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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