



February 27, 2014

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The Honorable Thomas M. Middleton
Finance Committee
3 East Miller Senate Building
11 Bladen Street
Annapolis, MD 21401-1991

Re: Support for SB 774 (Procurement – Occupational Safety and Health Prequalification)

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

Dear Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of Senate Bill 774. This crucial piece of legislation would require construction firms to be prequalified, based on their performance on worker health and safety measures, before entering bids on public contracts in Maryland. Ultimately, it would ensure that taxpayer dollars are not used to fund unscrupulous contractors that disregard their workers' health and safety.

At the Center for Progressive Reform, I work with a number of legal scholars with expertise in worker safety, two of whom literally wrote the book on the reasons why state and federal agencies struggle to eliminate workplace illnesses, injuries, and fatalities.¹ One enduring obstacle is the fact that agency resources are grossly outmatched by the sheer number of worksites: with only 54 inspectors, it would take 101 years for the Maryland Occupational Safety and Health program (MOSH) to inspect each one.² Setting high standards for safety in public projects is a creative, inexpensive step that Maryland can take to improve worker protections, without requiring the allocation of significant new resources for additional inspections.

Currently, construction firms are screened on a number of factors prior to bidding, but worker-safety considerations are not included. As a result, agencies can easily end up financing companies that operate hazardous worksites and endanger Maryland workers. Indeed, the current system encourages firms to cut corners on worker safety, since by doing so they may be able to offer lower bids than their more responsible competitors and thus have a better chance at winning lucrative contracts.

The construction industry is responsible for a disproportionately high number of fatalities and injuries. From 2008 and 2010, between 25 and 33 percent of all workplace deaths in Maryland were in the construction industry, and each of those years saw between 5,800 and 6,900 construction-related injuries. These incidents impose unbearably high costs on individuals and families in Maryland, as well as

¹ See THOMAS O. MCGARITY & SIDNEY A. SHAPIRO, *WORKERS AT RISK: THE FAILED PROMISE OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION* (1993).

² AFL-CIO, *DEATH ON THE JOB: THE TOLL OF NEGLECT 112* (2013), available at <http://bit.ly/1k5FuK5>.

burden the local economy. Between 2008 and 2010, construction deaths and injuries cost Maryland \$712.8 million in medical services, lost productivity, administrative expenses, and lost quality of life.³ Public agencies are among the largest purchasers of construction services in Maryland, so they are in a unique position to improve worker protections through the use of their considerable buying power. The impact of this bill would reach far beyond public contracts, since any companies hoping to remain eligible for bidding would have to maintain a good safety record in *all* their work.

The prequalification system that this bill would establish is particularly well-designed. The bill instructs the Department of Labor, Licensing, and Regulation to develop a standardized questionnaire and rating system. The Department would consult with a broad range of stakeholders, including unions, safety experts, and contractors, to ensure that the resulting system is fair and effective.

The questionnaire would incorporate a wide range of health and safety criteria, and the Department would set a minimum passing score. A firm's compliance record and its performance on numerical metrics (*e.g.*, lost-time incident rates) would be important components, but most factors would emphasize the firm's broader safety culture, including: the use of written, site-specific safety plans; the level of employee participation in identifying and resolving hazards; and the quality of safety training for workers and supervisors. As a result, firms will not have to fear being excluded based on just one or two idiosyncratic aspects of their record, if they otherwise have a strong safety culture.

Potential bidders—both contractors and subcontractors—would have to undergo the evaluation at least once a year to remain eligible. The Department would maintain a standing list of prequalified firms, which would enable general contractors to quickly confirm before accepting any sub-bids that they came from subcontractors that had already been prequalified. Firms may be tempted to submit false information in the questionnaire, but the bill addresses this problem by debarring firms from bidding (for a maximum of three years) if it is discovered that they provided misleading information.

A few other states consider a contractor's worker safety record before allowing it to enter bids or begin work, but in general they only take into account a very small set of factors, such as the firm's worker's compensation experience modification rate (EMR) or its history of citations.⁴ And unlike this bill, they typically do not guarantee that these factors will be objectively assessed and consistently incorporated into the evaluations. Several more robust prequalification systems can be found at the local level, including one already in place in Montgomery County, MD, although such programs are necessarily limited in their scale and influence.⁵ With this bill, Maryland would become a leader in this area—the first state to adopt a comprehensive safety prequalification system—and help to raise standards for worker protection throughout Maryland's construction industry.

Thank you,



Michael Patoka
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³ PUBLIC CITIZEN, *THE PRICE OF INACTION: A COMPREHENSIVE LOOK AT THE COSTS OF INJURIES AND FATALITIES IN MARYLAND'S CONSTRUCTION INDUSTRY 7-9* (2012), available at <http://bit.ly/1lfEHXg>.

⁴ These states include California (Cal. Pub. Cont. Code § 20101), Massachusetts (810 CMR 9.00 *et seq.*), Connecticut (C.G.S. § 4a-100), and Tennessee (*see* <http://www.tdot.state.tn.us/construction>).

⁵ Other commendable prequalification programs at the local level can be found in Durham, NC (<http://bit.ly/1fNU2XC>), Fairfax County, VA (<http://1.usa.gov/1hirj0I>), and the Los Angeles Unified School District (<http://bit.ly/1hKZJwH>).