

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 936 (Delegate Jones)

Environment and Transportation and  
Appropriations

Budget and Taxation

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Public-Private Partnership Agreements - Construction Contracts - Security  
Requirements

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This bill clarifies that the requirements for the amount of payment security and any performance security in the form of a performance bond submitted for construction contracts under a public-private partnership (P3) be established on the value of the respective construction elements and not on the total value of the P3 agreement.

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Fiscal Summary

**State Effect:** None. The bill is clarifying in nature and has no material effect on State finances.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law/Background:** “Payment security” is security that guarantees payment for labor and materials, including leased equipment, under a contract for construction. It guarantees that all participants (suppliers, subcontractors, and laborers) will be paid if the contractor defaults. “Performance security” is security to guarantee the performance of a contract for construction. A “public body” includes the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.

Before a public body awards a construction contract valued at more than \$100,000, the contractor must provide performance security in an amount that the public body considers adequate for its protection, and payment security for at least 50% of the amount payable under the contract. Payment and performance security must be (1) a bond executed by a surety company authorized to do business in the State; (2) cash in an amount equivalent to a bond; or (3) another security that is satisfactory to the public body.

Chapter 5 of 2013 established a new framework for P3 reporting and oversight. It specified that private entities that are parties to construction contracts under a P3 agreement provide performance and payment security in a form and amount determined by the responsible public entity, except that requirements for payment security (1) be in accordance with State law regarding security for construction contracts funded by public bodies and (2) be established on the value of the construction elements of the P3 agreement and not the total value of the agreement. There is no requirement in current law that performance security meet the same two criteria.

Chapter 5 of 2013 defined a “public-private partnership” as a method for delivering public infrastructure assets using a long-term, performance-based agreement between specified State “reporting” agencies and a private entity where appropriate risks and benefits can be allocated in a cost-effective manner between the contract partners, in which:

- a private entity performs functions normally undertaken by the government, but the reporting agency remains ultimately accountable for the public infrastructure asset and its public function; and
- the State may retain ownership of the public infrastructure asset and the private entity may be given additional decision making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.

A “public infrastructure asset” is a capital facility or structure, including systems and equipment related to the facility or structure intended for public use.

Only reporting agencies identified by Chapter 5 may establish a P3. Reporting agencies include the Department of General Services which oversees building purchases and leases for most of State government, the Maryland Department of Transportation, the Maryland Transportation Authority, and specified State higher education institutions. However, P3s do not include agreements entered into by the University System of Maryland, St. Mary’s College of Maryland, Morgan State University, and Baltimore City Community College in which State funds are not used to fund or finance any portion of the project. Specified revenue-producing transportation facilities are also not considered P3s.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None designated; however, SB 453 (Senators Guzzone and Middleton – Budget and Taxation) is identical in effect.

**Information Source(s):** Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, Bryant Security Bonds, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2015  
md/ljm Revised - House Third Reader - March 27, 2015  
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