
February 27, 2024

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis MD 21401

Re: Letter of Opposition – House Bill 994 – State Finance and Procurement - Retention Proceeds

Dear Chair Pena-Melnyk and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 994, 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.

House Bill 994 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 House Bill 994 an unfavorable report.

Respectfully submitted,

Pilar Helm
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Maryland Department of Transportation
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