



The Voice of Merit Construction

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TO: HOUSE HEALTH & GOVERNMENT OPERATIONS 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 favorable with amendments report on S.B. 183.