all parties face on a construction project is non-payment by the owner of the project. In Maryland all of this risk flows down to the subcontractor and lower tier subcontractors. SB 453 / HB 1097 will allow the risk to be shared fairly among all of the construction entities. Subcontractors and their employees who live and work in your district depend on a steady cash flow to remain viable. With the passage of this bill, these important business entities will know that the money is coming in a reasonable time for the work they have completed and properly invoiced for.

Subcontractors are in the business of building construction projects and should not be required to finance construction projects; in whole or in part. Every day a subcontractor waits for payment for completed work is another day they are financing the construction project. Anytime you receive a product or service, you pay immediately. In some cases, you pay before receiving the service. Yet construction subcontractors wait at least 45 days to receive payment for work that they have paid labor, material and job costs to complete.

Small, minority or disadvantaged business that do not have the “legacy” funding of more established business are the most vulnerable to going out of business while waiting for payment from a General Contractor who is waiting for payment from an Owner.

A very similar law went into effect in Virginia on January 1st of this year. The Virginia legislature is known for their conservative approach to contracts, but they felt this was an important protection for subcontractors and passed the same legislation overwhelmingly. Additionally, this protection has been law in North Carolina since the 80's.

SB 453 / HB 1097 will not solve the issue of construction subcontractors financing construction but it will allow all the parties to the construction process to share in the risk rather than all the risk being placed on the subcontractors.

ACE welcomes the opportunity to have an on-going dialogue with the State of Maryland to address these issues on a regular basis so that your subcontractors are relieved from financing construction projects to benefit all citizens in Maryland.

Who is ACE – the Alliance for Construction Excellence?

- National Electrical Contractors Association (NECA) – Washington D.C. Chapter
- Mechanical Contractors Association of Metropolitan Washington (MCA)
- American Subcontractors Association of Metro Washington (ASA)
- Mechanical Contractors Association, Inc. (MCA)
- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)
- National Electrical Contractors Association (NECA) – Maryland Chapter

Please visit our Website <http://allianceforconstructionexcellence.com/>

[For More Information Contact:](#)

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Annapolis, MD 21401
Phone 410-267-0410
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[Ike Casey, Executive Director of ASA of Metro Washington](#)
[571/237-7101](tel:5712377101) or ike@asamw.org

[J.T. Thomas, National Electrical Contractors Association and ACE Chairman](#)
[\(703\) 658-4383](tel:7036584383) or jt@wdcneca.org

Jason Ascher - SUPPORT - SB 453 - State and Privat

Uploaded by: Jason Ascher

Position: FAV



Senate Finance

To: Senator Melony Griffith, Chair; Senator Kathy Klausmeier, Vice-Chair; and Members of the Committee
From: Jason Ascher, Political Director, Mid-Atlantic Pipe Trades Association.

SUPPORT – SB 453 – State and Private Contracts – Prompt Payment Requirement

On behalf of the Mid-Atlantic Pipe Trades Association and our 10,000+ United Association of Plumbers and Steamfitter members across Maryland, I ask you to **SUPPORT SB 453**.

During their 2021 legislative session, the Virginia General Assembly passed SB 550. It was passed with a bipartisan coalition and signed by their republican Governor. SB 453 was drafted to mirror this legislation. S ensured contractors, union or non-union, receive payment for completed work.

Non-Payment is a significant issue in the construction industry. In fact, we had a United State President (whom I won't name) who was notorious for not paying his contractors for completed work, and in many cases, it led to contractors going out of business. When owners, Prime contractors (General Contractors), or higher-level subcontractors withhold payment from their lower-level subcontractors, these lower-level subcontractors have trouble paying their obligations, including workers. Many of these lower-level subcontractors are small businesses that are otherwise profitable but do not have large reserves of money to cover costs while waiting to be paid.

HB 1097 does this by putting the liability on the initial source of the non-payment, banning pay-if-paid clauses, and setting a required standard for payment from Owner to Prime Contractor and Prime to Subs. These updates will ensure continuity of work for the owners, financial stability for the contractors, and ensure that workers get paid for their work.

For all the reasons listed above, I ask that you **SUPPORT SB 453**.

Sincerely,

Jason Ascher
Political Director
Mid-Atlantic Pipe Trades Association
7050 Oakland Mills Road, Suite 180
Columbia, MD 21046

BDCBT SB 0453 State and Private Construction Contr

Uploaded by: Jeffry Guido

Position: FAV



Maryland Senate - Finance Committee

Chair: Melony Griffith

Vice Chair: Katherine Klausmeier

Senate Bill 0453 - State and Private Construction Contracts - Prompt Payment Requirements

Position: Support

The Baltimore DC Metro Building Trades Council is in support of SB 0453 on behalf of our signatory contractors as they provide employment for our members. Many of our contractors are small to medium businesses and perform work as second and third tier contractors. It is instilled in all of our members to give 8 hours work for 8 hours pay to make our contractors competitive. In the construction industry the old adage of the "Big Fish eat the Little Fish" is very true. When a remittance or invoice is held it can be the beginning of the end. It becomes a burden to make payroll, meet supplier invoices and make your overhead. If you cannot man the job or supply the materials and fail to meet the production schedule a contract can be cured and that contractor is removed from the job allowing the general contractor or owner to use the bond to complete the work with another contractor while keeping any remaining money from the original bid. To have a more fair and competitive work place invoices and payments need to be made in a timely manner as stated in the bill. This allows a company to grow and prosper. Senate Bill 0453 is a means to that end.

We urge the Committee for a favorable report. Thank you.

Sincerely,

Jeffry Guido

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- Electrical Workers
- Insulators
- Boilermakers
- United Association
- Roofers
- Cement Masons
- Teamsters
- Laborers
- Bricklayers
- Ironworkers
- Sheet Metal Workers
- Elevator Constructors
- Painters
- Operating Engineers
- Carpenters

5829 Allentown Rd Camp Spring MD 20746

Value on Display... Everyday.



SB 453_LOS_State and Private Construction Contract

Uploaded by: Kevin O'Keeffe

Position: FAV



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www.iecchesapeake.com

8751 Freestate Drive
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February 23, 2023

To: Members of the Senate Finance Committee

From: Independent Electrical Contractors (IEC) Chesapeake

Re: Support Senate Bill 453 – State and Private Construction Contracts – Prompt Payment Requirements

Independent Electrical Contractors (IEC) Chesapeake supports Senate Bill (SB) 453 and requests a favorable report.

Senate Bill 453 would require that contractors pay subcontractors within 60 days of receiving an invoice if the work had been satisfactorily completed or 7 days after receipt of payment by the owner to the contractor for work performed by the subcontractor. These requirements do not apply to subcontractors who are not in compliance with the contract. The contractor must provide a subcontractor within 60 days in writing the reason for withholding payments. A contractor not in compliance with the 60 day payment requirement would be required to pay interest at 9 percent per year on unpaid monies owed.

Subcontractors including IEC Chesapeake members face many challenges in conducting their business operations. Senate Bill 453 would help subcontractors receive payments in a timely manner and help them maintain adequate cash flow.

Thank you for your consideration. If you have any questions, please contact Grant Shmelzer, Executive Director of IEC Chesapeake, at 1-301-621-9545, extension 114 or at gshmelzer@iec-chesapeake.com or Kevin O’Keeffe at 410-382-7844 or at kevin@kokeeffelaw.com.

About Us

Independent Electrical Contractors (IEC) Chesapeake represents members throughout Delaware, Maryland, Virginia, West Virginia, and Washington, D.C. Our headquarters are located in Laurel, Maryland. IEC Chesapeake has an extensive apprenticeship program for training electricians. In addition, IEC Chesapeake promotes green economic growth by providing education and working with contractor members, industry partners, government policy makers and inspectors to increase the use of renewable energy.



Logan Mechanical MBE Testimony SB453 HB1097 FAV.pd

Uploaded by: Roger Manno

Position: FAV

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9134 Piscataway Road, #1552
Clinton, MD 20735
(240) 899-8305
info@loganmechanical.org



MD License: 72486
DC License: RJ902154
UA Master: 12339073
EPA Section 608: 1133088687

Testimony

Tristan Smith, Logan Mechanical LLC - Certified MBE

SB453 / HB1097 – State And Private Construction Contracts – Prompt Payment Requirements

Favorable

Dear Chair Griffith and members of the Senate Finance Committee:

My name is Tristan Smith. I am the owner of Logan Mechanical, a certified MBE located in Clinton, Maryland. I graduated from the UA Steamfitters 602 apprenticeship program in 2012 as a Journeyman. I worked for American Mechanical Services and WE Bowers for four years before starting my own company, Logan Mechanical, in 2016. We are a 100 percent certified MBE, and we do state and local work, and are certified to do federal work.

However, it's difficult to bid as an MBE because of payment issues, access to capital, and organizational expertise required for bidding as a Prime Contractor. Because of these hurdles, we often times accept work as a Sub Contractor, as opposed to bidding as a Prime Contractor.

For example, we recently subcontracted with a Prime Contractor out of DC, after being approached by a company, since they were required to meet certain MBE targets under the bid. My company and our 4 workers have been on that job for 5 months, which costs me about \$30,000 per month in wages, not including our materials. In 5 months of work, we've only been paid for 1 month. The reason given to me by the Prime Contractor is that they have not received payment yet, and since the contract states that the work is "pay when paid," my team needs to keep working regardless of whether we get paid or not.

This is extremely difficult for an MBE for the following reasons:

1. As a small MBE, operating on extremely small profit margins, and with limited access to capital, we can not afford to bid as a Prime Contractor due to the administrative costs of reviewing a 300 page contract, for a job, sometimes as small as \$15,000.
2. As a result, in most cases, we get pushed into bidding as Sub Contractor.
3. Once we accept work as a Sub Contractor, there is no way for us to get paid unless the Prime Contractor gets paid, and we never actually know if and when they get paid.

We are completely at the mercy of the Prime Contractor.

It's an extremely exploitative system. I'm supporting SB453 / HB1097 because it ensures that we will either be paid promptly, or paid 9 percent interest while we are not being paid. That's much better than the current system for my company and for other MBEs in my situation. That's why I'm asking for this committee to pass the bill.

Thank you.

Respectfully,

Tristan Smith
Owner, Logan Mechanical LLC
Clinton, Maryland

MCAMW Testimony SB453 FAV.pdf

Uploaded by: Roger Manno

Position: FAV



February 16, 2023

Re: Senate Bill 453: Prompt Payment Requirements

Dear Chair Griffith and members of the Senate Finance Committee:

On behalf of the Mechanical Contractors Association of Metropolitan Washington (MCAMW) I write today to express strong support for Senate Bill 453, requiring a private construction contract to include a provision requiring the owner to pay the contractor within a certain period.

The MCAMW represents 200 construction contractors, some 10,000 workers, and 1,500 working apprentices. Our economic footprint throughout the region is substantial, generating some \$2 BILLION in annual revenue, and some \$500 million in state, federal and local taxes each and every year. MCAMW strongly supports Senate Bill 453 because one of the many challenges that subcontractors in the construction industry face is not being paid in a timely fashion. Too often, subcontractors are left waiting for months, and in some cases, years, until they are paid for a project they've already completed, even after having fulfilled their obligation of the contract with their customer or a prime contractor. The greatest hurdle that subcontractors in the construction industry have to face is access to cash. More frequent than not, the employing subcontractors are forced to act as banks and carry the burden of delayed payments for work completed at their own financial risk.

