

'24 DGS SB 183 SUP 1-24-2024.pdf

Uploaded by: Ellen Robertson

Position: FAV

BILL: Senate Bill 183
State Procurement - Prompt Payment of Suppliers

COMMITTEE: Senate Budget and Taxation Committee

DATE: January 24, 2024

POSITION: Support

Upon review of Senate Bill 183 - State Procurement - Prompt Payment of Suppliers, the Maryland Department of General Services (DGS) provides these comments for your consideration.

Senate Bill 183 requires contractors and subcontractors on State contracts to promptly pay “suppliers” any undisputed amount that is owed. The bill adds “suppliers” to the State’s statutory prompt payment requirements and defines a “supplier” as a person that has supplied labor or materials to a contractor or subcontractor while in the process of providing work on a State procurement contract.

The State’s policy for work under a State procurement is that the contractor must promptly pay a subcontractor any undisputed amount to which the subcontractor is entitled. Subcontractors must also promptly pay any undisputed amount to lower tier subcontractors. Undisputed amounts must be paid by contractors (or subcontractors to lower tier subcontractors) within 10 days of receiving a payment from the State. Included in State law are procedures for resolution of disputes between subcontractors and contractors when a contractor or subcontractor fails to pay undisputed amounts promptly. Senate Bill 183 adds “suppliers” to this framework.

DGS supports passage of Senate Bill 183 and encourages a favorable report.

For additional information, contact Ellen Robertson at Ellen.Robertson@maryland.gov or 410-260-2908 or Lisa Nissley at Lisa.Nissley1@maryland.gov or 410-260-2922.

SenatorBailey_FAV_SB183.pdf

Uploaded by: Jack Bailey

Position: FAV

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Budget & Taxation Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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James Senate Office Building
11 Bladen Street, Room 401
Annapolis, Maryland 21401
410-841-3673 • 301-858-3673
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District Office
Dorsey Professional Park
23680 Three Notch Road, Unit 101
Hollywood, Maryland 20636
240-309-4238

January 24, 2024

Senate Bill 183 – State Procurement – Prompt Payment of Suppliers

Dear Chairman Guzzone and Members of the Committee,

I am writing to introduce Senate Bill 183. This bill expands the prompt payment statute for State construction projects to ensure that suppliers are compensated appropriately and quickly in the same manner as is currently required for subcontractors.

I am introducing this bill following discussions with residents of my district who own businesses which work on State highway projects in St. Mary's County who have not been receiving compensation for their labor or materials in a timely manner. When I inquired with the State Highway Administration on their behalf, I was informed that they were not entitled under the law to prompt payment because these businesses were considered to be "suppliers." I have since heard from many of these businesses that they are no longer interested in doing business with the State because they are not certain that they will receive payments in a timely manner.

Existing State law requires the prompt payment of subcontractors under State procurement contracts, but this statute does not include clearly defined protections for suppliers. Notably, there are provisions of the Real Property Article including suppliers under the protections of the prompt payment statute for private projects. This legislation is intended to resolve this inconsistency and ensure that our local businesses that do work for the State are compensated for their work and materials in a timely manner, as they deserve.

I respectfully request a favorable report on Senate Bill 183. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey

Harless Mary Leigh Gough -SB183 testimony PDF.pdf

Uploaded by: Mary Leigh Harless

Position: FAV

Mary Leigh Gough Harless Testimony on Senate Bill 183

Good evening Chairman Guzzone and honorable members of the Budget and Taxation Committee. My name is Mary Leigh Gough Harless and I come before you to share my experience in relation to Senate Bill 183.

I am here as a concerned citizen who has personally faced challenges related to a road construction project in Leonardtown, Maryland, undertaken by Highway and Safety Services. I own a family farm that was rented to this construction contractor for the project.

The rental contract started on November 1, 2019, with the requirement of regular rent payments. Unfortunately, within the first year, these payments became sporadic. I notified Highway and Safety Services' project manager as well as the company owner Kyle McPhearson, MDOT personnel overseeing the project, and the bonding agency about my situation but it was all no help. My last payment of any kind was received on April 1, 2022. Despite the lack of payments, Highway and Safety Services' construction supervisor's trailer is still present on the property signifying an ongoing use of the property without the corresponding financial commitments.

Even though the money owed is undisputed, it has become necessary to hire an attorney and go to court several times. Despite the court having found in my favor, Highway and Safety Services has not paid me the over \$30,000 they owe in unpaid rent. I have another court hearing in February.

I had believed that I could rely on a contractor to the state, thinking that the State of Maryland would stand behind any obligations of a contractor. I trusted that the state would properly vet a business they hired to perform work for them. Regretfully, I have since come to learn that this contractor has a long legal history of not meeting their financial obligations and, despite these significant red flags, the State contracted with them anyway.

