

**ACETalkingPointsHB552.SB553.pdf**

Uploaded by: Ike Casey

Position: FAV



## Subcontractor Protections HB 552 / SB 553

Subcontractors and their employees who live and work in your district depend on a steady cash flow to remain viable. One of the major hindrances to positive cash flow is when an owner or general contractor holds retainage beyond a reasonable period of time. HB 552/SB 553 will address this unfair practice and provide an important protection for their businesses.

Subcontractors are in the business of building construction and should not be required to finance construction projects in whole or in part. Yet to the extent that funds are being retained, the subcontractor is providing at least part of the project financing. Funds should be retained only if and when necessary to provide assurances that a job will be completed.

HB 325 / SB 250 is vitally important to construction subcontractors. Often the subcontractors' overhead and profit are tied up in **Retainage**. Slow payment after work is properly completed and billed is a significant drain on any subcontractor's ability to continue in business and is devastating to a small, minority or disadvantaged business.

This Legislative Body passed a law in 2019 that requires payment of Retainage in 90 days on all private work. It stands to reason that the State should be held to the same standard of payment as private industry.

ACE welcomes the opportunity to have an on-going dialogue with the State of Maryland to address these issues on a regular basis so that your subcontractor constituents can thrive and the state will become an owner of choice for all citizens in Maryland.

Who is ACE – the Alliance for Construction Excellence?

- National Electrical Contractors Association (NECA) – Annandale Virginia
- Mechanical Contractors Association of Metropolitan Washington (MCA)
- American Subcontractors Association of Metro Washington (ASA)
- Mechanical Contractors Association, Inc. (MCA)
- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)

Please visit our Website <http://allianceforconstructionexcellence.com/>

For More Information Contact:

Office of Bruce C. Bereano  
191 Duke of Gloucester Street  
Annapolis, MD 21401  
Phone 410-267-0410  
lobbyannapolis@comcast.net

\*\*\*\*

Ike Casey, Executive Director of ASA of Metro Washington  
571/237-7101 or ike@asamw.org

\*\*\*\*\*

J.T. Thomas, National Electrical Contractors Association and ACE Chairman  
(703) 658-4383 or jt@wdcneca.org

# **SB 553 - State Finance and Procurement – Retention**

Uploaded by: Justin Hayes

Position: FAV



Peter Franchot  
*Comptroller*

## TESTIMONY OF COMPTROLLER PETER FRANCHOT

**Support - Senate Bill 553 - State Finance and Procurement - Retention Proceeds**  
*Budget and Taxation Committee*  
*February 16, 2022*

Chair Guzzone, Vice Chair Rosapepe, and members of the Committee, it is my pleasure to provide testimony in **support** of **Senate Bill 553 - State Finance and Procurement - Retention Proceeds**. I would like to thank Senator Patterson for sponsoring this important legislation, and the Committee for providing the opportunity for my testimony to be heard.

Small businesses often operate on small margins, making consistent cash flow critical to their success. Timely payment to small businesses is another crucial aspect of ensuring they can continue to operate effectively. Senate Bill 553 aids in that regard by requiring payment of undisputed retainage upon substantial completion of a project. Undisputed retainage terms can be negotiated under initial contracts, protecting the State's interests. Our small businesses in Maryland bring significant benefits to the state, and encouraging expedited payments by passing Senate Bill 553 will help them thrive.

For the reasons stated above, I respectfully request a favorable report for Senate Bill 553. Thank you for your time and consideration.

###

**SB553\_NFIB\_fav (2022).pdf**

Uploaded by: Mike O'Halloran

Position: FAV



---

NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – [www.NFIB.com/Maryland](http://www.NFIB.com/Maryland)

TO: Senate Budget and Taxation Committee

FROM: NFIB – Maryland

DATE: February 16, 2022

RE: **SUPPORT SENATE BILL 553** – State Finance and Procurement – Retention Proceeds

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland’s small businesses, NFIB supports Senate Bill 553 – legislation that requires the payment of any retainage within 90 days provided there is no dispute.

