



The Voice of Merit Construction

Mike Henderson

*President
Greater Baltimore Chapter
mhenderson@abcbaltimore.org*

Chris Garvey

*President & CEO
Chesapeake Shores Chapter
cgarvey@abc-chesapeake.org*

Debra D. Livingston CAE

*President & CEO
Metro Washington Chapter
dlivingston@abcmetrowashington.org*

Amos McCoy

*President & CEO
Cumberland Valley Chapter
amos@abccvc.com*

Mark McDaniel

*Chairman
Joint Legislative Committee
mmcDaniel@nlpentinc.com*

Marcus Jackson

*Director of Government Affairs
Metro Washington Chapter
mjackson@abcmetrowashington.org*

Additional representation by:
Harris Jones & Malone, LLC

6901 Muirkirk Meadows Drive
Suite F
Beltsville, MD 20705
(T) (301) 595-9711
(F) (301) 595-9718

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TO: CHAIR KELLEY AND MEMBERS OF THE FINANCE COMMITTEE

FROM: ASSOCIATED BUILDERS AND CONTRACTORS

RE: S.B. 486 – LABOR AND EMPLOYMENT – EMPLOYMENT DURING AN EMERGENCY (MARYLAND ESSENTIAL WORKERS PROTECTION ACT)

POSITION: OPPOSE

On behalf of the Associated Builders and Contractors for Maryland, we appreciate the General Assembly’s concern for our members and provide this information to assist the Committee in its deliberations. We have reviewed HB--- and respectfully recommend the following amendments:

Definition of Emergency Amendment

On page 3, strike beginning with “(1)” in line 21 down through “(III)” on page 4 in line 3.

When read in its totality, the bill appears to be focused on catastrophic health emergencies, such as the COVID-19 pandemic that we have been experiencing since March of 2020. The amendments above refocus the bill on its original intent, namely “an incident, occurrence, or outbreak that is the subject of an executive proclamation under § 14–3a–02 of the public safety article.” Md. Code, Pub. Safety §14-3A-02, states, “If the Governor determines that a catastrophic health emergency exists, the Governor may issue a proclamation under this subtitle.”

We are seeking to avoid State of Emergency’s for snow, rain or other reasons unrelated to a long-term pandemic.

Local Authority to Declare an Emergency

On page 9, strike in their entirety lines 27 through 28.

On page 10, line 1 strike “(2)” and substitute “(1)”.

On page 10, line 2 strike “EACH” and substitute “THE”.

On page 10, line 2 strike “EACH” and substitute “THE”.

On page 10, line 4 strike “AN” and substitute “THE”.

On page 10, strike beginning with “THAT” in line 9 down through “SUBSECTION” in line 10

This amendment will tailor the bill to apply to State catastrophic health emergency proclamations. For companies that operate in multiple jurisdictions, this will bring uniform application of the law and equal compensation to employers. For example, as currently written, the Baltimore City Office of Emergency Management could declare an emergency related to unexpected flooding. An employer would have to follow the mandates under §

3-1605, § 3-1608, and §3-1609 of the subtitle for those employees working in Baltimore City; however, for those employees just outside the City line would not. This complicates the employers accounting practices and creates dissention among the ranks as some employees will be getting receiving benefits the others are not simply because their local jurisdiction has declared an emergency.

Hazard Pay Retroactivity & Impairment of Existing Contracts

On page 17, line 6 after “WORKS” insert “DURING THE DECLARED EMERGENCY”.

On page 17, line 9 after “YEAR” insert “OR IF THE LABOR PROVIDED BY THE ESSENTIAL WORKER IS PART OF CONTRACT AWARDED PRIOR TO THIS ACT’S ENACTMENT”

On page 17, line strike in their entirety lines 14 through 15.

On page 17, line 18 strike “(4)” and substitute “(5)”.

The enabling language of the bill reads as follows “BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to require the payment of hazard pay for work performed in an emergency before the effective date of this Act.” By striking lines 18 through 19 as this amendment suggests, the bill continues



to look prospectively from when the bill was enacted. Lines 18 through 19 would inadvertently capture the start of this current pandemic, March 5, and require essential employers to reopen their books and pay hazard pay to each employee for each hour that the employee physically came to work during the pandemic. For small businesses, this would be an unexpected blow that many cannot absorb. Because of the large span of time that the look back encompasses, an employer may also miss a day or hours that an employee worked, potentially exposing that employer to a lawsuit from an employee up to two years later.

On behalf of over 1500 ABC business members in Maryland, we remain available to the Committee as it works to finalize this legislation.

Marcus Jackson, Director
Government Affairs

