



## **Testimony of the Associated Pennsylvania Constructors (APC)**

**Submitted to/for:**

**Senate Majority Policy Committee  
“Cutting Red Tape and Regulatory Reform in Pennsylvania”**

**8E-B East Wing, PA State Capitol Complex  
Harrisburg, PA**

**October 25, 2023**

We thank Chairman Laughlin and Senate Majority Policy Committee members for allowing our organization, the Associated Pennsylvania Constructors (APC), to submit testimony as you examine ways to improve Pennsylvania’s business climate by making regulatory reforms in state government.

By way of background, APC is a trade association that unites more than 400 members, including prime and subcontractors, consulting engineers, material suppliers, manufacturers, and others interested in Pennsylvania's road and bridge construction industry. The association has served the industry for over 90 years and represents the majority of actively bidding contractors in the Commonwealth's \$2.7 billion highway industry.

We are a highly regulated industry, and our members have worked successfully to make Pennsylvania a better place to live, work, and recreate for nearly 100 years. We continue working with our governmental partners, such as PennDOT, the PA Turnpike Commission, and local governments, to build high-quality, cost-effective solutions to Pennsylvania’s infrastructure challenges.

Our members have long advocated for regulatory reforms to improve efficiency, streamline processes, and enhance productivity. Regulatory reform and "cutting red tape" are crucial to achieving these outcomes.

We want to suggest four areas in which the General Assembly may be able to improve the Commonwealth's regulatory climate to improve the way our industry does business in the state.

**First, improve how Highway Occupancy Permits (HOPs) are issued.**

Contractors often act as developers and are part of a development team. Highway Occupancy Permits can often be problematic and increase private development costs in the Commonwealth. Some typical issues include:

- Review process and times (developer's capital commitments tied up with no certainty on review times)
- Mandated updates to infrastructure and costs/process/requests related to those (developer uncertainty to these costs deters commitment from economic development)
- District Inconsistencies among PennDOT Districts. For example, District 8 will not accept a bond as collateral on form M-950K as the statute allows. District 4, on the other hand, accepts bonds for the collateral. District 8 has a position that no individual bonds unless a minimum of \$500K. Pub 282 section on Access Security (pages 63-65) provides the District Executive authority to decide whether to accept forms of security other than LOC. It also mentions the rationale of PennDOT for preferring LOC. *"Letters of credit are required because they are a safer and easier form of security in that PennDOT may go directly to the bank, present the letter of credit, and collect the funds without going through an insurance company or initiating a legal action."* LOCs needlessly tie up developer cash when a bond would suffice.
- The indemnification of liability requires the landowner (not the tenant) to carry additional insurance that names PennDOT as additionally insured. This requirement makes the marketability and value drop because it essentially takes the lease from a triple net (NNN) down to a double net (NN). When buyers in the secondary market evaluate all available assets to purchase, the appeal of this property will drop to the bottom of the list because it is NN, not NNN.

### **Second, include PennDOT in Pennsylvania's Prompt Payment Law.**

Pennsylvania's prompt payment law was enacted in the 1990s but excluded the Pennsylvania Department of Transportation. Specifically, the definition of "contract" in chapter 39 of the Procurement Code states, *"A contract exceeding \$50,000 for construction as defined in section 103 (relating to definitions), including heating or plumbing contracts **but excluding Department of Transportation contracts** under section 301(c)(1) (relating to procurement responsibility)."* (Emphasis added) And, section 301 (c)(1) that is referenced above, states in part, *"Bridge, highway, dam, airport (except vertical construction), railroad or other heavy or specialized construction..."*

Except for certain circumstances, the prompt pay law requires payment to contractors within 45 days. Our members typically report more extended periods—sometimes exceeding 180 days—to receive compensation. Yet, our members are held to strict construction timeframes and penalized if work is not completed on time.

Another concern for contractors is that by regulation (Pub. 408), contractors must continue working regardless of the state's ability to pay within a "prompt timeline." When this occurs, contractors have to float their resources to ensure the project continues so as not to default on the contract. These instances of extended work without payment are of great concern when the General Assembly does not enact a timely budget, further compounding this delay in work performed and completed.

Our members have advocated to be included in PA's prompt payment law for decades. We believe that uniformity and fairness be attributed to our members to ensure they receive their payments on time, as do other forms of public construction. Payment delays can disrupt cash flow and create financial strains on contractors, especially small businesses. By including transportation construction in the prompt payment law, contractors can have greater confidence in paying their employees and subcontractors on time, leading to a more efficient and productive construction process.

**Third, APC continues to work with PennDOT to eliminate district inconsistencies.** PennDOT operates and divides the state into eleven districts, each having jurisdiction over the construction projects within its territory. Having 11 ways of doing business for one governmental owner may lead to eleven ways of delivering and overseeing projects, thereby creating massive inefficiencies. Because many contractors bid on PennDOT work in multiple regions, they often face challenges when navigating the nuances of eleven districts. , what construction method or process may work in one PennDOT district won't be acceptable in another. Over the years, APC has attempted to work with PennDOT to analyze these various guidelines and regulations to standardize and consolidate them to achieve a precise and simplified set of rules for contractors to bid upon. We believe having standardized procedures will also make it easier for contractors to comply with regulations, thus reducing the risk of non-compliance issues that can delay projects.

**Fourth, streamline PA's prequalification process.** Also contained in the state Procurement Code is the prequalification of responsible bidders, which has been in place since 1973. A PennDOT prequalification process aims to develop a system that will assure bidders' integrity, responsibility, and competence. To be clear, APC continues to support the existence of a state prequalification program for bidders, and we would suggest one area that should be considered for improvement.

We would suggest that the proliferation of prequalification codes has become problematic, and a careful re-evaluation should be carried out to reduce their number. When the system was first implemented, approximately 10 to 15 prequalification codes existed. Today, that number has increased to over 80 codes. While the proliferation of these codes may be well intended with the onset of specialty contractors in today's market, it presents a significant barrier of entry for new or small contractors seeking to get into the PennDOT market and bid on public works construction in Pennsylvania.

APC thanks the committee for allowing us to submit this testimony to you and remains willing to work with you to develop ways to improve Pennsylvania's regulatory climate. We believe our members play a vital role in our state's economy and look forward to working with all of you to provide safe, efficient, and high-quality infrastructure to the Commonwealth and its citizens.

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