For contractors, particularly those bidding on state projects, cash is the life blood of their business. Contractors must put up cash for various items related to a contract – materials, sub-contractors, equipment rental, etc. The current limitations simply do not match the needs of the industry especially given the realities of the current economy. Distributors are requiring more up front from contractors as supplies are limited because of supply line disruptions brought about by the COVID-19 pandemic.

SB553 still protects the State. Agencies and units of government will still be able to settle contract disputes. Further, they will be able to withhold whatever amount in excess of retainage they deem necessary to protect themselves.

For these reasons, **NFIB supports SB553**. This bill is a positive step in helping small businesses increase their cash flow and bid more contracts. NFIB-Maryland requests a favorable committee report.

**SB 553\_MAA\_FAV.pdf**

Uploaded by: Rachel Clark

Position: FAV



CHAIRMAN:  
Rob Scrivener  
VICE CHAIRMAN  
Brian Russell

**MARYLAND ASPHALT ASSOCIATION**



SECRETARY:  
David Slaughter  
TREASURER:  
Jeff Graf  
PRESIDENT:  
G. Marshall Klinefelter

February 16, 2022

Senator Guy Guzzone, Chair  
Senate Budget and Taxation Committee  
3 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 553 – FAVORABLE – State Finance and Procurement – Retention Proceeds**

Dear Chair Guzzone and Members of the Senate Budget and Taxation Committee:

The Maryland Asphalt Association (MAA) is comprised of 18 producer members representing more than 47 production facilities, 24 contractor members, 24 consulting engineer firms and 41 other associate members. We proactively work with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Senate Bill 553 requires all undisputed retention proceeds that have been retained by a unit of State government or by a contractor as part of a State procurement to be paid within 90 days following the date of substantial completion. This bill would greatly benefit our industry by providing a reliable and secure process of payment for our members, allowing us to serve the State of Maryland more effectively. Under current law, our contractors and subcontractors often take on burdensome costs that are harmful to their functioning as a business, and adding the economic effects of COVID-19 on top of that has created a difficult environment to operate and flourish in. By offering timely assurance of payments to our contractors and subcontractors, we are better able to support our State's countless construction and transportation projects that are essential to our entire infrastructure network.

We appreciate you taking the time to address this important issue and we respectfully urge a favorable report on Senate Bill 553.

Thank you,

Marshall Klinefelter  
President  
Maryland Asphalt Association

**SB 553\_MTBMA\_FAV.pdf**

Uploaded by: Rachel Clark

Position: FAV



February 16, 2022

Senator Guy Guzzone, Chair  
Senate Budget and Taxation Committee  
3 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 553 – FAVORABLE – State Finance and Procurement – Retention Proceeds**

Dear Chair Guzzone and Members of the Senate Budget and Taxation Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 553 requires all undisputed retention proceeds that have been retained by a unit of State government or by a contractor as part of a State procurement to be paid within 90 days following the date of substantial completion. This bill would greatly benefit our industry by providing a reliable and secure process of payment for our members, allowing us to serve the State of Maryland more effectively. Under current law, our contractors and subcontractors often take on burdensome costs that are harmful to their functioning as a business, and adding the economic effects of COVID-19 on top of that has created a difficult environment to operate and flourish in. By offering timely assurance of payments to our contractors and subcontractors, we are better able to support our State’s countless construction and transportation projects that are essential to our entire infrastructure network.

We appreciate you taking the time to address this important issue and we respectfully urge a favorable report on Senate Bill 553.

Thank you,

A handwritten signature in blue ink, appearing to read "Michael Sakata", written over a large, stylized flourish.

Michael Sakata  
President and CEO  
Maryland Transportation Builders and Materials Association

# **SB 553 - Letter of Support - Maryland NECA.pdf**

Uploaded by: William Yull

Position: FAV



**Maryland Chapter**  
National Electrical Contractors Association



Phone: (410) 590-1189

1743 Dorsey Road, Suite 104-105  
Hanover, MD 21076

Fax: (410) 590-1198

February 15, 2022

Dear Chair Guzzone and members of the Senate Budget & Taxation Committee:

On behalf of the Maryland Chapter of the National Electrical Contractors Association (NECA), I write today to express our strong support for Senate Bill 553, requiring State procurement contracts be paid within 90 days after the date of substantial completion.

