SB 921_MTBMA_FAV.pdf
Uploaded by: Michael Sakata
Position: FAV

February 21, 2024

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

RE: SB 921 – <u>FAVORABLE</u> – State Finance and Procurement – Retention Proceeds

Dear Chair Guzzone and Members of the 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.

This bill would greatly benefit our industry by providing a reliable and secure process of payment for our members, allowing us to more effectively serve the State of Maryland. 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 the budget deficits to the transportation program on top of that have 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 infrastructure network as a whole.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 921.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

SB 921_MAA_FAV.pdf
Uploaded by: Tim Smith
Position: FAV

MARYLAND ASPHALT ASSOCIATION

SINCE 1954

February 21, 2024

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

RE: SB 921 – FAVORABLE – State Finance and Procurement – Retention Proceeds

Dear Chair Guzzone and Members of the Committee:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 consulting engineer firms and 41 other associate members. MAA works proactively 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.

This bill would greatly benefit our industry by providing a reliable and secure process of payment for our members, allowing us to more effectively serve the State of Maryland. 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 the budget deficits to the transportation program on top of that have 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 infrastructure network as a whole.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 921.

Sincerely,

Tim Smith

Tim E. Smith. P.E.
President
Maryland Asphalt Association

THE MARYLAND ASPHALT ASSOCIATION, INC. | 2408 PEPPERMILL DRIVE, SUITE G, GLEN BURNIE, MARYLAND 21061
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SB0921 - TSO - Retention Proceeds_OPP_FINAL.pdf
Uploaded by: Patricia Westervelt
Position: UNF

MARYLAND DEPARTMENT OF TRANSPORTATION

Wes Moore
Governor
Aruna Miller
Lieutenant Governor
Paul J. Wiedefeld
Secretary

February 21, 2024

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis MD 21401

Re: Letter of Opposition – Senate Bill 921 – State Finance and Procurement - Retention Proceeds

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 921, as it would eliminate the incentive for contractors to quickly perform items on a punch list to bring a project to completion so they can receive their final payment.

Senate Bill 921 would require payment of retainage within 90 days after substantial, rather than final, completion of a project. This could mean that payment needs to be made prior to the completion of the "punch list," the list of items that the contractor and project sponsor agree must be addressed by the contractor once the site is operational but before a project is considered complete. Often items on the punch list are minor, but the punch list may also include items that require rework.

Retainage provides an incentive for contractors to perform the items on the punch list quickly and entirely to bring a project to completion so they can receive their final payment. Payment of retainage prior to completion of the punch list means that contractors are not incentivized to complete the items on a timely basis, or at all.

If contractors do not complete punch list items following payment of retainage, the MDOT may need to contract with a third party to finish the work, resulting in double payment for the work. Therefore, expenditures for construction projects could increase.

Requiring payment of retainage within 90 days after substantial completion, rather than final completion, could also open up disputes, claims, and potential litigation around the ambiguous term "substantial completion."

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 921 an unfavorable report.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090

'24 SB 921 Retention Proceeds LOI B&T 2-21-2024.pd

Uploaded by: Ellen Robertson

Position: INFO

Maryland
DEPARTMENT OF
GENERAL SERVICES

Wes Moore, Governor | Aruna Miller, Lt. Governor | Atif Chaudhry, Secretary

BILL:	**Senate Bill 921** State Finance and Procurement – Retention Proceeds
COMMITTEE:	Senate Budget and Taxation
DATE:	February 21, 2024
POSITION:	Letter of Information

Upon review of Senate Bill 921 – State Finance and Procurement – Retention Proceeds, the Department of General Services (DGS) provides these comments.

DGS is the State's construction manager for a variety of State agencies and typically has more than 1,300 active design and construction projects. The DGS 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 921 will have a significant operational impact on the DGS by **eliminating retention, a mechanism the State utilizes to ensure the full completion of construction projects.**

This bill 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 will be required to pay the amount even though the work has not been completed.

A 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 or Lisa Nissley at 410-260-2922.