

AUC of Maryland_SB 835_FAV.pdf

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Position: FAV



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February 26, 2025

Legislative Position: Favorable
Senate Bill 835
State Finance and Procurement - Retention Proceeds
Senate Budget & Taxation Committee

Dear Chairman Guzzone and members of the committee:

Established in 1950, the Associated Utility Contractors of Maryland, Inc. (AUC) is dedicated to advancing the utility contracting industry across the state. Our mission is to foster strong relationships between utility contractors and their clients, uphold the highest professional standards within the industry, and elevate the reputation of utility professionals within the business community. We actively advocate for public policies that address industry challenges and contribute to improving Maryland's overall business environment.

AUC is pleased to support SB 835. This legislation would require that undisputed retention proceeds retained by a unit or a contractor under a State procurement contract be paid within 90 days after the date of substantial completion.

As stated in the fiscal note, the current practice of withholding retainage can cause cash flow problems for subcontractors. By requiring payment of undisputed retention proceeds before final completion, this bill will allow subcontractors to be paid their retainage much earlier, which will help alleviate these cash flow issues.

However, we respectfully request that the committee consider an amendment to change the payment timeline from 90 days to 60 days. The majority of utility contractors are second-tier subcontractors, which gives our members only 90 days to give notice to a contractor when we haven't been paid to make a claim under the Miller Act. If we are not paid our retainage until 90 days after substantial completion, it leaves us little time to take action if there are any issues with payment. By shortening the payment timeline to 60 days, we can ensure that we have sufficient time to address any payment issues that may arise.

Whitney Beall
EXECUTIVE DIRECTOR

PO Box 249
Annapolis Junction, MD 20701

P. 410-750-2554
whitney@aucofmd.com



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We believe that this amendment will not significantly impact the fiscal note, as it is already estimated that the bill will have a minimal impact on the State's finances. We also believe that this amendment will not alter the overall intent of the bill, which is to ensure that subcontractors are paid their retainage in a timely manner.

In conclusion, AUC supports SB 835 with the proposed amendment to change the payment timeline to 60 days and encourage a **favorable report**. We believe that this bill will have a positive impact on the construction industry in Maryland and we look forward to working with the committee to ensure its passage.

Thank you for considering our testimony.

Sincerely,

The Associated Utility Contractors of Maryland (AUC)

SB835_LOS_State Finance and Procurement - Retentio

Uploaded by: Kevin O'Keeffe

Position: FAV



February 26, 2025

To: Members of the Senate Budget and Taxation Committee

From: Independent Electrical Contractors (IEC) Chesapeake

Re: Support Senate Bill (SB) 835 -State Finance and Procurement - Retention Proceeds

Independent Electrical Contractors (IEC) Chesapeake represents approximately 200 electrical contractors who employ approximately 15,000 workers in the mid-Atlantic region. In addition, IEC Chesapeake has approximately 1,000 registered apprentices in the electrical trade including low voltage apprentices.

IEC Chesapeake supports SB835 and requests a favorable report. IEC Chesapeake supports SB835 which would require a unit of government or contractor to pay undisputed retention proceeds within 90 days after the substantial completion of a project. This legislation would benefit contractors with their cash flow by making monies owed to them available within 90 days.

Thank you for your consideration. If you have any questions, please contact Grant Shmelzer, Executive Director of IEC Chesapeake, at 301-646-0197 or at gshmelzer@iec-chesapeake.com or Kevin O’Keeffe at 410-382-7844 or at kevin@kokeeffelaw.com.

About Us

Independent Electrical Contractors (IEC) Chesapeake represents members throughout Delaware, Maryland, Virginia, West Virginia, and Washington, D.C. Our headquarters are located in Laurel, Maryland. IEC Chesapeake has an extensive apprenticeship program for training electricians. In addition, IEC Chesapeake promotes green economic growth by providing education and working with contractor members, industry partners, government policy makers and inspectors to increase the use of renewable energy.

sb835test - State Finance and Procurement - Retent

Uploaded by: Marcus Jackson

Position: FWA



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*

Dan Bond CAE

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

Tricia Baldwin

*Chairman
Joint Legislative Committee
tbaldwin@reliablecontracting.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

February 26, 2025

TO: BUDGET AND TAXATION COMMITTEE

FROM: ASSOCIATED BUILDERS AND CONTRACTORS

RE: S.B. 835 – STATE FINANCE AND PROCUREMENT –
RETENTION PROCEEDS

POSITION: FAVORABLE WITH AMENDMENTS

The Associated Builders and Contractors of Maryland appreciates the opportunity to opine on S.B. 835 which is before you today for consideration. The members of ABC believe in the tenets of free enterprise, investing in their workforce and giving back to the communities in which they live, work and play.

