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Judicial Proceedings Committee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB667: State Procurement - Maryland State Board of Contract Appeals - Attorney's Fees
Favorable

Good Afternoon Chair Guzzone, Vice Chair Rosapepe and Members of the Budget and Taxation Committee,

For the record, my name is Senator Nick Charles. As you may know, I have been working for years in the House and now have the privilege to work in the Senate on behalf of improving our State's procurement system. SB667 is a cross-file of HB292, which is currently in the Health and Government Operations Committee in the House. I urge a favorable report on this edit to the Maryland State Board of Contract Appeals (MSBCA) process that will immediately improve transparency and equity within our procurement system.

Under current law, if MSBCA sustains the appeal and finds that there has been a violation of law or regulation, they *may* award a bidder or offeror the reasonable costs of filing and pursuing a bid protest, but not attorney's fees. This law would create a more just process by requiring that MSBCA **must** award reasonable attorney's fees to a bidder, offeror, or contractor who *prevails* in appealing a bid protest or contract claim to the board. In conversations I have heard from attorneys that represent different bidders or contractors before MSBCA, many violations and egregious procurement law infringements often go without being brought before the Board, simply because some do not have the funds to hire legal representation.

This Bill is about accountability, it discourages arbitrary or unfair conduct in processing claims, as unit personnel now risk bearing the financial burden if their actions are found to be in bad faith. This Bill is about fairness, it ensures that parties who have been wronged have access to legal representation, just as the State does, to defend their claims without facing significant financial barriers.

As mentioned in the Fiscal and Policy Note for this Bill, "In the last five years, only 1 of 74 contract claims was successful and only 5 of 77 bid protests were successful." If this Bill results in a huge surge of increased claims, that would be a favorable reason to pass this Bill and ensure that those being unfairly denied access to contract appeal cases due to high attorney fees can now properly address reasonable grievances. If the State of Maryland is in favor of a competitive and robust procurement market, these additional claims should not serve as barrier to pass this important piece of legislation to improve our State's processes.

With all that in mind, I urge a favorable report. Thank you.

Senator Nick Charles

A handwritten signature in cursive script that reads "Nick Charles".