MARYLAND DEPARTMENT OF TRANSPORTATION

Wes Moore
Governor

Aruna Miller
Lieutenant Governor

James F. Ports, Jr.
Secretary

January 19, 2023

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

Re: Letter of Opposition – Senate Bill 112 – State Finance and Procurement – Grants – Prompt Payment Requirement

Dear Chairman Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 112, which establishes prompt payment requirements for grant agreements and significantly reduces the ability of MDOT to ensure that grantees are in compliance with grant requirements. The bill also runs contrary to a recent recommendation from the Department of Legislative Services (DLS) regarding prompt payment requirements.

Senate Bill 112 significantly reduces MDOT's ability to effectively administer grant agreements by requiring grant funds to be paid within 30 days regardless of whether all grant requirements are being met. Much like the General Assembly withholds appropriations from State agencies pending the receipt of reports and other items required in the *Joint Chairmen's Report*, the ability to withhold grant payments for non-compliance is an important tool for grant administrators.

For example, if a grant agreement requires submission of an annual report by January 15 each year and a bi-annual grant payment is due on March 1, the grant payment may be withheld until the annual report is submitted if it was not submitted on time. Under Senate Bill 112, this would not be allowed as long as the grantee submits a proper invoice. Although Senate Bill 112 defines a proper invoice as including "documentation required by regulation or the grant agreement," this may be insufficient to withhold funds. In the example given, the annual report is a grant requirement that is not directly tied to the invoice submission, so the grantee could still submit a "proper invoice" even though the annual report submission had not been met.

Senate Bill 112 extends prompt payment provisions for invoices that were enacted in Chapters 157 and 158 of 2022 to grant payments. However, the nature of grant payments and invoice payments are very different. Invoice payments are tied to the billing of amounts after goods or services are received. The timing of grant payments may not be as clearly linked between when grant requirements are met and when the grant payment is requested. The timing of grant payments can be reimbursed-based or occur on a certain date. Grant payments based on a certain date are most susceptible to reduced effectiveness of grant administration with the passage of Senate Bill 112.

The MDOT administers a significant number of grant agreements, including grants for locally operated transit systems, highway user revenue grants, highway safety grants, the Kim Lamphier Bikeways program, BWI Marshall Airport Community Enhancement grants, and WMATA, to name a few. The amount of each of these grant's ranges from a few thousand dollars to several hundreds of millions of dollars. The late payment interest rate of 9% established in Senate Bill 112, is significant and will add up quickly for large grants.

Chapters 157 and 158 of 2022 required a report from DLS regarding the timing of payments from State agencies for at last three prior fiscal years. In December 2022, DLS submitted its report and made three recommendations. The first two recommendations are to prioritize and support the modernization of the State's financial management system and to continue efforts to increase State employee compensation and expand staffing where necessary. DLS' third recommendation is to restore the 15-day grace period that was in place prior to Chapters 157 and 158 and to delay any other changes to State payment requirements until measures to improve on-time payment performance have been implemented. Specifically, the report states:

> *"Shortening the grace period from 15 days to 7 days exposes the State to increased liability for payment of interest on late payments. Instituting that change before measures to improve agency on-time performance, including a modernized financial management system and enhanced employee retention, may result in increases in State liability as agencies will not likely be able to meet the compressed deadlines. Once the FMIS upgrade is complete and the State can assess the extent to which it improves the payment process, it may then consider adjusting the timeframe for State payments to vendors."*

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 112 an unfavorable report.

Respectfully submitted,

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