



ASSOCIATED BUILDERS AND CONTRACTORS 2023 MARYLAND GENERAL ASSEMBLY REPORT TO THE MEMBERS

For ABC's 1500+ construction members, the 2023 Maryland General Assembly was a particularly challenging one as legislators wrestled with the practical implications of legalized cannabis, flirted with criminalizing prevailing wage violations, and imposed union labor requirements on offshore wind energy projects.

In a session that saw the introduction of nearly 2500 bills, ABC's Joint Legislative Committee, comprised of our lobbyists and ABC members from every corner of the state, reviewed over 200 pieces of legislation, debated, testified, met with legislators, introduced amendments, and represented the membership with distinction.

The results, you will see, were mixed.

Cannabis Reform (SB 516/HB 556)

ABC Position: Employers must be allowed to test employees for impairment.

Bill Status: BILL PASSED WITH AMENDMENTS

Employers Assured the Right to Maintain Drug Free Worksite

Last November, Marylanders overwhelmingly voted in favor of a Constitutional Amendment created by the passage of House Bill 1 during the 2022 General Assembly session. The amendment legalizes cannabis for adult-use in Maryland, effective July 1, 2023.

While ABC is agnostic on the issue of legalizing cannabis for recreational use, we actively lobbied on the importance of safety to our members. After several rounds of hearings and in conversations with the bill's sponsors, we were given assurance that the language allows employers to test employees for substance use and alcohol use and remove them from the job if it is determined they are impaired. Adult-use cannabis will be available for sale in Maryland starting on July 1, 2023.

Criminalization of Prevailing Wage Violations & Workplace Fraud Act (SB 838/HB 1261)

ABC Position: OPPOSED

Bill Status: FAILED

ABC led opposition to the Criminalization of Prevailing Wage Violations & Workplace Fraud Act. As introduced by Senator Ben Kramer (D – Montgomery County) and Delegate Kris Valderrama, the legislation would have established misdemeanor criminal penalties for an employer found to have knowingly failed to correctly classify an individual under the Workplace Fraud Act or a contractor or subcontractor found to have knowingly violated the State Prevailing Wage Law. An employer or contractor could have been sentenced to maximum penalties of \$5,000 and/or 60 days imprisonment for each employee who was not correctly classified under the Workplace Fraud Act, or in the case of the State Prevailing Wage Law, for each violation.

Prompt Payment Requirements (Senate Bill 453/ House Bill 1097)

ABC Position: NEUTRAL

Bill Status: WITHDRAWN

This was a difficult bill for our group to navigate as it pitted general contractor against subcontractor. And although we took a neutral stance, we actively engaged the sponsors to explore how a more equitable solution could be reached that provided reasonable accommodations for both.

The bill, patterned after legislation that passed last year in the Virginia legislature, would have mandated that a contract between a contractor and a subcontractor on both State and private construction projects include a provision that requires the contractor to pay a subcontractor within (1) 60 days of the receipt of an invoice following satisfactory completion of the invoiced work or (2) seven days after the contractor receives payment from the State or private owner. The bill would not have required a contractor to pay invoiced amounts that are subject to withholding as a result of the subcontractor's noncompliance with the contract. Further, the bill applied 9% interest per year on any unpaid amount if a contractor does not pay a subcontractor, as noted above. The bill does not apply to or prohibit the inclusion of any retainage provision in a subcontractor's contract. The bill failed to progress beyond its initial hearing and the House version was eventually withdrawn by the sponsor in the face of strong opposition from the House Economic Matters Committee.

Offshore Wind Expansion (SB 781)

ABC OPPOSED.

Bill Status: PASSED

Legislation includes Project Labor Agreement

There were a number of bills we had rated as our highest priority and killing the PLA provision was at the very top. Katie Fry Hester and Delegate Lorig Charkoudian championed legislation to promote investment in the expansion of offshore wind (OSW) energy in Maryland, with a specific focus on the State's transmission system to support OSW.

As amended and passed by a conference committee, Senate Bill 781 requires the Public Service Commission (PSC) to request that PJM Interconnection (PJM) analyze specified OSW transmission system expansion options. Under the bill, the PSC must issue, or request that PJM issue, competitive solicitations for proposals for related projects and must evaluate the proposals and ask PJM to assist with the evaluation. The PSC may then accept one or more proposals, subject to specified criteria.

The bill places specified community benefit and union-only project labor agreement requirements for OSW transmission projects issued and procured under the bill and lays out specific cost-benefit analysis that the State must conduct before entering into any authorized procurement.

It will be ABC's job to track these studies to ensure they are honestly factoring in the union-only clause that can add anywhere from 10 to 20 percent to the cost of the project. And given these projects will be located on the Eastern Shore where union representation is even less than the 10 percent that exists for the entire state, the cost increases could be significantly greater.

Apprenticeship 2030 Commission

ABC Position: SUPPORTED WITH AMENDMENT.

Bill Status: PASSED

ABC supported the Apprenticeship 2030 Commission with amendments. The bill will investigate and make recommendations to expand apprenticeship and workforce development opportunities for more Marylanders: "to decrease skill shortages in high-demand occupations and provide young people with affordable training for future pathways."