S.B. 835 requires that undisputed retention proceeds on State construction contracts that are retained by a state agency, or a contractor be paid within 90 days after the substantial completion of a project, as defined by the applicable contract or subcontract.

We support the timely payment of retention proceeds as it is essential for the success of construction projects, as it allows contractors and subcontractors to meet their financial obligations, pay their employees promptly, and invest in future projects. Unfortunately, delayed payment of retention proceeds can create significant hardships for construction firms.

With that said, we would like to offer the following amendment(s):

AMENDMENT NO. 1:

On page 1, in lines 3 and 4, strike “or a certain contractor”.

AMENDMENT NO. 2:

On page 2, in lines 21 and 22, strike “**OR A CONTRACTOR**”; and in line 24, strike “**OR SUBCONTRACT**”.

ABC appreciates your consideration and, for these reasons, respectfully requests a **favorable with amendments** report on S.B. 835.

Marcus Jackson, Director of
Government Affairs

SB0835 - TSO - LOO - Retention Proceeds.pdf

Uploaded by: Patricia Westervelt

Position: UNF

February 26, 2025

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

Re: Letter of Opposition – Senate Bill 835 - State Procurement – Retention Proceeds

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully offers the following letter of opposition on Senate Bill 835 for the Committee's consideration.

SB 835 would require payment of undisputed retention proceeds within 90 days after the date of *substantial*, rather than *final*, completion of a project. This could lead to payment of the retainage prior to the completion of the “punch list” for a project, or the list of items the parties agree must be addressed by the contractor once the site is operational but before a project is considered complete. While the items on the punch list are often minor, they can include rework items.

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, if at all. If contractors do not complete punch list items following payment of retainage, MDOT may need to contract with a third party to finish the work, resulting in double payments and increased expenditures for construction projects.

Further, MDOT must maintain the ability to keep retainage until contract closeout to guarantee environmental requirements of the contract are met, ADA compliance has been confirmed, contractor payrolls have been received and reviewed to ensure compliance, and project records have been audited. Finally, requiring payment of retainage within 90 days after substantial completion, rather than upon final completion, could result in disputes, claims, and potential litigation between the State and contractors around the ambiguous term “substantial completion.”

The Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 835 an unfavorable report.

Respectfully submitted,

Matthew Mickler
Director of Government Affairs
Maryland Department of Transportation
410-865-1090

SB 835 - Retention Proceeds.docx - Google Docs.pdf

Uploaded by: John Woolums

Position: INFO

SB 835 - State Finance and Procurement - Retention Proceeds

Position: Letter of Information

Committee: Budget and Taxation

Date: February 26, 2025

From: John R. Woolums, Esq.

The Maryland Department of General Services (DGS) is providing this Letter of Information to explain the operational and fiscal effects of this proposed legislation on the Department.

SB 835 would require undisputed retention proceeds on State construction contracts to be paid within 90 days after the substantial completion of a project. DGS acts as the State's construction manager for a variety of State agencies, and each of these agencies have different operational needs that affect the construction timeline. DGS utilizes the retention of funds on a State construction contract to provide the State with a means to ensure full completion of the project to State standards and contract specifications.

At the time of substantial completion, a project site is operational, however there are specific items remaining for final completion. Depending on the project these items can vary from paint touch-up to more significant items such as landscaping. For example, if the project was substantially completed in the winter, but the seeding, planting, and landscaping must wait until the weather breaks, this work becomes a punch-list item to be completed at a future date, and that may not occur within 90 days of substantial completion.

The purpose of retainage is to provide an incentive for the contractor to complete all work for which they have been contracted. The law provided that the retainage amount may not exceed 5% of the total contract amount. DGS has the discretion to reduce retainage and regularly utilizes this discretion. DGS maintains a high level of communication with our contractors and the respective State agencies to ensure that work is completed and the contractors are paid in an appropriate and timely manner.

Again, DGS is providing this testimony for informational purposes, and the Department looks forward to being of further assistance as the Committee considers this bill.