Maryland NECA represents 75 construction contractors, some 2,000 workers and over 400 working apprentices. Our economic footprint throughout the region is substantial, generating some \$300 million in annual revenue, and some \$50 million in state, federal and local taxes each and every year.

Maryland NECA strongly support Senate Bill 553 because one of the many challenges that contractors in the construction industry face is the inability to be paid in a timely manner after substantial completion of a project. Too often, subcontractors are left waiting for months, and in some cases, years, until they are paid for a project they've already completed, even after having fulfilled their obligation of the contract with their customer or a prime contractor.

While the contractor waits to be paid for services rendered, their obligation to pay their vendors for material, their employees for their labor, and the cost of overhead for an office and warehouse is demanded in a timely basis. This means the contractor is left operating with a massive deficit, especially when the payment owed is worth hundreds of thousands, if not million of dollars. While the issue of retainage adversely affects minority and women owned business more significantly, all contractors, small and large, face this dilemma every day. Waiting for large sums of owed money greatly impacts cash-flow, which for small businesses, means the contractor is unable to not just pay themselves, but also fund additional projects for them to bid and work on, perpetuating the problem.

While morally reprehensible, it's not unheard of for customers and low-road prime contractors to purposefully hold money owed to a subcontractor so that they can "negotiate" better terms for the services already rendered. Unfortunately, this leaves contractors left to decide if it's worth years of legal battle to be awarded the money their rightfully owed; or, to take a lesser fee to at least cover the cost and keep their business afloat.

Senate Bill 553 is critical for the members of NECA by making sure that they are paid what they're owed and in a timely manner. For these reasons, Maryland NECA supports Senate Bill 553 and asks for a favorable report.

Sincerely,

William Yull  
Executive Director  
Maryland Chapter, NECA

**'22 SB 553 Retention DGS LOI B&T 2-16-22.pdf**

Uploaded by: Ellen Robertson

Position: INFO



**BILL:** Senate Bill 553  
State Finance and Procurement – Retention Proceeds

**COMMITTEE:** Senate Budget and Taxation

**DATE:** February 16, 2022

**POSITION:** Letter of Information

Upon review of Senate Bill 553– State Finance and Procurement – Retention Proceeds, the Department of General Services (DGS) provides these comments.

The legislation will have a significant operational impact on the Department of General Services (DGS) by **eliminating a mechanism the State utilizes to ensure the full completion of construction projects.**

Typically, DGS has 1,300+ active design and construction projects. DGS’s goal is to successfully complete these projects. **Retention is a percentage of the construction contract that can be withheld from payment to the contractor until the successful completion of the project.** At substantial completion of a construction project there is typically still minor work to be completed by the contractor, this can include touch-ups to previously completed work or small portions of work that do not affect the main use of the project. **The work is typically undisputed and necessary to the successful and full completion of the project, even though it may be considered minor.**

Senate Bill 553 requires undisputed retention amounts to be released within 90 days of the substantial completion. **The DGS current practice is to release retention at substantial completion and upon receipt of a proper invoice billing for the retention.** DGS will issue “Substantial Completion” when the State takes possession of a site from a contractor. The majority of this agency’s construction work is in existing, occupied facilities.



**On occasion DGS does not release retention at substantial completion because there are items remaining that are not completed.** For example, if a project with landscaping was substantially complete in the winter, the State would take occupancy, but the landscaping would not be completed until Spring. The remaining landscaping is undisputed, but if this legislation is passed the State would be required to pay the amount even though the work has not been completed.

The contractor may not put the time or effort into completing the remaining work if there is no financial incentive to do so. **The only remedy the State would have would be termination of the contract, then procuring and paying another contractor to finish the work. The State would then be required to file a claim against the original contractor to recoup the additional costs incurred.**

For additional information, contact Ellen Robertson at 410-260-2908.