This situation has not only caused financial hardship for me and my family but has also raised serious concerns about the accountability of contractors that come into our community.

I understand the importance of infrastructure projects for our community's development, but it is equally crucial that property owners are treated fairly and compensated for the use of their land. I urge this committee to carefully consider the implications of Senate Bill 183 on situations like mine. It is essential that legislation ensures fair practices and provides avenues for redress in cases where contractual obligations are not met.

In conclusion, I appreciate the opportunity to share my story, and I hope my experience will contribute to the thoughtful consideration of Senate Bill 183. Thank you for your time and attention.

testimony for bill 183.pdf

Uploaded by: Randal Sloan

Position: FAV

Sloan Materials, LLC

24770 Maypole Rd.
Leonardtown, MD 20650
(301)475-3651

January 22, 2024

Maryland General Assembly

RE: Written testimony for Senate Bill 183

To whom it may concern:

This written testimony for Senate Bill 183 is in reference to the Maryland Department of Transportation project *Intersection Improvements on MD 5 at Abell/Moakley Streets* in St. Mary's County, contract number SM2025171. The general contractor and bond holder for the project is Highway and Safety Services, Inc. of Gaithersburg, MD. The bonding company is SureTec Insurance Company of Houston, TX, with bond provided under bond number 4426250.

Sloan Materials, LLC provided services to Highway and Safety Services, Inc. as a material supplier from January 2020 through December 2021. Payment collection was difficult with payments arriving for invoices between 60 and 90 days past due. The final invoice was issued on December 30, 2021 and the last payment that we received arrived on July 18, 2022, leaving a balance due of \$47,417.71 all of it over 90 days past due. Current charges due, including accumulated interest, total \$68,081.52.

On May 17, 2022, The Law Office of Daniel A.M. Slade, LLC of Leonardtown, MD filed a claim against the project on behalf of Sloan Materials, LLC (see attached). In addition, The Law Office of Daniel A.M. Slade, LLC made numerous attempts to establish contact with SureTec Insurance Company, point of contact Michael Cronin. No response was received.

Sloan Materials, LLC also contacted Mr. Sean Powell, head of MDOT SHA, who assured us there was little he could do and encouraged us to file suit against Maryland Department of Transportation and Highway and Safety Services, LLC.

Sloan Materials, LLC also contacted SHA District 5 Construction, point of contact Mr. Reed Stonesifer. Mr. Stonesifer performed due diligence in finding a way to force Highway and Safety Services, Inc., or SureTec Insurance Company to settle the total balance due, but after numerous attempts also advised to file suit.

We are asking for consideration for payment in lieu of filing suit.

Sincerely,

Randal H. Sloan

Randal H. Sloan

sb183 - Prompt Payment of Supplier.pdf

Uploaded by: Marcus Jackson

Position: FWA



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

January 24, 2024

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TO: BUDGET AND TAXATION COMMITTEE
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
RE: S.B. 183 – PROMPT PAYMENT OF SUPPLIERS
POSITION: FAVORABLE WITH AMENDMENTS

Associated Builders and Contractors (ABC) opposes S.B. 183 which is before you today for consideration. This bill as written, exposes general contractors and subcontractors to double-liability to lower-tier subcontractors, which is fundamentally unfair. Additionally, the bill proposes to extend new prompt payment rights to suppliers, which include large equipment and supply companies like Trane, Caterpillar or Vulcan, which have never had such protections, do not need such protections and which long ago created free-market protections for themselves against late payment by subcontractors, including personal guarantees securing credit given to subcontractors. Maryland does not need to protect these large suppliers against small Maryland subcontractors, as this bill attempts to do.

ABC's first objection relates to the bill's potential to unfairly expose general contractors to double liability in the proposed section (c)(1). Section (c)(1), as proposed to be modified by S.B. 183, provides: "A contractor shall pay a subcontractor OR SUPPLIER an undisputed amount to which the subcontractor OR SUPPLIER is entitled within 10 days of receiving a progress or final payment from the State." As written, the "Contractor" – a term which does not appear to be defined in the Code – could pay a "subcontractor" but if the subcontractor does not pay its own "supplier" the general contractor could be required to pay that supplier also ("A contractor shall pay a subcontractor OR SUPPLIER an undisputed amount to which the subcontractor OR SUPPLIER is entitled within 10 days"). Standing alone, this is an unacceptable and unfair provision because it exposes general contractors to paying twice for the same materials (once to the "subcontractor" and once to the "supplier."

Secondly, as discussed above, the ABC opposes extending prompt pay protection to suppliers. ABC has numerous subcontractor members and these extending these protections to suppliers will require many member subcontractors to negotiate new contractual protections with large suppliers which have the bargaining leverage of a larger company. S.B. 183 would also potentially expose these subcontractors, which tend to be smaller companies, to new liabilities to suppliers, which are often larger companies.