While the contractor waits to be paid for services rendered, their obligation to pay their vendors for material, their employees for their labor, and the cost of overhead for an office and warehouse is demanded in a timely basis. This means the contractor is left operating with a massive deficit, especially when the payment owed is worth hundreds of thousands, if not millions of dollars. Both small, medium, and large contractors face this dilemma every day, and waiting for large sums of owed money means the contractor is unable to not just pay themselves, but also fund additional projects for them to bid and work on.

While morally reprehensible, it's not unheard of for customers and low-road prime contractors to purposefully hold money owed to a subcontractor so that they can "negotiate" better terms for the services already rendered. Unfortunately, this leaves contractors left to decide if it's worth years of legal battle to be awarded the money they're rightfully owed; or, to take a lesser fee to at least cover the cost and keep their business afloat.

Senate Bill 453 is critical for the members of MCAMW and all subcontractors in the State of Maryland by making sure that they are paid what they're owed and in a timely manner. For these reasons, MCAMW supports Senate Bill 453 and asks for a favorable report.

Sincerely,

Thomas L. Bello
Executive Vice President

Roger Manno Testimony, SB453 FAV.pdf

Uploaded by: Roger Manno

Position: FAV

TESTIMONY

ROGER MANNO, MANNO & ASSOCIATES LLC

SB453 / HB1097 – STATE AND PRIVATE CONSTRUCTION CONTRACTS – PROMPT
PAYMENT REQUIREMENTS

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

Thank you for your consideration of SB453 / HB1097 – State And Private Construction Contracts – Prompt Payment Requirements. I urge a favorable committee report.

This commonsense legislation is modeled after almost identical legislation which passed in 2022 in Virginia. That bi-partisan legislation united an enormous coalition of union and non-union contractors, both Republicans and Democrats, from every corner of the state and beyond. Maryland's bill similarly has broad support, including the following trade associations representing hundreds of contractors, and thousands of workers:

- Alliance for Construction Excellence (ACE)
- American Subcontractors Association of Metro Washington (ASA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- National Electrical Contractors Association (NECA) – Maryland Chapter
- Mechanical Contractors Association of Metropolitan Washington (MCAMW)
- Mechanical Contractors Association, Inc. (MCA)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)

At its core, SB453 / HB1097 ensures predictability, accountability, and continuity of work in construction, by ensuring that all parties in a project - the Owner, downstream to the Prime Contractor (General Contractor), and down from there to the Sub Contractors and lower-tiered Sub Contractors, are paid promptly.

SB453 Overview: Owners, Prime Contractors and Sub Contractors (State and Private Contracts):

- Payment due within 60 days of receipt of invoice following satisfactory completion of the invoiced work, or
- Payment due with seven days after the contractor receives payment from the State or private owner

- If the work performed is not compliant with the terms of the contract, payment may be withheld, and notice of such must be given within 60 days.
- If a contractor does not pay a subcontractor a required amount, interest accrues at the rate of 9% per year on any unpaid amount, as specified.

Under current Maryland construction contracts, “pay-if-paid clauses” shift all of the risk for payment by the Owner downstream to Prime Contractors, the Sub Contractors, and the lower-tier Sub Contractors below them. These problematic clauses absolve the Prime Contractors of payment to the Sub Contractors, and downstream from there, unless the Prime first gets paid by the Owner. In these cases, the Owner’s nonpayment creates cascading instability down the chain, ultimately resolving at the lowest tiered Sub Contractors, who are the least capable of enduring that economic hardship event.


To resolve this, as Virginia did, Maryland’s SB453 / HB1097 places responsibility for non-payment at the highest non-paying actor, usually the Owner. The bill takes a reasonable approach in exempting a contractor from liability for amounts due to a breach of contract by the subcontractor, requires timely notice and the reason for withholding payment, and also takes into account insolvency and bankruptcy.

Clarifying Opposition Misinformation:

- *“The bill makes some contractors a BANK”*: False. Under SB453, no one is left holding the bag for payment. The bill does not require any Prime Contractor or Sub Contractor to act as a “Bank” to fund anyone downstream, since every actor in the chain receives 9 percent interest for non-payment. So, if an Owner (government or private) does not pay the Prime Contractor, the Owner must pay the Prime Contractor a 9 percent annual penalty, until fully paid. That Prime Contractor then pays the Sub Contractor the same 9 percent, and so on down to the lower tier Sub Contractors. This ensures that everyone, other than the non-paying Owner, receives 9 percent if s/he is not paid by the actor upstream from them.
- *“The bill is not the same as the Virginia bill”*: False. The only substantive difference between the 2022 bi-partisan Virginia bill and SB453 is that Virginia’s statutory rate for non-payment is 12 percent, while Maryland’s is only 9 percent. It is the current law in Maryland that the government Owner must pay 9 percent for non-payment to a Prime Contractor. SB453 simply uses that number, 9 percent, to apply to everyone in the chain, from Prime Contractor, to Sub Contractors, and so on.
- *“If the bill passes, some contractors will be put out of business”*: False. Opponents of this Maryland bill continue to bid on Virginia contracts. If the Maryland bill is effectively identical to the Virginia bill, how could they still exist?

In closing, this is well established model legislation from our region, which significantly improves predictability, accountability, and continuity of work in the construction field. For those reasons, I respectfully ask for a favorable committee report.

Sincerely,


Roger Manno

TRADE ASSOCIATIONS IN SUPPORT OF SB453 / HB1097

- Alliance for Construction Excellence (ACE)
- American Subcontractors Association of Metro Washington (ASA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- National Electrical Contractors Association (NECA) – Maryland Chapter
- Mechanical Contractors Association of Metropolitan Washington (MCAMW)
- Mechanical Contractors Association, Inc. (MCA)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)

CONTRACTORS IN SUPPORT OF SB453 / HB1097 (PARTIAL LIST)

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chapelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.

- CRW Mechanical
- Densel Company, Inc.
- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services
- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls
- Saia Plumbing and Heating Company

- Seneca Balance of Maryland
- Service Mechanical, Inc.
- Siemens Building Technologies
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- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
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- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- Calvert Controls
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services
- A/C Power
- Alason Electrical Contractors, Inc.
- Arundel Electrical Contractors
- Bethel Electric
- Birckhead Electric Inc.
- Bluestone Communications
- Brown & Heim, Inc.
- Brown-Tisdale, Inc.
- Bruce & Merrilees
- Calmi Electrical Company, Inc.
- ConCor Networks, Inc.
- Deca, Inc.
- Electrical Automation Services, Inc.
- Freestate Electrical Construction
- Glenelg Construction, Inc.
- Hatzel & Buehler, Inc.
- I.B. Abel, Inc.
- J.E. Richards
- John G. Manser, Inc.

- Kelly Electric
- Kroeger Electric Company
- Lee's Electrical Contracting, Inc.
- Metz Electric
- Miller Electric
- Mona, Inc.
- Native Sons
- Potomac Testing
- Power Solutions
- Rommel Electric Company
- Rosendin
- S & S Electric, Inc.
- Tomey Electric, Inc.
- Aarow Electrical Solutions LLC
- ABS Verticon
- Adcock Systems LLC
- Advanced Electric Solutions
- Al Gleeson Electrical Co., Inc.
- Aldridge Electric Inc
- AVA Electric Co., Inc.
- Birckhead Electric Inc.
- Bryant-Berry Inc.
- Burnett & Jensen Corp.
- C3M Power Systems LLC
- Cabling Systems, Inc.
- CCCI-Gov, Inc.
- City General, Inc.
- Coastal Electric Corporation
- Commercial Power, Inc.
- Concor Networks Inc.
- Contemporary Electrical Services Inc.
- Control Wiring
- Direct Current
- Dynalectric Company
- EMCOR Combustioneer Corp.
- Excel Mechanical Contractors LLC
- Freestate Electric Construction Company
- Haislip Corporation
- Hanley Energy Electrical LLC
- Hatzel & Buehler, Inc.
- Heller Electric Company, Inc.

- Integrated Technologies LLC
- J E Richards Electric
- Jay Worch Electric LLC
- Jim Kirchner Electric Company
- JKM Electric Inc.
- JW Frew Electric
- Kelly Electric
- Limbach Company LLC
- Max Electrical Construction
- Merical Electrical Contractors, Inc.
- Metropolitan Controls Inc.
- Miller Electric
- Mona Electric Group Inc.
- Nationwide Electrical Services, Inc.
- New River Electrical Corporation
- Nichols Power Systems Company, Inc.
- NOVA Power Systems
- Perlectric Inc.
- Potomac Testing Inc.
- Power Services, Inc.
- Power Solutions
- Precision Electric Inc.
- Regional Electric Contractors, Inc.
- Richardson-Wayland Electrical Co. LLC
- Rosendin Electric Inc.
- Rosendin Electric Inc.
- RTL Electric Company Inc.
- Specified Electrical Systems LLC
- Substation Test Company
- T & B Electric Co., Inc.
- TriCore Systems, LLC
- Valid Electric Company Inc.
- VarcoMac Electrical Construction Co.
- WA Chester
- Wycliffe Technologies
- A&M Drywall Construction Inc.
- Abbey Commercial Flooring
- Absolute Builders, Inc.
- Accu-crete, Inc.
- ACECO, LLC
- ACM Services, Inc.

- Acme Mechanical Contractors of VA, Inc.
- Advanced Specialty Contractcors
- Airway Sheet Metal Company, Inc.
- American Iron Works
- Anderson Mechanical Services, Inc.
- Annandale Balancing Company, Inc
- Annandale Millwork and Allied Systems Corporation
- Atlantic Hardware Supply
- Beckstrom Electric
- Belfast Valley Contractors Inc.
- Benchmark Utility Services
- Berlin Steel
- BION, inc.
- Blackwood of DC, LLC
- Blueridge of DC
- Branair, Inc.
- BSA Contractors LLC
- Busy Ditch, Inc.
- Busy Service, Inc.
- Calvert Masonry, Inc.
- Cameron Group LLC
- Canam Steel Corporation
- Cap 8 Doors & Hardware
- CEA Insulation, Inc.
- Chiaramonte Construction Company
- Chutes International
- Cindell Construction Company Inc.
- CMC Sheet Metal Inc.
- Cochran & Mann, Inc.
- Commercial Energy Systems, Inc.
- Concreate, Inc.
- Construction Cleaning Service
- Convergint, Northern Virginia
- D&S Millwork
- D2 LLC
- DC Hispanic Contractors Association
- Dimensional Marble & Tile, Inc.
- District Construction Corporation
- District Construction Corporation
- District Electrical Services, Inc.
- Dynamic Mechanical Contractors

- Elevation Greenroofs
- Engineered Services, Inc.
- Ennis Electric Company, Inc.
- Environmental Waste Specialists, Inc.
- Equus Striping
- F.B. Harding, Inc.
- Fort Myer Construction Corporation
- Freestate Electrical Construction Company
- G.E. Frisco Company, Inc.
- GB Shades
- Gelberg Signs
- Genco Masonry, Inc.
- Goldin & Stafford, Inc.
- Hallmark Iron Works, Inc.
- HDZ Mechanical, LLC
- Heller Electric Co., Inc.
- Hercules Fence
- ISEC, Incorporated
- James Myers Company, Inc.
- JE Richards Electric, Inc.
- John E. Kelly & Sons Electrical Construction, Inc.
- John H. Hampshire, Inc.
- (The) Kauffman Group
- Kensington Glass Arts, Inc.
- Keystone Plus Construction
- Kogok Corporation
- Kynoch Environmental Management, Inc.
- L & R Floors
- Long Fence
- Loudon Sheet Metal Co. Inc.
- Luck Ecosystems
- Luna Concrete, Inc.
- Mallick Mechanical Contractors
- Manders Companies
- Masonry, Inc.
- McCloskey Mechanical Contractors Inc.
- Miller & Long Co., Inc.
- Milliamp Company LLC
- Milwaukee Tool
- Miscellaneous Metals, Inc.
- Mobile Video Guard

