

March 10, 2025

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

Re: Letter of Opposition – House Bill 1166 – State Procurement – Retention Proceeds

Dear Chair Pena-Melnyk and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully offers the following letter of opposition on House Bill 1166 for the Committee’s consideration.

HB 1166 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 House Bill 1166 an unfavorable report.

Respectfully submitted,

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Maryland Department of Transportation
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