



**BEFORE THE HOUSE COMMERCE AND LABOR COMMITTEE
REPRESENTATIVE DICK STEIN, CHAIRMAN**

**TESTIMONY
OF
CHRIS MCCLOSKEY
PARTNER, BRICKER & ECKLER LLP**

MARCH 17, 2021

Mr. Chairman and members of the House Commerce and Labor Committee, my name is Chris McCloskey. I practice with the law firm of Bricker & Eckler, where I chair the firm's Public Sector Industry Group and am a partner in its Construction Law Group as well. Our firm works with and serves as counsel to both the Ohio Hospital Association (OHA) and The Ohio Manufacturers' Association (OMA).

Established in 1915, OHA is the nation's first state-level hospital association. OHA exists to collaborate with member hospitals and health systems to ensure a healthy Ohio. OHA currently represents 240 hospitals and 14 health systems throughout Ohio.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,300 members. Its mission is to protect and grow Ohio manufacturing.

Thank you for the opportunity to provide opponent testimony on House Bill 68 (HB 68). We also appreciate the conversations and discussions we have had over the past week with both the sponsors and proponents of the legislation. It is our hope that a practical solution to our concerns can be found.

HB 68 would require that the owners of private construction projects -- including manufacturers and health care operators that are building, improving, or maintaining facilities in Ohio -- to pay contractors within 30 days of receiving an application for payment from the contractor or, if there is a process of certification of a payment application by a design professional, within 30 days after the payment application has been certified, whichever is later. HB 68 also contains provisions wherein late payments would be subject to a punitive 18% interest rate plus potential attorneys' fees and costs.

One of the pillars of a free-market economy is freedom of contract. Virtually every private construction contract is a freely negotiated agreement that sets forth the payment terms in detail and sets agreed upon consequences for late payment or failure to pay, typically with reasonable interest rates and/or other penalties. We are not aware of systemic late payments coming from manufacturing or health care projects, and thus do not understand the conditions for this proposed legislation. Our members seek to have their facilities up and running as soon as possible and cannot risk the delays that come with late or missed payments to contractors. Furthermore, an owner who fails to timely pay a prime contractor risks having subcontractors walk off the job because of the inability of the prime contractor to pay them, and the prime contractor also has the ability to file a mechanic's lien against the property for failure to pay. Both of these possibilities are strong incentives for an owner to timely pay a contractor according to the terms of their negotiated agreement. To impose the onerous requirements set forth in HB 68 on all owners because of anecdotal stories of late payments, with no

substantial body of data to support a systemic payment problem, is an unnecessary intrusion into private contracts between two sophisticated parties.

HB 68 allows the state to step in and set the terms of a contract with a potential windfall to one of the parties at the expense of the other. The provisions contained in the bill are far from industry standards negotiated today in both terms of time allowed to pay and the amount of penalties.

The OMA's and OHA's members negotiate and engage in countless contracts every year. They have embedded processes to comply with the terms of each contract whether that is for the construction of a new facility, the purchase of life-saving medical equipment, or supplying manufactured parts to an OEM. HB 68 rejects the concept of freedom of contract which has governed the majority of private transactions in this state and substitutes a state-sponsored version with terms and penalties much more punitive – and we would argue unnecessarily so -- than what exists in the marketplace.

We appreciate the opportunity to share our concerns with the bill as drafted and look forward to continuing our dialogue with the bill sponsors and the committee. Thank you. I would be happy to try to answer any questions.