- Modulex (SMI Sign Systems, Inc.)
- Mohawk Bridge & Iron
- National Design Group, Inc.
- NET100, Ltd.
- Netcom Technologies, Inc.
- Oak Tree Masonry, Inc.
- Orndorff & Spaid, Inc.
- P & D Contractors, LLC
- Paramount Mechanical Corporation
- PCC Construction Components, Inc.
- PerLectric, Inc.
- Pillar Construction, Inc.
- Precision Wall Tech, Inc.
- Press Mechanical Contractors, Inc.
- Prospect Waterproofing Co.
- Pruitt Corporation
- R.W. Warner
- Robert A. Aird, Inc.
- Rock Spring Contracting
- Ruppert Landscape
- Scaffold Resource
- Scaffolding Solutions, LLC
- Schnabel Foundation Company
- Shapiro and Duncan, Inc.
- Siemens Industry, Inc.-Building Technologies
- Southern Insulation, Inc.
- Southland Insulators, Inc.
- Sparkle Painting Co., Inc.
- Steele Foundation, LLC
- Stocks Management Group
- Stromberg Metal Works, Inc.
- Sunworks, Inc.
- Superior Iron Works, Inc.
- Superior Mechanical Services
- Tammal Enterprises, Inc.
- Telligent Masonry, LLC
- Tindall Corporation
- Titan Mechanical Inc.
- TME (Tanya McKinney Enterprises)
- Total Shading Solutions
- Travelers Construction Surety

- TWI,Ltd
- Unified Door & Hardware Group, Mid-Atlantic
- Division
- United Masonry, Incorporated of Virginia
- USI Insurance Services
- W.G./Welch Mechanical Contractors LLC
- Wayne Insulation Co., Inc.
- Weyer's Floor Service, Inc.
- Williams Scotsman
- Wright's Iron, Inc.
- ATS Studios, LLC

SB453 HB1097 Overview and Talking Points.pdf

Uploaded by: Roger Manno

Position: FAV

SB453 / HB1097 Overview and Talking Points

This bill ensures predictability, accountability, and continuity of work in construction, by ensuring that all parties in a project - the Owner, downstream to the Prime Contractor (General Contractor), and down from there to the Sub Contractors and lower-tiered Sub Contractors, are paid promptly. The bill is virtually identical to the bipartisan 2022 Virginia bill that united an enormous coalition of union and non-union contractors, both Republicans and Democrats, from every corner of the state and beyond.

Key Elements

For Owners, Prime Contractors and Sub Contractors (State and Private Contracts):

- Payment due within 60 days of receipt of invoice following satisfactory completion of the invoiced work, OR
- Payment due with seven days after the contractor receives payment from the State or private owner.
- If the work performed is not compliant with the terms of the contract, payment may be withheld, and notice of such must be given within 60 days.
- If a contractor does not pay a subcontractor a required amount, interest accrues at the rate of 9% per year on any unpaid amount.

Clarifying Opposition Misinformation

- *“The bill makes some contractors a BANK”:*
This is completely false. Under SB453, no one is left holding the bag for someone else’s non-payment. The bill does not require any Prime Contractor or Sub Contractor to act as a “Bank” to fund anyone downstream, since every actor in the chain receives 9 percent interest for non-payment. So, if an Owner (government or private) does not pay the Prime Contractor, the Owner must pay the Prime Contractor a 9 percent annual penalty, until fully paid. That Prime Contractor then pays the Sub Contractor the same 9 percent, and so on down to the lower tier Sub Contractors. This ensures that everyone, other than the non-paying Owner, receives 9 percent if s/he is not paid by the actor upstream from them.
- *“The bill is not the same as the Virginia bill”:*
False. The only substantive difference between the 2022 bi-partisan Virginia bill and SB453 is that Virginia’s statutory rate for non-payment is 12 percent, while Maryland’s is only 9 percent. It is the current law in Maryland that the government

Owner must pay 9 percent for non-payment to a Prime Contractor. SB453 simply uses that number, 9 percent, to apply to everyone in the chain, from Prime Contractor, to Sub Contractors, and so on.

- *“If the bill passes, some contractors will be put out of business”:*
Since opponents of this Maryland bill admitted that they continue to bid on Virginia contracts, and the Maryland bill is effectively identical to the Virginia bill, how could they still exist?

TRADE ASSOCIATIONS IN SUPPORT OF SB453 / HB1097

- Alliance for Construction Excellence (ACE)
- American Subcontractors Association of Metro Washington (ASA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- National Electrical Contractors Association (NECA) – Maryland Chapter
- Mechanical Contractors Association of Metropolitan Washington (MCAMW)
- Mechanical Contractors Association, Inc. (MCA)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)

CONTRACTORS IN SUPPORT OF SB453 / HB1097 (PARTIAL LIST)

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chappelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.
- CRW Mechanical
- Densel Company, Inc.

- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services
- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls
- Saia Plumbing and Heating Company
- Seneca Balance of Maryland
- Service Mechanical, Inc.

- Siemens Building Technologies
- Southland Industries
- Systems 3 Service
- The Poole & Kent Corporation
- The Severn Group, Inc.
- Thornton Service, Inc.
- Total Refrigeration Services, LLC
- W.E. Bowers, Inc.
- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
- Weather Control, Inc.
- Welch and Rushe, Inc.
- Tidewater
- Concrete Visions
- SMC HVAC
- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- Calvert Controls
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services
- A/C Power
- Alason Electrical Contractors, Inc.
- Arundel Electrical Contractors
- Bethel Electric
- Birckhead Electric Inc.
- Bluestone Communications
- Brown & Heim, Inc.
- Brown-Tisdale, Inc.
- Bruce & Merrilees
- Calmi Electrical Company, Inc.
- ConCor Networks, Inc.
- Deca, Inc.
- Electrical Automation Services, Inc.
- Freestate Electrical Construction
- Glenelg Construction, Inc.
- Hatzel & Buehler, Inc.
- I.B. Abel, Inc.
- J.E. Richards
- John G. Manser, Inc.
- Kelly Electric
- Kroeger Electric Company

- Lee's Electrical Contracting, Inc.
- Metz Electric
- Miller Electric
- Mona, Inc.
- Native Sons
- Potomac Testing
- Power Solutions
- Rommel Electric Company
- Rosendin
- S & S Electric, Inc.
- Tomey Electric, Inc.
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- ABS Verticon
- Adcock Systems LLC
- Advanced Electric Solutions
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- AVA Electric Co., Inc.
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- Coastal Electric Corporation
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- Heller Electric Company, Inc.
- Integrated Technologies LLC
- J E Richards Electric

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- JW Frew Electric
- Kelly Electric
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- Miller Electric
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- New River Electrical Corporation
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- NOVA Power Systems
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- Substation Test Company
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- TriCore Systems, LLC
- Valid Electric Company Inc.
- VarcoMac Electrical Construction Co.
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- Abbey Commercial Flooring
- Absolute Builders, Inc.
- Accu-crete, Inc.
- ACECO, LLC
- ACM Services, Inc.
- Acme Mechanical Contractors of VA, Inc.
- Advanced Specialty Contractcors

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- American Iron Works
- Anderson Mechanical Services, Inc.
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- Annandale Millwork and Allied Systems Corporation
- Atlantic Hardware Supply
- Beckstrom Electric
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- Benchmark Utility Services
- Berlin Steel
- BION, inc.
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- Blueridge of DC
- Branair, Inc.
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- Busy Service, Inc.
- Calvert Masonry, Inc.
- Cameron Group LLC
- Canam Steel Corporation
- Cap 8 Doors & Hardware
- CEA Insulation, Inc.
- Chiaramonte Construction Company
- Chutes International
- Cindell Construction Company Inc.
- CMC Sheet Metal Inc.
- Cochran & Mann, Inc.
- Commercial Energy Systems, Inc.
- Concreate, Inc.
- Construction Cleaning Service
- Convergint, Northern Virginia
- D&S Millwork
- D2 LLC
- DC Hispanic Contractors Association
- Dimensional Marble & Tile, Inc.
- District Construction Corporation
- District Construction Corporation
- District Electrical Services, Inc.
- Dynamic Mechanical Contractors
- Elevation Greenroofs
- Engineered Services, Inc.

- Ennis Electric Company, Inc.
- Environmental Waste Specialists, Inc.
- Equus Striping
- F.B. Harding, Inc.
- Fort Myer Construction Corporation
- Freestate Electrical Construction Company
- G.E. Frisco Company, Inc.
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- Gelberg Signs
- Genco Masonry, Inc.
- Goldin & Stafford, Inc.
- Hallmark Iron Works, Inc.
- HDZ Mechanical, LLC
- Heller Electric Co., Inc.
- Hercules Fence
- ISEC, Incorporated
- James Myers Company, Inc.
- JE Richards Electric, Inc.
- John E. Kelly & Sons Electrical Construction, Inc.
- John H. Hampshire, Inc.
- (The) Kauffman Group
- Kensington Glass Arts, Inc.
- Keystone Plus Construction
- Kogok Corporation
- Kynoch Environmental Management, Inc.
- L & R Floors
- Long Fence
- Loudon Sheet Metal Co. Inc.
- Luck Ecosystems
- Luna Concrete, Inc.
- Mallick Mechanical Contractors
- Manders Companies
- Masonry, Inc.
- McCloskey Mechanical Contractors Inc.
- Miller & Long Co., Inc.
- Milliamp Company LLC
- Milwaukee Tool
- Miscellaneous Metals, Inc.
- Mobile Video Guard
- Modulex (SMI Sign Systems, Inc.)
- Mohawk Bridge & Iron

- National Design Group, Inc.
- NET100, Ltd.
- Netcom Technologies, Inc.
- Oak Tree Masonry, Inc.
- Orndorff & Spaid, Inc.
- P & D Contractors, LLC
- Paramount Mechanical Corporation
- PCC Construction Components, Inc.
- PerLectric, Inc.
- Pillar Construction, Inc.
- Precision Wall Tech, Inc.
- Press Mechanical Contractors, Inc.
- Prospect Waterproofing Co.
- Pruitt Corporation
- R.W. Warner
- Robert A. Aird, Inc.
- Rock Spring Contracting
- Ruppert Landscape
- Scaffold Resource
- Scaffolding Solutions, LLC
- Schnabel Foundation Company
- Shapiro and Duncan, Inc.
- Siemens Industry, Inc.-Building Technologies
- Southern Insulation, Inc.
- Southland Insulators, Inc.
- Sparkle Painting Co., Inc.
- Steele Foundation, LLC
- Stocks Management Group
- Stromberg Metal Works, Inc.
- Sunworks, Inc.
- Superior Iron Works, Inc.
- Superior Mechanical Services
- Tammal Enterprises, Inc.
- Telligent Masonry, LLC
- Tindall Corporation
- Titan Mechanical Inc.
- TME (Tanya McKinney Enterprises)
- Total Shading Solutions
- Travelers Construction Surety
- TWI, Ltd
- Unified Door & Hardware Group, Mid-Atlantic

- Division
- United Masonry, Incorporated of Virginia
- USI Insurance Services
- W.G./Welch Mechanical Contractors LLC
- Wayne Insulation Co., Inc.
- Weyer's Floor Service, Inc.
- Williams Scotsman
- Wright's Iron, Inc.
- ATS Studios, LLC

UA Plumbers & Gasfitters Local 5 Testimony SB453 F

Uploaded by: Roger Manno

Position: FAV



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



TESTIMONY OF TERRIEA "T" SMALLS
BUSINESS MANAGER AND FINANCIAL SECRETARY / TREASURER
UA PLUMBERS & GASFITTERS LOCAL 5

SB453 - STATE AND PRIVATE CONSTRUCTION CONTRACTS – PROMPT
PAYMENT REQUIREMENTS

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

On behalf of the UA Plumbers & Gasfitters Local 5, our over 1,700 members and 300 apprentices and their families, I write today to thank Senator Kramer for sponsoring SB453, and to ask the committee for a favorable committee report.

