

TESTIMONY OF: Heather Lutzker
GMI Contractors, Inc.
Director of Business Development

House Bill 726 Public Hearing
The House Commerce Committee
Room 205, Ryan Office Building
Tuesday, April 7, 2015 (10:00 A.M.)

Good Morning, Chairman Harris, Minority Chairman Curtis, Representative Tobash, and the Members of the Committee. Thank you for the opportunity to testify before you this morning regarding the February 17, 1994 Contractor and Subcontractor Payment Act (CASPA) as it relates to subcontractors within the construction industry. More importantly, it is my opinion that this hearing is critical for the proper review of HB 726.

I am here today as the Director of Business Development of GMI Contractors, Inc. We are an architectural glazing contractor, who furnish and install glazing for all types of commercial work from new construction to renovation and as member of the Architectural Glass and Metal Association (AGMA), which works in conjunction with the Interior Finish Contractors Association of the Delaware Valley (IFCA) on legislative matters that affect commercial construction. In all of these capacities, I witness firsthand the impact of the current prompt pay law on subcontractors within Pennsylvania's construction industry.

In advance of today's hearing and for the past two years, I, along with both AGMA and IFCA, have been in constant communication with your staff regarding this important legislation and on Tuesday, March 31, 2015, we submitted our suggested edits to HB 726. Additionally, on April 11, 2013, AGMA had the pleasure to testify before the House Labor and Industry Committee regarding HB 473, legislation that would amend the 1963 Mechanics Lien Law. During that hearing and today, I will clearly articulate that the greatest impediment facing my business, as a small to medium sized contractor, is not being paid for work that has been satisfactorily completed.

In the last legislative session, on June 10, 2014, Representative Tom Killion took bold legislative action by introducing HB 2331, which would amend CASPA by requiring timely payments to contractors and subcontractors. More specifically, it included "suspension of performance" language, which stated "that if a payment is not received by a contractor in accordance with the owner's payment obligations then the contractor may suspend performance of the work, without penalty, until payment is received. Any term in a construction contract that is contrary to this subsection shall be unenforceable as a matter of public policy."

To that end, AGMA and IFCA included this "suspension of performance" language in our edits to HB 726; more specifically, we inserted it as an additional subsection (e) under Section Seven entitled Contractor's and Subcontractor's Payment Obligations. Ultimately, this language will eliminate contractor and subcontractors reliance on the Mechanics' Lien Law to resolve payment disputes. Without question, I firmly believe this language will enhance HB 726

and resolve the outstanding payment issues that I, along with other contractors, subcontractors and suppliers in the construction industry, face on a daily basis.

On October 28, 2014, the Finishing Trades Institute of the Mid-Atlantic Region (FTI) received a letter from then Majority Leader Mike Turzai after his visit to the FTI, stating his “appreciation hearing about prompt pay legislation and his willingness to give it significant consideration in this legislative session.” The FTI is the apprenticeship training center for AGMA and IFCA and this letter is a true testament that he, along with all of you, are seriously reviewing and considering this important legislative issue. I would like to submit his letter dated October 28, 2014 to today’s hearing record.

Beyond our proposed “suspension of performance” language, I, along with AGMA and IFCA, believe there should be some discussion regarding both subsection (d) under Section Five entitled Owner’s Payment Obligations and subsection (a) under Section Twelve entitled Penalty and Attorney Fee as it relates to interest rates. As proposed, the change from 1 to 1.5 percent could constitute a significant increase and may be problematic to our contractors and subcontractors. Currently, CASPA violators presently face up to 24 percent interest, not including attorneys’ fees, on top of a base award, and the new number would increase the interest liability to 36 percent; ultimately a 50 percent increase. In my opinion, this is a potentially controversial provision and I respectfully request that the House Commerce Committee and its staff continue to dialogue on this issue to determine a mutually beneficial outcome for our contractors and subcontractors regarding it.

The proposed waiver prohibition inserted by Rep. Tobash in HB 726 as subsection (c) to Section Three entitled Application of Act is an acceptable addition for contractors and subcontractors and it will aid in the uniform enforcement of CASPA. Similarly, under Section Nine entitled Retainage, the proposed posting of security in lieu of retainage is a good addition for contractors and subcontractors. We offered minor changes to the language of subsection (a.1) of Section Nine that would enhance that provision. Finally, we believe that the proposed language in Section Twelve entitled Penalty and Attorney Fee, which incorporates the waiver provisions of Sections Six entitled Owner’s Withholding of Payment for Good Faith Claims and Twelve entitled Contractor’s Withholding of Payment for Good Faith Claims could be problematic. Receiving written notice of a deficiency item within seven days of receiving an invoice is often not feasible, as defects may not be known at that time and a waiver of the right to challenge an invoice is a direct, harsh result for owners, contractors, and subcontractors. Thereby, we believe further discussion on this proposed language by this committee and staff may be necessary.

In conclusion, I sincerely believe the edits I highlighted today to HB 726 would provide the necessary protections for contractors and subcontractors to ensure they are paid in a timely and prompt matter. Our proposed “suspension of performance” language reinforces the enforcement of HB 726 and it will ultimately enhance CASPA for the betterment of Pennsylvania’s construction industry. I look forward to the continued dialogue on this important legislative issue. Please call upon me, along with AGMA and IFCA, to be a resource to you and your staff.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify on this very important issue affecting Pennsylvania's construction industry.

MIKE TURZAI
Majority Leader

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October 28, 2014

Michael Schurr
Director of Education
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Dear Mike:

Thank you for inviting me out to tour the institute. That was certainly an interesting and informative experience for me. I really enjoyed the virtual welding machine, and having a chance to see all the other technology and gadgets around the facility! It is such an amazing place, and one deserving of the pride and dedication shown by the staff and students.

Thank you also for giving me a chance to meet with the trade industry leaders. You provided me with some truly valuable insights into the challenges facing tradesmen and business owners. I appreciated hearing about the prompt pay legislation; we will be giving it significant consideration as we head into the next session.

It was wonderful meeting you, and I hope to see you again soon.

Very truly yours,

A handwritten signature in blue ink that reads 'Mike Turzai'.

Mike Turzai
Majority Leader
Member, 28th Legislative District
Pennsylvania House of Representatives

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