To address these concerns, ABC has a proposed amendment which modifies the definition of "supplier" to limit that term to apply to first-tier subcontractors only. If the Assembly amended the bill in accordance with this proposed amendment,

ABC's concerns outlined above would be remediated. The proposed amendment is as follows:

Page 1, Line 19: strike subcontractor:

(2) "SUPPLIER" MEANS A PERSON THAT HAS SUPPLIED LABOR OR MATERIALS TO A CONTRACTOR [OR SUBCONTRACTOR] IN THE PROSECUTION OF WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.

For the reasons set forth above, on behalf of the over 1,500 ABC members in Maryland, we respectfully request an unfavorable report on S.B. 183.

Marcus Jackson, Director of
Government Affairs

SB 183_MAA_FWA.pdf

Uploaded by: Rachel Clark

Position: FWA

CHAIRMAN:
Jeff Graf
VICE CHAIRMAN
David Slaughter

MARYLAND ASPHALT ASSOCIATION



TREASURER:
Paul Bramble
SECRETARY:
Curtis Hall
PRESIDENT:
Tim Smith

January 24, 2024

Senator Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 183 – FAVORABLE WITH AMENDMENTS – State Procurement – Prompt Payment of Suppliers

Dear Chair Guzzone and Members of the Committee:

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.

Senate Bill 183 defines suppliers and would require contractors and subcontractors to promptly pay suppliers any undisputed amount that is owed. We appreciate the Sponsor introducing this legislation but have concerns as it relates to the relationship, or lack thereof, between a prime contractor and a supplier. Often, a prime contractor has no relationship with a supplier—suppliers work directly with subcontractors and never meet or have agreements with a prime contractor. This legislation would result in wide sweeping liability to the prime contractor when it should not. We have drafted what we believe to be a friendly amendment to solve this problem. By removing subcontractor from the definition of supplier and adding "prime" to contractor, this establishes that suppliers shall be promptly paid by the prime contractor when they have a direct relationship with each other. Please see the language below. We have also attached the amendment language on Page 2.

(2) "SUPPLIER" MEANS A PERSON THAT HAS SUPPLIED LABOR OR MATERIALS TO A PRIME CONTRACTOR [OR SUBCONTRACTOR] IN THE PROSECUTION OF WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.

We appreciate you taking the time to consider our amendment on Senate Bill 183.

Sincerely,

A handwritten signature in black ink that reads "Tim Smith".

Tim E. Smith, P.E.
President
Maryland Asphalt Association

AMENDMENT TO SENATE BILL 183

Page 1, Line 19: Add “prime” before contractor and strike “or subcontractor”

(2) “SUPPLIER” MEANS A PERSON THAT HAS SUPPLIED LABOR OR MATERIALS TO A **PRIME** CONTRACTOR [OR SUBCONTRACTOR] IN THE PROSECUTION OF WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.

SB 183_MTBMA_FWA.pdf

Uploaded by: Rachel Clark

Position: FWA



January 24, 2024

Senator Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 183 – FAVORABLE WITH AMENDMENTS – State Procurement – Prompt Payment of Suppliers

Dear Chair Guzzone and Members of the Committee:

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.

Senate Bill 183 defines suppliers and would require contractors and subcontractors to promptly pay suppliers any undisputed amount that is owed. We appreciate the Sponsor introducing this legislation but have concerns as it relates to the relationship, or lack thereof, between a prime contractor and a supplier. Often, a prime contractor has no relationship with a supplier—suppliers work directly with subcontractors and never meet or have agreements with a prime contractor. This legislation would result in wide sweeping liability to the prime contractor when it should not. We have drafted what we believe to be a friendly amendment to solve this problem. By removing subcontractor from the definition of supplier and adding “prime” to contractor, this establishes that suppliers shall be promptly paid by the prime contractor when they have a direct relationship with each other. Please see the language below. We have also attached the amendment language on Page 2.

(2) “SUPPLIER” MEANS A PERSON THAT HAS SUPPLIED LABOR OR MATERIALS TO A PRIME CONTRACTOR [OR SUBCONTRACTOR] IN THE PROSECUTION OF WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.

We appreciate you taking the time to consider our amendment on Senate Bill 183.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

AMENDMENT TO SENATE BILL 183

Page 1, Line 19: Add “prime” before contractor and strike “or subcontractor”

(2) “SUPPLIER” MEANS A PERSON THAT HAS SUPPLIED LABOR OR MATERIALS TO A **PRIME** CONTRACTOR [OR SUBCONTRACTOR] IN THE PROSECUTION OF WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.