This bill is simple, and makes a lot of sense in providing predictability and stability in the economic systems that drive construction projects. By prohibiting "pay-if-paid clauses" from construction contracts, and requiring "prompt payment" within 60 days, the bill prevents the current shift of payment liability, from the Owner, who is most able to pay, downstream to Prime (general contractors) or upper-tier Subs, and further downstream to lower-tier Subs, who are least able to pay.

Just last year, our neighboring Virginia passed the almost identical bill, on a bi-partisan basis, uniting labor and management, unions and non-union contractors, Democrats and Republicans. These include a number of prominent trade associations, representing thousands of workers and hundreds of contractors, including:

- Associated Builders and Contractors (ABC VA)
- Alliance for Construction Excellence (ACE)
- American Subcontractors Association (ASA)



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- Hampton Roads Utility and Heavy Contractors Association (HRUHCA)
- Heavy Construction Contractors Association (HCCA)
- Iron Workers Employers Association (IWEA)
- Old Dominion Highway Contractors Association (ODHCA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- Precast Concrete Association of Virginia (PCAV)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Richmond Area Municipal Contractors Association (RAMCA)
- Virginia Asphalt Association (VAA)

In addition to the hundreds of contractors and many trade associations who supported Virginia's almost identical SB550, Maryland's SB453 has the support of hundreds of local contractors, a very small representation of whom include:

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chapelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.
- CRW Mechanical
- Densel Company, Inc.
- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services

Terriea "T" L. Smalls
Business Mgr. / Financial Sec-Treas.

James L. "Lou" Spencer
Asst. Business Manager

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer



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4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls

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4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



- Saia Plumbing and Heating Company
- Seneca Balance of Maryland
- Service Mechanical, Inc.
- Siemens Building Technologies
- Southland Industries
- Systems 3 Service
- The Poole & Kent Corporation
- The Severn Group, Inc.
- Thornton Service, Inc.
- Total Refrigeration Services, LLC
- W.E. Bowers, Inc.
- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
- Weather Control, Inc.
- Welch and Rushe, Inc.
- Tidewater
- Concrete Visions
- SMC HVAC
- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- CALVERT CONTROLS
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services

Both SB550 and SB453 place the initial and ultimate responsibility for non-payment at the highest non-paying actor in the system. However, it is notable that both the Virginia bill and the Maryland bill carve-out government itself, when acting as an Owner, from the provisions of the bill. We believe that that is wrong. And while the Maryland statutes require a 9 percent interest rate for nonpayment of construction contractor fees, we would support this committee's including an amendment for appropriate treble damages for government Owners, at 27 percent, if it is the will of the committee to do so.

With or without that change, SB453 is an enormous step in streamlining construction projects and the related payment to contractors, and we ask for a favorable committee report.

Terriea "T" L. Smalls
Business Mgr. / Financial Sec.-Treas.

James L. "Lou" Spencer
Asst. Business Manager

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer



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Sincerely,

Terriea "T" Smalls

Business Manager and Financial Secretary / Treasurer

Terriea "T" L. Smalls
Business Mgr. / Financial Sec-Treas.

James L. "Lou" Spencer
Asst. Business Manager

5

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer

UA Steamfitters 602 Testimony SB 453 FAV.pdf

Uploaded by: Roger Manno

Position: FAV

Journeyman Pipe Fitters and Apprentices



Local Union No. 602

8700 ASHWOOD DRIVE • 2ND FLOOR • CAPITOL HEIGHTS, MD 20743

TELEPHONE: (301) 333-2356 • FAX: (301) 333-1730

AFFILIATED WITH AFL-CIO

Chris Madello, Business Manager and Financial Secretary / Treasurer

UA Steamfitters Local 602

SB453 - State and Private Construction Contracts – Prompt Payment Requirements

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

On behalf of the UA Steamfitters Local 602, the more than 5000 Journeymen, Apprentices and Helpers we represent, and the roughly 200 signatory contractors under the Mechanical Contractors Association of Metro Washington with whom we work, I write today to thank Senator Kramer for sponsoring SB453 to ensure prompt payment of all contractors, both union and non-union, and to ask the committee for a favorable report.

Senate Bill 453 mirrors bi-partisan legislation (SB 550) passed in the Virginia General Assembly in 2022, and is now law. That legislation was supported by both management and workers, and by both unions and non-union contractors. These include hundreds Prime and Sub contractors, suppliers, unions, and a number of trade associations, including:

- Associated Builders and Contractors (ABC VA)
- Alliance for Construction Excellence (ACE)
- American Subcontractors Association (ASA)
- Hampton Roads Utility and Heavy Contractors Association (HRUHCA)
- Heavy Construction Contractors Association (HCCA)
- Iron Workers Employers Association (IWEA)
- Old Dominion Highway Contractors Association (ODHCA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- Precast Concrete Association of Virginia (PCAV)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter
- Richmond Area Municipal Contractors Association (RAMCA)
- Virginia Asphalt Association (VAA)

In addition to the hundreds of contractors and many trade associations who supported Virginia's almost identical SB550, Maryland's SB453 has the support of hundreds of local contractors, a small portion of whom include:

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chapelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.
- CRW Mechanical
- Densel Company, Inc.
- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services
- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls
- Saia Plumbing and Heating Company
- Seneca Balance of Maryland Service Mechanical, Inc.
- Siemens Building Technologies
- Southland Industries
- Systems 3 Service
- The Poole & Kent Corporation
- The Severn Group, Inc.
- Thornton Service, Inc.
- Total Refrigeration Services, LLC
- W.E. Bowers, Inc.
- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
- Weather Control, Inc.
- Welch and Rushe, Inc.

- Tidewater
- Concrete Visions
- SMC HVAC
- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- CALVERT CONTROLS
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services

This legislation is quite simple. It ensures financial stability, predictability and continuity of work in the construction field, such that all levels of the construction stream, from Owner, downstream to the Prime (general contractor), and to the Subs, are paid promptly, within 60 days. The bill does so by banning so called “pay-if-paid clauses” from most construction contracts. These onerous provisions shift all of the risk for payment by the Owner downstream to Prime or upper-tier Subs, and downstream further to lower-tier Subs. In essence, these clauses state that the Prime is not required to pay the Subs unless the Prime gets paid by the Owner.

When the Owner doesn’t pay the Prime, it wreaks economically destabilizing havoc downstream, ultimately impacting the bottom-tier Subs the most, since they are usually those most vulnerable to cashflow and credit shifts. Maryland’s SB453, like the Virginia bill, appropriately place the ultimate responsibility and liability for non-payment and the related construction timeframe disruptions, at the initial point of non-payment, at the highest non-paying actor in the system.

The one issue unaddressed in both the Virginia bill and the Maryland bill, is that the definition of “Owner” specifically excludes all levels of government. One argument for this exclusion is that Maryland requires a 9 percent interest rate on unpaid contractor fees. However, given the level of worksite disruption and economic carnage wrought by non-payment of all Owners – both private sector and governmental public sectors – the exemption for governmental Owners should be appropriately repealed. If not a repeal, while the bill, as drafted, does not address this issue, we believe that an appropriate incentives for prompt payment by governmental actors / Owners might be treble damages, or 27 percent. That’s something for the committee to consider, in its infinite wisdom.

Either way, SB453 goes a long way in restoring predictability and efficiency in the construction field, and for those reasons, we respectfully as for a favorable committee report.

Sincerely,

Christopher Madello

Chris Madello

Business Manager and Financial Secretary / Treasurer

Bill SB453 .pdf

Uploaded by: Terreia Smalls

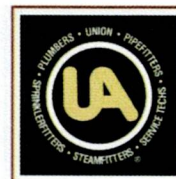
Position: FAV



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



TESTIMONY OF TERRIEA "T" SMALLS
BUSINESS MANAGER AND FINANCIAL SECRETARY / TREASURER
UA PLUMBERS & GASFITTERS LOCAL 5

SB453 - STATE AND PRIVATE CONSTRUCTION CONTRACTS – PROMPT
PAYMENT REQUIREMENTS

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

On behalf of the UA Plumbers & Gasfitters Local 5, our over 1,700 members and 300 apprentices and their families, I write today to thank Senator Kramer for sponsoring SB453, and to ask the committee for a favorable committee report.

This bill is simple, and makes a lot of sense in providing predictability and stability in the economic systems that drive construction projects. By prohibiting "pay-if-paid clauses" from construction contracts, and requiring "prompt payment" within 60 days, the bill prevents the current shift of payment liability, from the Owner, who is most able to pay, downstream to Prime (general contractors) or upper-tier Subs, and further downstream to lower-tier Subs, who are least able to pay.

Just last year, our neighboring Virginia passed the almost identical bill, on a bi-partisan basis, uniting labor and management, unions and non-union contractors, Democrats and Republicans. These include a number of prominent trade associations, representing thousands of workers and hundreds of contractors, including:

- Associated Builders and Contractors (ABC VA)
- Alliance for Construction Excellence (ACE)
- American Subcontractors Association (ASA)



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

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- Hampton Roads Utility and Heavy Contractors Association (HRUHCA)
- Heavy Construction Contractors Association (HCCA)
- Iron Workers Employers Association (IWEA)
- Old Dominion Highway Contractors Association (ODHCA)
- National Electrical Contractors Association (NECA) – Atlantic Coast Chapter
- Precast Concrete Association of Virginia (PCAV)
- Sheet Metal and Air Conditioning Contractors Association (SMACNA) – Mid-Atlantic Chapter

- Richmond Area Municipal Contractors Association (RAMCA)
- Virginia Asphalt Association (VAA)

In addition to the hundreds of contractors and many trade associations who supported Virginia's almost identical SB550, Maryland's SB453 has the support of hundreds of local contractors, a very small representation of whom include:

- ADJ Sheet Metal
- A.G. Prada Company Inc.
- American Combustion Industries, Inc.
- AMS of Maryland
- Boland
- BPI
- C.V. Carlson Company, Inc.
- Caigeann Mechanical Co., Inc.
- CARRIER
- Chapelle Mechanical Services, LLC
- Comfort Control
- Craddock Mechanical
- Crane Service Company, Inc.
- Critical Systems Service
- Crockett Facilities Services, Inc.
- CRW Mechanical
- Densel Company, Inc.
- EMCOR Services Combustioneer
- EMCOR Service CES- Special Building Operations
- EMCOR Government Services



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



- Facility Engineering Services Corp
- First Call Plumbing, Inc.
- Gaghan Mechanical, Inc.
- General & Mechanical Services, LLC
- G&M Services LLC
- H & D Mechanical, LLC
- HARRIS
- Havtech Service, LLC
- Heffron Company, Inc
- High Purity Systems, Inc.
- Honeywell International, Inc
- Innovative Mechanical Systems
- Interstate Service Company, Inc.
- J & L Mavilia, Inc.
- James J. Madden, Inc.
- John C. Grimberg CO., Inc.
- Johnson Controls, Inc.
- Journeyman Mechanical Contractors, Inc.
- JPG Plumbing & Mechanical Services, Inc.
- Kelly HVAC, Inc.
- Kent Island Mechanical
- Kirlin Design Build
- Kocharian and Company, Inc.
- Limbach Inc.
- M & M Welding and Fabricators, Inc.
- MECCO, Inc.
- Mechanical Systems, Inc.
- Metro Test & Balance, Inc.
- Norair Engineering
- NAC Mechanical Services
- Paramount Mechanical Corporation
- Pepco Government Services LLC
- Pritchett Controls
- Pro-Air, Inc.
- R & R Mechanical Contractor, Inc.
- Ralph P. Sita, Inc.
- Riggs Distler and Company, Inc.
- S & W Controls

Terriea "T" L. Smalls
Business Mgr. / Financial Sec-Treas.