ABC's amendment focused on ensuring the members of the commission will represent the diversity of Maryland's workforce [and not be limited to union officials].

Recommendations include expanding registered apprenticeships in industries with a lack of skilled workers; increasing the number of registered apprenticeships to at least 60,000 in 2030; and achieving the target set forth in the Blueprint for Maryland's Future, which calls for 45% of high school graduates to complete a registered apprenticeship at the high school level. The bill passed as emergency legislation, which means it will take effect as soon as the Governor signs it. The Commission's report is due to the Governor and the MDA by December 1, 2023.

Prohibited Indemnity and Defense Liability Agreements (SB 56/HB 256)

ABC Position: OPPOSED

Bill Status: FAILED

The bill sought to prohibit a contract with a design professional from including any provision that would absolve the designer from liability claims for damages.

Specifically, the bill would have defined a "design professional" as a licensed architect, certified interior designer, licensed landscape architect, professional engineer, or professional land surveyor.

The bill would have clarified that any provision regarding professional negligence would be void, unenforceable, and against public policy.

The bill passed the Senate but failed to progress in the House.

Clean Trucks Act of 2023

ABC Position: OPPOSED

Bill Status: PASSED

By December 1, 2023, the Maryland Department of the Environment (MDE) must adopt regulations establishing requirements for the sale of new zero-emission medium- and heavy-duty vehicles in the State and incorporate by reference the California Air Resources Board's (CARB) Advanced Clean Trucks (ACT) regulations.

"Heavy-duty vehicle" means a vehicle with a gross vehicle weight (GVW) rating equal to or greater than 14,001 lbs. A "medium-duty vehicle" has a GVW rating of between 8,501 and 14,000 lbs. Under the bill, the MDE will conduct a needs assessment of the following, which is due to the MGA by December 2024:

- (1) the additional electrical capacity, transmission, distribution demands, and hydrogen fueling demands that will result from implementing the regulations,

and the ability of the State's electric utilities, grid, and hydrogen infrastructure to meet those demands, based on publicly available information and existing analyses.

- (2) The number of zero-emission medium- and heavy-duty vehicle recharging and refueling stations recommended to implement the regulations, and the costs, permitting processes, and timelines for installing those stations.
- (3) The purchase incentives and other mechanisms recommended to successfully implement the regulations, including incentives for recharging, and refueling stations and related infrastructure, and the existing and potential sources of funding for those incentives and mechanisms; and the timeline, economic feasibility, and models available for transitioning medium- and heavy-duty vehicles in the State vehicle fleet, including State-contracted medium- and heavy-duty vehicles, to ZEVs.

The regulations must take effect starting with the model year 2027, but MDE is authorized to delay the implementation of the regulations by one or more model years if the needs assessment and deployment plan is unfeasible. Senate Bill 224/House Bill 230 will take effect on June 1, 2023.

Mold Inspections and Remediation House Bills 972 and 976,
ABC Position: OPPOSED
Bill Status: PASSED W AMENDMENT

This bill addresses the presence of mold in buildings. House Bill 972, which was ultimately amended into House Bill 691, would have established mold as a specific cause for rent escrow cases to be brought against housing providers. However, the two bills did not have a shared definition of mold. The bill was ultimately amended in the Senate to establish a workgroup that will study and recommend the best practices for identifying mold, preventing the development of mold indoors, and remediating moldy conditions harmful to public health. The amended bill passed and will take effect July 1, 2023, and the workgroup's report is due on or before October 1, 2024.

Right to Work (HB 494)
ABC Position: SUPPORTED
Bill Status: FAILED

Once again, ABC supported the Right to Work Bill that was sponsored by Delegate Chris Adams. The bill would prohibit a private-sector employer from requiring, as a condition of employment or continued employment, an employee, or a prospective employee,

under certain circumstances, to join or remain a member of a labor organization, pay charges to a labor organization, or pay a certain amount to a third party; establishing certain penalties for a violation of the Act; and requiring the Attorney General to take steps necessary to ensure effective enforcement of the Act. The bill failed to receive a favorable vote out of the House Economic Matters Committee.

HB 949 – Retention Proceeds

ABC SUPPORTED

Bill Status: FAILED

ABC supported the Retention Proceeds bill that was sponsored by Delegate Chris Adams. The bill would require undisputed retention proceeds retained by a unit or a certain contractor under a state procurement contract to be paid within 90 days after the date of substantial completion. The bill failed to receive a favorable vote out of the Health and Government Operations Committee.

Omnibus Procurement Reform Act (“OPRA”) of 2023 (HB 1166)

ABC Position: SUPPORTED

Bill Status: WITHDRAWN

Once again, Chair C.T. Wilson (D – Charles County) introduced House Bill 1166. This bill was intended to make the purposes and policies of State procurement law apply to county procurements that include any State funds and give the Maryland State Board of Contract Appeals (MSBCA) jurisdiction to hear and decide appeals related to those local procurements. The bill also would have made changes to State procurement policies and procedures related to the cancellation of solicitations, the timelines for MSBCA rulings, disclosure of information regarding awarded contracts, and costs of contract claims and bid protests that may be awarded to successful appellants. Unfortunately, the bill was withdrawn by the bill sponsor.