



**TESTIMONY OF Ike Casey for KIMBERLEE DRIGGS, D2 SITE WORK AND
PRESIDENT ASA OF METRO WASHINGTON**

**ON BEHALF OF
AMERICAN SUBCONTRACTORS ASSOCIATION OF METRO WASHINGTON**

BEFORE THE ECONOMIC MATTERS COMMITTEE

on

HB 451 - State and Private Construction Contracts – Prompt Payment Requirements

Submitted on January 27, 2025

Subcontractor Protections with HB 451

Mr. Chairman and members of the committee,

My name is Kimberlee Driggs, and I am the owner of D2 Sitework, a woman-owned, MBE/DBE certified construction subcontractor based in Rockville. Additionally, I serve as the current President of the American Subcontractors Association of Metro Washington, and I speak for all our members.

The major risk all parties face on a construction project is slow payment or non-payment by the owner of the project. In Maryland all this risk flows down to me and other subcontractors and lower tier subcontractors. HB 451 will allow the risk to be shared fairly among all the construction stakeholders.

I am going to lay it all on the table for you...

I have been in business for over 12 years and am fortunate enough to have a decent line of credit at a high interest rate to fall back on when payments are slow. Over the last 12 years I have had to draw on the majority of these

funds, if not all to compensate for slow payments on work that has been successfully completed and invoiced correctly. In addition, 5-10% of our annual revenue is held up in retention, even though our work is fully bonded. To add to our cashflow burden we have unprocessed change orders amounting to 5-10% of our annual revenue. This is unfortunately common in our industry.

I have 30 active jobs and an average of 12 per month that are physically active. If just one out of the twelve payments is delayed, the financial consequences can put me at risk of losing my business. Let me provide an example of a project we were working on at a local university. Our work was being successfully performed and on schedule. Requisitions were undisputed and submitted timely. A total of \$700,000 was up to 90 days past due. My line of credit was maximized as I was trying to grow my business. Several attempts we made to find out why payments were being delayed and when could we expect them. The General Contractor we were working for could not provide an explanation, only said that they had not been paid either. I escalated this to the Head of Procurement and asked for a meeting with the decision makers. They had many excuses, none that could justify the financial burden and extreme stress that I had incurred over this time period. No interest penalty was paid and no apologies were made but the amounts due were eventually paid.

Our overhead expenses such as Health Insurance, Business Insurance, materials, Equipment payments, rent must be paid every 30 days. Then there is payroll and trucking payments that must be paid weekly. The negative result of slow payments not only can put you out of business, It hurts your credit score, upsets employee confidence, damages your reputation with vendors, your bonding company, the bank, etc....

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. Construction is a Risky business, but it does not have to be. For the last 20 years, only 25% of construction companies survive past 10 years. The number one reason is cashflow.

A very similar law to HB 415 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.

Although this bill includes a section that indicates subcontractors have a right to payment in Section 4, page 5, line 13, which:

PAYMENT OF A CONTRACTOR BY AN OWNER MAY NOT BE A REQUIRED CONDITION FOR PAYMENT OF A SUBCONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION UNLESS THE OWNER IS INSOLVENT OR HAS FILED FOR BANKRUPTCY PROTECTION UNDER TITLE 11 OF THE UNITED STATES CODE.

I understand a statement, similar to the one in Virginia and other states would be clearer and more effective. In Virginia it reads: *“Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor receiving payment for amounts owed to that contractor. Any provision in a contract contrary to this section shall be unenforceable.”*

Most General Contractors in Maryland have language that payment by the owner is a condition precedent to payment to the subcontractor. If they work in Virginia that wording is not enforceable. It has not caused any problems that I have heard of.

HB 451 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.

ASAMW 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.

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