James L. "Lou" Spencer
Asst. Business Manager

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



- Saia Plumbing and Heating Company
- Seneca Balance of Maryland
- Service Mechanical, Inc.
- Siemens Building Technologies
- Southland Industries
- Systems 3 Service
- The Poole & Kent Corporation
- The Severn Group, Inc.
- Thornton Service, Inc.
- Total Refrigeration Services, LLC
- W.E. Bowers, Inc.
- W.G. Tomko, Inc.
- W.L. Gary Company, Inc.
- Washington Refrigeration Company
- Weather Control, Inc.
- Welch and Rushe, Inc.
- Tidewater
- Concrete Visions
- SMC HVAC
- Bernward Mechanical
- Heritage Mechanical
- MECHPRO
- CALVERT CONTROLS
- Dynamic Mechanical Contractors
- J&R Solutions HVAC Services

Both SB550 and SB453 place the initial and ultimate responsibility for non-payment at the highest non-paying actor in the system. However, it is notable that both the Virginia bill and the Maryland bill carve-out government itself, when acting as an Owner, from the provisions of the bill. We believe that that is wrong. And while the Maryland statutes require a 9 percent interest rate for nonpayment of construction contractor fees, we would support this committee's including an amendment for appropriate treble damages for government Owners, at 27 percent, if it is the will of the committee to do so.

With or without that change, SB453 is an enormous step in streamlining construction projects and the related payment to contractors, and we ask for a favorable committee report.



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



Sincerely,

Terriea "T" Smalls

Business Manager and Financial Secretary / Treasurer

Terriea "T" L. Smalls
Business Mgr. / Financial Sec-Treas.

James L. "Lou" Spencer
Asst. Business Manager

5

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer

CV SB 453 letterpdf.pdf

Uploaded by: Thomas Bello

Position: FAV

Concrete Visions, LLC

7526 Connelley Dr Suite G
Hanover, MD 21076
Phone: (410) 766-2210
Fax: (410) 630-5515
www.concretevisions.com



2/17/2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith and Members of the Senate Finance Committee

Re: **SUPPORT Senate Bill 453** – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee,

I'm writing to you today to express strong Support of Senate Bill 453. As the Vice President of Concrete Visions LLC, **Senate Bill 453** ensures subcontractor protection and prompt payment from Owner and General Contractors after the completion of contracted work.

We are located in Hanover, MD. We are a small company of 13. We have been in business since 2003. Our specialty is performing Ground Penetrating Radar services for commercial construction. We are a signatory contractor to the Plumbers Local 5 Union and members of the MCAMW.

We are a small company, listed as a small business in the SBA directory. While we have been established for many years, the burden of making payroll, covering overhead costs, paying fringe benefits, etc, are no less troublesome for us than a brand new company. We rely on prompt payments to responsibly cover our expenses. In addition to the burden of waiting on payments, this also adds additional work for our 2 person accounting department. Again, we are a small company so any added work chasing funds owed, adds exponential expenses for us. For these reasons we support Senate Bill 453 and ask for a favorable report.

Sincerely

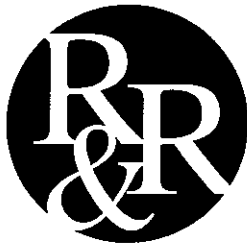
Vance Rogers

Vance Rogers
Vice President

DOC021723.pdf

Uploaded by: Thomas Bello

Position: FAV



Mechanical LLC

2902 Bladensburg Road, N.E.
Washington, D.C. 20018
office 202 636 9451 • fax 202 636 9458

February 17, 2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith and Members of the Senate Finance Committee

Re: **SUPPORT Senate Bill 453** – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee,

I'm writing to you today to express strong Support of Senate Bill 453. As the President of R&R Mechanical, LLC, **Senate Bill 453** ensures subcontractor protection and prompt payment from Owner and General Contractors after the completion of contracted work.

R&R Mechanical has been in business for 36 years with offices in Maryland and the District of Columbia. We are a Union Signatory Contractor of Local Union 602, Local 5 and MCAMW Member. We employ approximately 200 men and women of which 80% reside in the State of Maryland including myself.

Delayed payments are detrimental to the success of any business. The construction industry is particularly burdened by this given its labor-intensive nature. Payroll, benefits, taxes, and overhead expenses such as rent, and utilities are both ethical and legal obligations that must be met. Our suppliers enforce payment terms for the survival of their own businesses. We must pay suppliers to maintain access to materials and equipment. When payment is delayed, it impacts cashflow which puts meeting all these business obligations at risk. We effectively become an interest free finance company for the Owners and General Contractors. In some cases, Owners and General Contractors delay payment for their own financial benefit be that in the form of reducing their own financing cost or simply accruing additional interest on funds due to the subcontractor community.

For the above reasons and many others, we support Senate Bill 453 and ask for a favorable report.

Sincerely,

Robert Spallone
President
R&R Mechanical

Kent Island Mechanical Inc. Senate Bill 453 Suppor

Uploaded by: Thomas Bello

Position: FAV



13340 Mid Atlantic Blvd. Office: 301.776.3035
Laurel, MD 20708 Fax: 301.776.3040

Date: 2.17.2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith and Members of the Senate Finance Committee

Re: **SUPPORT Senate Bill 453** – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee,

I'm writing to you today to express strong Support of Senate Bill 453. As the owner of Kent Island Mechanical Inc., **Senate Bill 453** ensures subcontractor protection and prompt payment from Owner and General Contractors after the completion of contracted work.

Kent Island Mechanical Inc. is located in Laurel, MD and has been in business since 2006. We support the health care, life science and pharmaceutical market with our start coming at the National Institutes of Health campus in Bethesda, MD. We employ around 35 office professionals and 100 Union field employees as we are signatory to Local Union 602, Local 5, and Local 486. Kent Island Mechanical Inc. has also been a member of MCAMW since opening our doors.

Maintaining positive cash flow is one of the most difficult yet most important parts of running a viable business as I am sure you understand. The current nature of being a subcontractor in MD makes that even more difficult. Every contract we are asked to execute has paid when paid terms as a standard clause, meaning we do not receive payment for any work completed until our customer has been paid then usually 14 days after they receive payment we will receive payment. In many cases this means we will not see payment for 90-120 days. This makes it extremely difficult to maintain cashflow. Payments for materials and equipment are due in Net30 terms with the occasional vendor being willing to stretch that out to Net60 so materials and equipment must be paid for 60-90 days before payment may be received from our customers. The costs of payroll and fringe benefits are seen weekly as we pay our employees every Thursday for their efforts on projects which we may not receive payment on for months after the employees have been paid. Also of note are the overhead expenses of our office and everything else that goes into keeping a business in the position to operate and run successful projects which all must usually be paid monthly again 60-90 days ahead of receiving payments on projects.

I appreciate your time reviewing our letter in support of Senate Bill 453 and hope you understand the reasons we support Senate Bill 453 and ask for a favorable report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Bowen', with a long horizontal flourish extending to the right.

Mark Bowen
President

MCA MD BILL 453 (002).pdf

Uploaded by: Thomas Bello

Position: FAV

JOURNEYMAN

Mechanical Contractors, Inc.
2125 Baldwin Avenue, Suite #19-B
Crofton, MD. 21114
Phone 301-261-6200 / Fax 301-261-0406
E-mail Address: dmackin@journeyman-mechanical.com

February 17, 2023

The Honorable Melony Griffith
Chair of Maryland State Finance Committee
3 East
Miller State Office Building
Annapolis, Maryland 21401

Dear Senator Griffith,

I'm writing to you to express strong support of Senate Bill 453. As the owner/principal of JOURNEYMAN Mechanical Contractors, **Senate Bill 453** ensures subcontractor protection and prompt payment from Owner and General Contractors after the completion of contracted work.

Company Information/ background:

Location: Crofton, Maryland

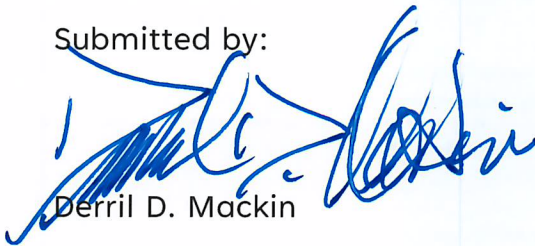
- 27 Employees
- 38 Years in business
- Union Signatory Contractor of Local Union 602, Local 100, and MCAMW Member

The prompt payment from General Contractors is important, and a key facet for my company's successful cash flow. What happens to our small Business, is Owners and General Contractors are allowed to use Subcontractors like

myself as a "FREE BUSINESS LOAN" with a no interest payment, or any other financial obligation.

Senate Bill 453 is vitally important of improve small business' cashflow. The passage of this bill, will ensure our payroll obligations, including health and welfare benefits payments are met. Companies will be able to operate, (purchase equipment, and supplies. All while reducing overhead costs. This unethical practice of allowing poor payments facilities not only, employee layoffs but also, unfortunately a negative credit rating for small companies.

Submitted by:



Derril D. Mackin

Journeyman Mechanical

Md SB 453_CC.pdf

Uploaded by: Thomas Bello

Position: FAV



Main Office
6711 Distribution Drive
Beltsville, MD 20705
Phone (301) 931-9300
Fax (301) 931-0369

2228 Page Road, Ste 101
Durham, NC 27703
Phone (919) 381-5065
Fax (919) 381-5095

Air Conditioning & Ventilating Balancing & Testing

AIR BALANCE, WATER BALANCE, SOUND CONTROL, AND SYSTEM ADJUSTMENTS

February 21, 2023

Senate Finance Committee
Chair Melony Griffith and Members of the Committee
Maryland State House
100 State Circle
Annapolis, Md 21401

RE: Support for Senate Bill 453 – State and Private Construction Contracts – Private Payment

Dear Chairman Griffith and Members of the Senate Finance Committee,

As a Maryland based construction contractor and signature to the collective bargaining agreement with UA Local 602 since 1966, I am writing to express strong support for SB 453, which will ensure subcontractors protection and prompt payment from owners and General Contractors after completion of contracted work.

