



March 22, 2022

The Honorable Terry Johnson  
Chairman  
Ohio Senate Workforce and Higher Education Committee  
Statehouse  
1 Capitol Square, 2<sup>nd</sup> floor  
Columbus, OH 43215

**RE: House Bill 68 – Written Opposition Testimony**

Dear Chairman Johnson:

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. House Bill 68 (HB 68) destroys the idea of freely negotiated contracts.

In general terms the bill requires that the owners of *private construction projects* – including manufacturers and retailers that are building, improving, or maintaining facilities in Ohio -- pay contractors within 30 days of receiving an application for payment from the contractor. The bill also contains provisions wherein late payments would be subject to a punitive 18% interest rate plus potential attorneys' fees and costs.

We are not aware of systemic late payments coming from manufacturing or retailer 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. Imposing 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 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 dollar amount of penalties.

The Ohio Manufacturers' Association's and Ohio Hospital Association'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 respectfully request the committee to oppose HB 68. Please feel free to contact either of our associations with questions. We would be happy to provide further information.