



January 23, 2019

Board of Directors

John Applegate
Alyson Flournoy
Robert Glicksman
Alice Kaswan
Thomas McGarity
Sidney Shapiro
Amy Sinden
Robert R.M. Verchick

Delegate Dereck E. Davis, Chair
House Committee on Economic Matters
231 House Office Building
6 Bladen Street
Annapolis MD 21401

Delegate Eric M. Bromwell, Vice Chair
House Committee on Economic Matters
231 House Office Building
6 Bladen Street
Annapolis MD 21401

Re: Support for HB 24 (Procurement – Public Work Contracts – Contractor Occupational Safety and Health Requirements)

Advisory Council

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

Dear Delegates Davis, Bromwell, and Members of the Committee:

Thank you for this opportunity to provide written testimony in support of House Bill 24. This crucial piece of legislation would require construction firms to establish safety and health plans before entering bids on public contracts in Maryland, and to implement those plans when performing work funded by the state's taxpayers. Ultimately, it would ensure that taxpayer dollars are not used to fund unscrupulous contractors that disregard their workers' health and safety.

The Center for Progressive Reform's Member Scholars include a number of experts on worker safety, two of them whom 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 51 inspectors across the state in 2017 (the latest year for which data is available), it would take nearly 100 years for the Maryland Occupational Safety and Health program (MOSH) to inspect each worksite one time.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.

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

² DLLR MARYLAND DIVISION OF LABOR AND INDUSTRY, 2017 ANNUAL REPORT, at 6, http://dlslibrary.state.md.us/publications/Exec/DLLR/LE2-108_2017.pdf; AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLIGENCE 179 (2018), <https://aflcio.org/sites/default/files/2018-04/DOTJ2018nb.pdf>.

Currently, construction firms are screened on a number of factors before contracts are awarded, but worker safety considerations are not included. As a result, state 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 2012 to 2017, between 22 and 29 percent of all workplace deaths in Maryland were in the construction industry,³ and each of those years saw between 3,900 and 5,000 construction-related injuries.⁴ These incidents impose unbearably high costs on individuals and families in Maryland, as well as burden the local economy. Research shows that preventable workplace deaths and injuries can affect an employer's bottom line through workers' compensation payments, legal fees, and lost productivity, among other factors.⁵

Public agencies are among the largest purchasers of construction services in Maryland, so they are in a unique position to improve worker protections through 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 system that this bill would establish is a reasonable compromise—imposing limited requirements on firms that bid on contracts, while focusing greater attention on the health and safety practices of firms that are actually awarded public funding. The bill requires bidders simply to attest that they have a health and safety plan in place and will implement it when performing work under a prospective contract. The bill instructs the Department of Labor, Licensing, and Regulation (DLLR) to develop a standardized questionnaire and rating system that would apply to firms awarded contracts valued at \$100,000 or more. The results of the rating system would be used to determine whether additional safety measures beyond the firm's existing health and safety program are necessary to protect Maryland workers.

³ U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2017), <https://bit.ly/2FIV93E> (29%); U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2016), <https://bit.ly/2R60t2n> (22%); U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2015), <http://bit.ly/2mO1EZy> (26%); U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2014), <http://1.usa.gov/1ITKsHU> (22%); U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2013), <http://1.usa.gov/1Z9ruik> (23%); U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, FATAL OCCUPATIONAL INJURIES IN MARYLAND (2012), <http://1.usa.gov/1ITKD5Z> (24%).

⁴ U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2017 (2017), <https://bit.ly/2sGPCSq>; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2016 (2016), <https://bit.ly/2T9uBM5>; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2015 (2015), <http://bit.ly/2mNUmF3>; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2014 (2014), <http://1.usa.gov/1S7hSFT>; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2013 (2013) <http://1.usa.gov/1UASV3l>; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NUMBERS OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, MARYLAND, 2012 (2012), <http://1.usa.gov/1PibPYJ>.

⁵ *Business Case for Safety and Health*, OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEP'T OF LABOR, <http://1.usa.gov/23ZBCQ7> (last visited Jan. 23, 2019).

The questionnaire should incorporate a wide range of health and safety criteria. A firm's compliance record and its performance on numerical metrics (e.g., lost-time incident rates) would be important components, but most factors should 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 penalized based on just one or two idiosyncratic aspects of their record, if they otherwise have a strong safety culture.

Firms may be tempted to submit false information to DLLR, but the bill addresses this problem by giving the agency the power to issue citations and to recommend debarment of firms found in violation of the law from bidding on future contracts (for a maximum of two years).

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.⁶ 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.⁷

This bill would help to raise standards for occupational health and safety throughout Maryland's construction industry and ensure that taxpayer money is not supporting "low-road" employers who put profits over workers' safety.

Sincerely,



Katherine Tracy
Policy Analyst
Center for Progressive Reform
ktracy@progressivereform.org
202-747-0698 x7

⁶ 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* <https://www.tn.gov/tdot/tdot-construction-division/construction-contractor-prequalification.html> (last visited Jan. 23, 2019)).

⁷ *See Office of Procurement*, MONTGOMERYCOUNTYMD.GOV, <http://www.montgomerycountymd.gov/PRO/home.html> (last visited Jan. 29, 2019).