There are several compelling reasons why SB 453 specifically affects Comfort Control Inc. and associated Ventilation Verification Firms two of the biggest reasons and unique to our trade specific industry.

- 1) We provide a service that is 100% labor, without any subcontractors or materials we cannot hold payroll, benefits, or tax obligations just because we have not been paid, this is legally and morally wrong and has always been against our corporate philosophy.
- 2) We are the very last trade on a project before occupancy. Often our fees are associated with the final retention, held up because of punch out items, some sort of legal action out of our control or in some cases just plain poor financial mismanagement is the cause of our nonpayment using the paid when paid clause as a method of nonpayment

It has been a struggle over the years maintaining a positive cash flow. Our line of credit is directly tied into our Bonding capability (a line of credit we need to utilize because of the paid when paid clause,) driving up our overall costs and limiting our growth and competitiveness. Legal action is cost prohibitive due to individual project specific contract value leaving us in “no win” situation, just the cost of doing business!

I urge the Senate Finance Committee to support the bill and vote it out of committee as soon as possible.

Sincerely,

Michael Moran

Michael Moran
Vice President

MDSB453_Support_MCAMW.pdf

Uploaded by: Thomas Bello

Position: FAV



February 16, 2023

Re: Senate Bill 453: Prompt Payment Requirements

Dear Chair Griffith and members of the Senate Finance Committee:

On behalf of the Mechanical Contractors Association of Metropolitan Washington (MCAMW) I write today to express strong support for Senate Bill 453, requiring a private construction contract to include a provision requiring the owner to pay the contractor within a certain period.

The MCAMW represents 200 construction contractors, some 10,000 workers, and 1,500 working apprentices. Our economic footprint throughout the region is substantial, generating some \$2 BILLION in annual revenue, and some \$500 million in state, federal and local taxes each and every year. MCAMW strongly supports Senate Bill 453 because one of the many challenges that subcontractors in the construction industry face is not being paid in a timely fashion. Too often, subcontractors are left waiting for months, and in some cases, years, until they are paid for a project they've already completed, even after having fulfilled their obligation of the contract with their customer or a prime contractor. The greatest hurdle that subcontractors in the construction industry have to face is access to cash. More frequent than not, the employing subcontractors are forced to act as banks and carry the burden of delayed payments for work completed at their own financial risk.

While the contractor waits to be paid for services rendered, their obligation to pay their vendors for material, their employees for their labor, and the cost of overhead for an office and warehouse is demanded in a timely basis. This means the contractor is left operating with a massive deficit, especially when the payment owed is worth hundreds of thousands, if not millions of dollars. Both small, medium, and large contractors face this dilemma every day, and waiting for large sums of owed money means the contractor is unable to not just pay themselves, but also fund additional projects for them to bid and work on.

While morally reprehensible, it's not unheard of for customers and low-road prime contractors to purposefully hold money owed to a subcontractor so that they can "negotiate" better terms for the services already rendered. Unfortunately, this leaves contractors left to decide if it's worth years of legal battle to be awarded the money they're rightfully owed; or, to take a lesser fee to at least cover the cost and keep their business afloat.

Senate Bill 453 is critical for the members of MCAMW and all subcontractors in the State of Maryland by making sure that they are paid what they're owed and in a timely manner. For these reasons, MCAMW supports Senate Bill 453 and asks for a favorable report.

Sincerely,

Thomas L. Bello
Executive Vice President

Please pass Maryland Bill 453 - MCAMW - 2-17-2023

Uploaded by: Thomas Bello

Position: FAV



Air Conditioning * Refrigeration * Heating
Interstate Service Company, Inc.

4101 Utah Avenue
Brentwood, Maryland 20722
Office (301) 864-2121 * Fax (301) 864-1282

2/17/2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith
& Members of the Senate Finance Committee

Re: SUPPORT Senate Bill 453 – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee:

I'm writing to you today to express strong Support of Senate Bill 453. As the owner/ principal of INTERSTATE SERVICE COMPANY, INC., Senate Bill 453 ensures subcontractor protection and prompt payment from Owner and General Contractors after the completion of contracted work.

We are a family-owned and operated small business with 37 employees, proudly located in Prince George's County and serving the Maryland area since 1972. We have been keeping businesses and their environment comfortable by provide commercial mechanical HVACR (heating, ventilation, air conditioning, refrigeration services) for over 50 years to our community as a Union Signatory Contractor of Local Union 602 and MCAMW Member.

As supply chain challenges continue to plague our industry, managing our cash flow as a subcontractor has become increasingly difficult, particularly when we are not given protection to ensure prompt payment from Owners/General Contractors. Our vendors expect supplies, materials & equipment to be paid for within 0-30 day terms, Office/shop rent is required to be paid monthly as well as keeping up with all Payroll/Fringe Benefit Obligations and other overhead costs on a monthly basis. Passing of this Bill 453 will help relieve the burdens that our company faces due to delayed payments from Owners/General Contractors....for these reasons we support Senate Bill 453 and ask for a favorable report.

Sincerely,

Heather D'Jangali, CFO
Interstate Service Company, Inc.

SB_453_Support Bernward.pdf

Uploaded by: Thomas Bello

Position: FAV



2/20/2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith and Members of the Senate Finance Committee

Re: **SUPPORT Senate Bill 453** – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee,

I'm writing to you today to express strong Support of Senate Bill 453. As the Founder and Chief Visionary Officer of Bernward Mechanical and Construction Solutions, we are highly supportive of **Senate Bill 453** to ensure that we and our fellow subcontractors are protected from needlessly slow payment from Owner and General Contractors after the completion of contracted work.

Bernward Mechanical is a Service Disabled Small Business located here in Anne Arundel County, Maryland. We started in 2016 with a vision to provide best in class mechanical construction and service with an all-union workforce to the DMW with Leadership, Service, and Dedication. Since those early beginnings, we have grown to a force of over 80 employees, are signatory to Local Unions 486, 602, 5, 24, 26, 100, 197, 51 and LiUNA, and are active members in both MCA-MD and MCAMW.

As a subcontractor, we face numerous burdens from delayed payments from owners and general contractors. Most significant is cash flow to pay our employees, our suppliers, and our second tier subcontractors. During a construction contract, we bear the primary burden of the cost of construction each and every day. We must make payroll weekly, pay our withholding taxes weekly, pay our union benefits and dues monthly, and pay our suppliers every 30 days. Almost every one of those payments has to be made on average 60 days before we see one dollar of payment from our clients. That leaves us holding the burden of the cost of construction 90, 120, sometimes even 150 days. This is a major and avoidable problem for small businesses that prevents many from growing to their full potential and boosting our economy, and opens up many small businesses to seeking out often high interest financing options that cut into their margins in order to pay for an owner's renovation or new building.

I urge you to provide a favorable report on SB453. You will not only be alleviating one of the largest burdens on our small businesses, but also ensuring the economic growth of those same businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Neimeyer", is written over a white background.

Carl Neimeyer, Founder and Chief Visionary Officer, Bernward Mechanical and Construction Solutions

836 Ritchie Highway Suite 1
DUNS 079262863

Severna Park, MD 21146

410-975-5576
CAGE 7NVZ4

WLGARY_SB453.pdf

Uploaded by: Thomas Bello

Position: FAV



W. L. GARY COMPANY, INC.

Providing Solutions for Over 125 Years

PLUMBING, HEATING, AIR CONDITIONING, AND ENERGY SOLUTIONS

1140 3rd St NE, Suite 406
Washington, DC 20002

Mail to: PO Box 91113
Washington, DC 20090

(office) 202.723.0676
(fax) 202.723.4710

www.wlgary.com

February 16, 2023

Attn: Maryland Senate Finance Committee Chair Melony Griffith and Members of the Senate Finance Committee

Re: **SUPPORT Senate Bill 453** – State and Private Construction Contracts- Prompt Payment Requirements

Chair Griffiths and Members of the Senate Finance Committee,

I'm writing to you today to express strong Support of Senate Bill 453. As the President of W. L. Gary Company Inc., I see **Senate Bill 453** as a valuable way to ensure subcontractor protection and prompt payment from Owner and General Contractors after the completion of our contracted work. Without this bill, we currently face cash shortages as we must pay our 150 employees every week, along with their union benefits every month. Our material suppliers terms are usually net 30 and we need to pay those bills or be threatened with not receiving our next shipment of materials without which, we might find ourselves in breach of contract. I have been with our company for over 40 years of its over 125 year existence. I have seen many businesses in our construction industry be put out of business because of issues with not getting paid in a timely manor. They had profitable businesses on paper but ran out of cash and were forced to close. If they had been paid in a timely manor, perhaps they would still be in business, providing jobs and income for more Maryland residents.

We know that our industry requires us to finance our work for 30 to 60 days under ideal conditions with work that is done at the beginning of a month, is billed at the end of the month and the payment comes 30-45 days after billing. We understood those terms when we chose to be in our business. We have been forced to finance projects through delayed payments far longer than we had ever anticipated. Under current law, Project owners and Prime contractors can hold money and not pay invoices for an unspecified amount of time, draining our limited resources. This is especially hard on smaller lower tier subcontractors who may not have the financial strength to wait for 90-120days to receive payment for work that was legitimately completed. As a Mechanical Contractor, we also subcontract some of the work to Sheetmetal contractors and insulating contractors. This bill will help us greatly so that we can make timely payments to our subcontractors without our company financing that cost as well.

Currently our headquarters is located in the District of Columbia but we have a large satellite Office in Lanham, Maryland with a fabrication and warehouse facility in Hyattsville Maryland. The majority of our 150 employees, including the 4 share holders, live in Maryland. We are signatory employers of members of Steamfitters Local 602, Plumbers Local 5, and UA local 486 as well as an active member of the Mechanical Contractors Association of Metro Washington (MCAMW). I bring this up to show we pay our employees well. We are not labor brokers who can tell their 1099 workers "we will pay you when we get paid". We need to pay our weekly payroll obligations to our employees, our



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PLUMBING, HEATING, AIR CONDITIONING, AND ENERGY SOLUTIONS

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weekly obligations to federal payroll taxes, SUDA, monthly union benefits, monthly rent to our landlords, utilities for our offices and warehouse, etc. regardless of whether we have been paid for our work or not. Our terms of payment with all of those entities cannot be "I'll pay you if and when I get paid"

The current system is not fair and equitable. We were not incorporated to be a financial institution. If the owners and Prime Contractors need help with financing, they should be seeking help from firms setup for just that purpose. Not the small and medium contractors who work every day to build buildings and service those same establishments, providing thousands of jobs across the state.

I urge you to give a favorable report and support **Senate Bill 453** and help us continue to provide meaningful employment for Maryland residents.

Sincerely

W. Randall Greer

W. L. Gary Company, Inc.

President

SB 453 SUPPORT Dabbs.pdf

Uploaded by: Tom Clark

Position: FAV



International Brotherhood of Electrical Workers

JOSEPH F. DABBS: Business Manager • THOMAS C. MYERS: President • RICHARD D. WILKINSON: Vice President
CHRISTOPHER M. CASH: Financial Secretary • RICHARD G. MURPHY: Recording Secretary • PAULO C. HENRIQUES: Treasurer



TESTIMONY IN SUPPORT OF SB 453 STATE & PRIVATE CONSTRUCTION CONTRACTS-PROMPT PAYMENT February 23, 2023

TO: Hon. Melony Griffith, Chair and members of the Senate Finance Committee
From: Joe Dabbs, Business Manager, International Brotherhood of Electrical Workers, Local 26

Madam Chair and members of the Senate Finance Committee, I respectfully ask that you give a **favorable** report to **SB 453**. The electrical construction industry in Maryland has never seen better times between Labor and Management. Both the IBEW and the National Electrical Contractors Association (NECA) have in recent years cultivated a relationship of understanding and prosperity for both parties. Therefore today, I speak in coordination with the contractors and **support** this prompt payment bill.

So many of our Contractors, especially minority contractors are put in financial risk because unconscionable General Contractors withhold payment for services rendered. Quite often this delay in payment is without reason or to collect interest on the sometimes millions of dollars that subcontractors have earned. SB 453 forces a General Contractor to publicly state the reason for withholding, to notify the sub-contractor, and pay a rate of 9% interest after 60 days of non-compliance. The authors of this bill should be commended because these simple rules will take care of the existing problem. It will keep the honest General contractors honest and force the unscrupulous General contractors to be honest.

I am the leader of 11,000 members and we at IBEW Local 26 depend upon Electrical Contractors that are financially secure and free of obstacles regarding payment of services rendered. I encourage this committee to join in this solidarity between labor and management and pass this bill. It works for everyone and as the Fiscal Summary notes, there is no effect on State finances.

Please take notice of this joint effort between IBEW Local 26 and NECA Contractors, as we seek fair business practices in the State. The state that encourages minority and veteran owned businesses and the diverse workforce they employ. Please join all of us and vote **favorable on SB 453**. Thank you very much



SB 453 SUPPORT.pdf

Uploaded by: Tom Clark

Position: FAV



International Brotherhood of Electrical Workers

JOSEPH F. DABBS: Business Manager • THOMAS C. MYERS: President • RICHARD D. WILKINSON: Vice President
CHRISTOPHER M. CASH: Financial Secretary • RICHARD G. MURPHY: Recording Secretary • PAULO C. HENRIQUES: Treasurer



TESTIMONY IN SUPPORT OF SB 453 STATE & PRIVATE CONSTRUCTION CONTRACTS-PROMPT PAYMENT February 23, 2023

TO: Hon. Melony Griffith, Chair and members of the Senate Finance Committee
From: Tom Clark, Political Director, International Brotherhood of Electrical Workers, Local 26

Madam Chair, Madam Vice Chair and members of the Committee, I ask that you join me in **support of SB 453**. To me, this piece of legislation is just a “do the right thing” type of bill. In the construction industry, prompt payment of services is something that is expected, but quite often not practiced. This simple bill could save Maryland contractors from bankruptcy, solely because unscrupulous customers and General contractors do **not** want to “do the right thing”.

Imagine an Electrical contractor bidding and winning a contract worth 5 million dollars. They would have to purchase the lights and switchgear, let’s say at 2.5 million. Along with their payroll, they are putting up to 80% of that 5 million dollars. Yet there is no guarantee that they will receive prompt payment of services, when the job is completed. Contractors can withhold payment without cause. In a state that promotes small, minority and veteran owned business, this withholding can ruin a Maryland business, specifically small minority businesses. SB 453 requires the General contractor to publicly state the reason for withholding and made responsible for interest lost. This maybe the cause of this practice: A General Contractor can make a great sum of interest on money that is designated to a sub-contractor.

In today’s world of supply line shortages, some subcontractors may have to pre-pay for equipment that is 18 months from delivery. This cost is a big burden to small Maryland sub-contractors, let us not add to this problem by keeping them from receiving payment for services rendered.

I believe this bill is a “slam dunk” regarding it being favorable. Most General contractors understand fair business practices, but let’s set some basic rules for the unscrupulous General contractors that aim to harm small Maryland businesses. Please join me in **support of SB 453**. Thank you.



Logan Mechanical MBE Testimony SB453 HB1097 FAV.pd

Uploaded by: Tristan Smith

Position: FAV

Logan Mechanical, LLC
9134 Piscataway Road, #1552
Clinton, MD 20735
(240) 899-8305
info@loganmechanical.org



MD License: 72486
DC License: RJ902154
UA Master: 12339073
EPA Section 608: 1133088687

Testimony

Tristan Smith, Logan Mechanical LLC - Certified MBE

SB453 / HB1097 – State And Private Construction Contracts – Prompt Payment Requirements

Favorable

Dear Chair Griffith and members of the Senate Finance Committee:

My name is Tristan Smith. I am the owner of Logan Mechanical, a certified MBE located in Clinton, Maryland. I graduated from the UA Steamfitters 602 apprenticeship program in 2012 as a Journeyman. I worked for American Mechanical Services and WE Bowers for four years before starting my own company, Logan Mechanical, in 2016. We are a 100 percent certified MBE, and we do state and local work, and are certified to do federal work.

However, it's difficult to bid as an MBE because of payment issues, access to capital, and organizational expertise required for bidding as a Prime Contractor. Because of these hurdles, we often times accept work as a Sub Contractor, as opposed to bidding as a Prime Contractor.

For example, we recently subcontracted with a Prime Contractor out of DC, after being approached by a company, since they were required to meet certain MBE targets under the bid. My company and our 4 workers have been on that job for 5 months, which costs me about \$30,000 per month in wages, not including our materials. In 5 months of work, we've only been paid for 1 month. The reason given to me by the Prime Contractor is that they have not received payment yet, and since the contract states that the work is "pay when paid," my team needs to keep working regardless of whether we get paid or not.

This is extremely difficult for an MBE for the following reasons:

1. As a small MBE, operating on extremely small profit margins, and with limited access to capital, we can not afford to bid as a Prime Contractor due to the administrative costs of reviewing a 300 page contract, for a job, sometimes as small as \$15,000.
2. As a result, in most cases, we get pushed into bidding as Sub Contractor.
3. Once we accept work as a Sub Contractor, there is no way for us to get paid unless the Prime Contractor gets paid, and we never actually know if and when they get paid.

We are completely at the mercy of the Prime Contractor.

It's an extremely exploitative system. I'm supporting SB453 / HB1097 because it ensures that we will either be paid promptly, or paid 9 percent interest while we are not being paid. That's much better than the current system for my company and for other MBEs in my situation. That's why I'm asking for this committee to pass the bill.

Thank you.

Respectfully,

Tristan Smith
Owner, Logan Mechanical LLC
Clinton, Maryland

2023 SB453 ASAB Testimony 2-23-23.pdf

Uploaded by: Warren Quinn

Position: FAV

February 23, 2023

Maryland Senate Finance Committee

SB0453 – State and Private Construction Contracts – Prompt Payment Requirements

Document in Support of Oral Testimony in Favor of the Bill

- A. Condition Precedent Payment Clauses (“Pay if Paid” clauses) are contractual conditional payment provisions intended to shift risk of loss related to non-payment downward to lower-tier subcontractors. Pay if Paid clauses are customarily viewed extremely unfavorably, as the transfer risk is usually viewed as inequitable and patently unfair because the “lower” entities and individuals are the most likely to suffer the greatest from such risk increase. Most jurisdictions invalidate Pay if Paid clauses in construction contracts because they interfere, frustrate, or prohibit the lower-tiered Subcontractors’ exercise of their statutory mechanics’ lien rights. (Source: American Bar Association, 12/11/20 “Construction Law 101,” Craig L. McCloud)
- B. Below is a Sample Condition Precedent Payment Clause (“Pay if Paid” clause) that is included in contracts of adhesion (i.e., “non-negotiable” terms) provided by General Contractors (“GCs”) to Subcontractors in commercial construction contracts in Maryland (emphasis added):

*Contractor shall pay the Subcontractor for the Subcontract Work, the "Subcontract Amount". Subcontractor shall submit invoices according to the Payment Procedures attached hereto as Exhibit B, together with a Partial Lien Waiver and Release on the Contractor form attached as Exhibit D hereto. Invoices shall be paid within seven (7) calendar days after receipt by Contractor of payment from the Owner, less any deductions for improperly or untimely performed work or for work performed by Contractor for the Subcontractor's account. **Payments to Subcontractor are expressly conditioned upon the receipt of payment by Contractor from the Owner as a condition precedent, and Subcontractor assumes the risk of nonpayment by the Owner.** Also, the Subcontractor may be required, as a condition precedent to any payment, to furnish evidence satisfactory to Contractor **that all payrolls, material bills, and other indebtedness applicable to the Subcontract Work have been paid.** Contractor reserves the right to make payment to Subcontractor in advance of these terms, however, any such early payment to Subcontractor or failure by Contractor to insist on any prerequisite for payment shall not be deemed a waiver of Subcontractor's obligations under this Subcontract, nor shall it alter the process required by this Subcontract for subsequent payments. All payments to Subcontractor are subject to set-off for any valid claim of Contractor against Subcontractor arising out of or related to this, or any other transaction.*

Page 1 of 2

- C. Pay if Paid clauses do not give the Subcontractor any right to information regarding when the GC is paid by the owner for the Subcontractor's work, so the Subcontract cannot determine the status of their mechanics' lien rights.
- D. Subcontractors are reluctant to file mechanic's liens out of fear that it will adversely affect their relationship with the GC and, consequently, their ability to be awarded projects by the GC, placing the Subcontractor's ability to sustain their business as a going concern within the complete discretion of the GC.
- E. Pay if Paid clauses expressly shift the risk of the project Owner's ability to fund the project from the GC to the Subcontractors. This is especially egregious during recessionary pressures, when Subcontractors are more likely to accept additional risks included in a contract of adhesion, at an unsustainably low bid price, in order to be awarded a project.
- F. Pay if Paid clauses expressly require the Subcontractor to fund all costs of their work, including labor and materials, for an undetermined amount of time prior to receiving payment for work completed, placing an extreme financial cash flow burden on the Subcontractor.
- G. 13 States currently prohibit Pay if Paid clauses in public and private commercial construction projects:
- California
 - Kansas
 - Illinois
 - Indiana
 - Nevada
 - Montana
 - North Carolina
 - New York
 - South Carolina
 - Utah
 - Virginia
 - Wisconsin
- H. Courts in other jurisdictions have found that Pay if Paid clauses are unenforceable in the typical circumstances reflecting the unequal bargaining power of the parties to construction contracts.

Respectfully submitted,
Warren Quinn
Executive Director

American Subcontractors Association of Baltimore

Page 2 of 2

President
Joselin Martin
TrueNorthCFO

Vice President
Eddie Hoffman
Life Safety Systems

Secretary
Krista Hickman
KatzAbosch

SB 453 - Prompt Payment- Favorable - NECA & ACE.pd

Uploaded by: William Yull

Position: FAV



Maryland Chapter
National Electrical Contractors Association



Phone: (410) 590-1189

1743 Dorsey Road, Suite 104-105
Hanover, MD 21076

Fax: (410) 590-1198

February 13, 2023

Dear Chair Griffith and members of the Senate Finance Committee:

On behalf of the Maryland Chapter of the National Electrical Contractors Association (NECA) and the Alliance for Construction Excellence (ACE), I write today to express our strong support for Senate Bill 453, requiring a private construction contract to include a provision requiring the owner to pay the contractor within a certain period of time.

Maryland NECA represents 75 construction contractors, some 2,000 workers and over 400 working apprentices. ACE is a coalition of premier construction specialty contractor associations, allied to create awareness of the value of quality construction. ACE represents subcontracting firms that employ highly skilled technicians for field construction work, and provide those employees with high-value wages, family medical care, retirement plans, and continuing education through workforce development and apprenticeship training programs.

Both NECA and ACE strongly support Senate Bill 453 because one of the many challenges that subcontractors in the construction industry face is not being paid in a timely fashion. Too often, subcontractors are left waiting for months, and in some cases, years, until they are paid for a project they've already completed, even after having fulfilled their obligation of the contract with the customer or prime contractor.

While the subcontractor waits to be paid for services rendered, their obligation to pay their vendors for material, their employees for their labor, and the cost of overhead for an office and warehouse is demanded in a timely basis. This means the contractor is left operating with a massive deficit, especially when the payment owed is worth hundreds of thousands, if not millions of dollars. Subcontractors - small, medium, and large - face this dilemma every day, and waiting for large sums of owed money means the contractor is unable to pay themselves. In fact, many contractors waiting on retainage and other forms of delayed payment finds themselves financing additional projects at varying interest rates, money which can't be recovered, to keep their crews working.

While morally reprehensible, it's not unheard of for low-road customers and prime contractors to purposefully hold money owed to a subcontractor so that they can "negotiate" better terms for the services already rendered. Unfortunately, this leaves contractors left to decide if it's worth years of legal battle to be awarded the money they rightfully owed; or, to take a lesser fee to at least cover costs and keep their business afloat.

Senate Bill 453 is critical for the members of NECA, ACE, and all subcontractors in the State of Maryland by making sure that they are paid what they're owed and in a timely manner. For these reasons, Maryland NECA and ACE supports Senate Bill 453 and asks for a favorable report.

Sincerely,

William Yull
Executive Director
Maryland Chapter, NECA

Testimony - MMCA - SB453 - 2023 Session - UNF.pdf

Uploaded by: Caitlin McDonough

Position: UNF



2423 MARYLAND AVENUE, SUITE 201
BALTIMORE, MARYLAND 21218
OFFICE: (410) 235-8303
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Pless B. Jones, Sr.
President

SB 453 - State and Private Construction Contracts – Prompt Payment Requirements
Position: OPPOSITION

The Maryland Minority Contractors Association, Inc. (MMCA) is a non-profit Maryland corporation established in 1977, composed of minority and women-owned businesses (MWBE), groups, and individuals within the State of Maryland. MMCA has 150+ years of collective general and sub-contracting experience. An important part of MMCA's mission includes providing and taking an active role in reviewing state and local legislation, regulations, policies, and programs that affect its membership businesses.

MMCA has reviewed **SB 453 - State and Private Construction Contracts – Prompt Payment Requirements** and is in **OPPOSITION** for the reasons listed below:

- SB 453 would mandate the inclusion of specific terms in contracts between private parties without regard to the consideration negotiated between the parties. For example, 17-604 (B) (4) requires 9% interest on payments more than 60 days after receipt of an invoice, when most agreements require a monthly 1.5% interest after the due date of the payment, typically not more than 30 days after the date of an invoice.
- SB 453 includes independent contractors within the definition of a “Subcontractor,” which will significantly impede the ability of MWBEs to obtain work. Overall, independent contractors may not intentionally set out to harm MWBEs, but their presence in the marketplace can create challenges and obstacles for MWBEs to overcome. It's important for organizations to actively seek out and prioritize working with MWBEs to help promote diversity and inclusion in the marketplace.

It's worth noting that independent contractors can hurt MWBEs in a few ways:

1. **Competitive Disadvantage:** Independent contractors can often offer services at lower rates than MWBEs due to their lower overhead costs. This can make it harder for MWBEs to compete in the marketplace, especially when it comes to winning bids for contracts.
 2. **Loss of Business:** When organizations choose to work with independent contractors instead of MWBEs, it can result in a loss of business for MWBEs. This can be especially harmful when organizations have diversity and inclusion initiatives, but do not actively seek out or prioritize working with MWBEs.
 3. **Limited Access to Opportunities:** When organizations rely on independent contractors, they may miss out on the opportunity to work with MWBEs who could offer unique perspectives, expertise, and services that can help their business thrive. This lack of access to opportunities can limit the growth and development of MWBEs.
- SB 453 would prohibit “pay when paid” provisions in subcontracts entered into for public works, but fails to provide financial support for the contractors who rely upon prompt payment by public bodies/government for payment to subcontractors for labor or other project costs. The committee should note that the 9% interest, which provides a scant incentive in any event, does not kick in until after 60 days. This provision discourages MWBEs from bidding as prime contractors because they typically do not have access to the working capital needed to “carry” the job costs for more than 30-45 days.

MBIA Letter of Opposition SB 453.pdf

Uploaded by: Lori Graf

Position: UNF

February 20, 2023

The Honorable Melony G. Griffith
Senate Finance Committee
Miller Senate Office Building,
3 East Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Opposition of SB 0453 State and Private Construction Contracts – Prompt Payment Requirements

Dear Chairwoman Griffith:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 0453 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 a **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 Senate Finance Committee

MAHC Testimony_SB 453_Pay when paid_UNF.pdf

Uploaded by: Miranda Willems

Position: UNF



Testimony to the Senate Finance Committee
SB 453 – State and Private Construction Contracts – Prompt Payment
Requirements
Position: UNFAVORABLE
February 23, 2023

SB 453 would require private construction contracts to include language that requires the owner to pay the contractor within 60 days of receiving their invoice or force them to pay the contractor a 9% interest penalty. The proposed contract requirements would not only place a financial and administrative burden on affordable housing developers who are already working with very tight budgets, but it will also create an additional administrative burden on construction companies using subcontractors and result in increased construction costs. Most all affordable housing developers are receiving loan funds from the Maryland Department of Housing and Community Development (DHCD), in addition to loans from the federal government, private banks and investors, and possibly local governments, to construct their affordable housing projects. These are large and complex projects with multiple funding sources. Each lender/funding source has their own process and timeline for reviewing and approving draw requests during construction, so it is common for a lender to take 60+ days to approve a draw and release a payment to the owner. This includes the DHCD loan funds that have to be disbursed through the Comptroller's office via a paper check that gets mailed to the owner.

Affordable housing developers have very little cushion in their construction budgets and with rising inflation and interest rates, and the increase in construction costs all impacting the viability of projects in recent years, they simply cannot afford an additional 9% interest "penalty" if their loan funds are not released in a timely manner by a lender, forcing them to delay payment to their contractor. If this bill passes, less affordable housing projects will get built because the costs are simply too high, and the budgets won't pencil out. We request an Unfavorable report on SB 453.

MAHC is the leading organization for the affordable rental housing industry in Maryland and represents over 185 member organizations, including nonprofit and for-profit developers, State and local housing authorities, property management companies, financial institutions, community development organizations, contractors, tax credit investors, consultants and individuals. Our members would be negatively impacted by SB453.

Respectfully submitted on February 23, 2023 by Miranda Darden-Willems, Executive Director, on behalf of the MAHC Board of Directors.

MAHC Board of Directors

Christine Madigan, Enterprise Community Development, President
Tom Ayd, Green Street Housing, Vice President
Catherine Stokes, Homes for America, Secretary



Miles Perkins, AGM Financial, Treasurer
Marsha Blunt, Pennrose Property Management
Mike Cumming, CohnReznick, Chief Financial Officer
Mary Claire Davis, AHC Greater Baltimore
Ivy Dench-Carter, Pennrose Properties, Advisor Emeritus
Maryann Dillon, Housing Initiative Partnership
Nichole Doye Battle, GEDCO
Peter Engel, Howard County Housing Commission
Mike Font, New Harbor Development
Chickie Grayson, Retired, Advisor Emeritus
Dana Johnson, Homes for America
Brian Lopez, Osprey Property Company
Dan McCarthy, Episcopal Housing
Willy Moore, Southway Builders
David Raderman, Gallagher, Evelius & Jones, Of Counsel
Jessica Zuniga, Foundation Development Group, Ex Officio

www.mdahc.org

443-758-6270

SB 453_MAA_UNF.pdf

Uploaded by: Rachel Clark

Position: UNF

CHAIRMAN:
Jeff Graf
VICE CHAIRMAN
David Slaughter

MARYLAND ASPHALT ASSOCIATION



TREASURER:
Paul Bramble
SECRETARY:
Curtis Hall
PRESIDENT:
G. Marshall Klinefelter

February 23, 2023

Senator Melony Griffith, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 453 – UNFAVORABLE – State and Private Construction Contracts - Prompt Payment Requirements

Dear Chair Griffith and Members of the Senate Finance Committees:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 consulting engineer firms and 41 other associate members. MAA works proactively with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Among other things, Senate Bill 453 would require all construction contracts, both public and private, to include provisions requiring that a subcontractor to be paid within 60 days of the receipt of an invoice following satisfactory completion of the work to be done or within 7 days after the contractor receives payment from either the owner of the project or the unit of state government overseeing the project.

MAA and our members know better than most the issues surrounding the importance of prompt payment, but Senate Bill 453 goes too far and prevents a contractor from requiring that they first be paid by the owner or the unit of state government before they must turn around and pay a subcontractor for the work performed. Such a preclusion could put an immense financial burden on our members should the owners or governmental units fail to uphold their prompt payment requirements. Our members do not have vast cash resources, and it would be unfair to force them to float funds to their subcontractors for an extended period with the only consolation being the possibility of eventually collecting interest on the amount originally owed to them. We also oppose this because of the bad precedent it would set in general contract law. Although this would only apply to construction contracts now, one can foresee a possible expansion of this requirement into more types of contracts. As a result, we must oppose this bill as drafted, though we would be willing to work with the sponsors to ease some of our concerns.

We appreciate you taking the time to consider our request for an UNFAVORABLE report on Senate Bill 453.

Sincerely,

Marshall Klinefelter
President
Maryland Asphalt Association

SB 453_MTBMA_UNF.pdf

Uploaded by: Rachel Clark

Position: UNF



February 23, 2023

Senator Melony Griffith, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 453 – UNFAVORABLE – State and Private Construction Contracts - Prompt Payment Requirements

Dear Chair Griffith and Members of the Senate Finance Committees:

The Maryland Transportation Builders and Materials Association (MTBMA) has been and continues to serve as the voice for Maryland's construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects 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 advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Among other things, Senate Bill 453 would require all construction contracts, both public and private, to include provisions requiring that a subcontractor to be paid within 60 days of the receipt of an invoice following satisfactory completion of the work to be done or within 7 days after the contractor receives payment from either the owner of the project or the unit of state government overseeing the project.

MTBMA and our members know better than most the issues surrounding the importance of prompt payment, but Senate Bill 453 goes too far and prevents a contractor from requiring that they first be paid by the owner or the unit of state government before they must turn around and pay a subcontractor for the work performed. Such a preclusion could put an immense financial burden on our members should the owners or governmental units fail to uphold their prompt payment requirements. Our members do not have vast cash resources, and it would be unfair to force them to float funds to their subcontractors for an extended period with the only consolation being the possibility of eventually collecting interest on the amount originally owed to them. We also oppose this because of the bad precedent it would set in general contract law. Although this would only apply to construction contracts now, one can foresee a possible expansion of this requirement into more types of contracts. As a result, we must oppose this bill as drafted, though we would be willing to work with the sponsors to ease some of our concerns.

We appreciate you taking the time to consider our request for an UNFAVORABLE report on Senate Bill 453.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association