

February 20, 2024

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis Maryland 21401

Re: *Letter of Opposition – House Bill 852 – State Procurement – Leases and Construction Contracts – Performance Suspension Pending Audit*

Dear Chair Pena-Melnyk and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 852, as it would have the potential to put the State and contractors at risk.

House Bill 852 would make it mandatory to suspend performance of a construction contract or a contract to lease real property if the contract is the subject of an investigation by the Office of Legislative Audits for an act or allegation of fraud, waste, or abuse.

Current law allows for the State to suspend performance of a contract. If the Office of Legislative Audits (OLA) has sufficient information, in their opinion, to warrant suspension, then they can request that the agency suspend performance of a contract. In that case, the suspension could be affected after due consideration of consequences. The automatic suspension required by this bill could do more harm than good to the State and to contractors, subcontractors, and suppliers doing business with the State.

Making suspension mandatory puts the State at risk of significant liability to contractors for delay damages and increases in the cost of materials resulting from the suspension. It also puts the State at risk of damage to State operations and functions.

A contractor whose contract is suspended might not be able to recover financially, even if it can later recover additional compensation from the State. Mandatory suspension could especially harm subcontractors and suppliers, including Minority Business Enterprises, Certified Small Businesses, and Veteran-Owned Small Business Enterprises, which might not be able to recover damages to cover their losses. Further, bonding companies might be more reluctant to bond State projects, knowing that at any time an investigation can automatically bring a contract to a halt. House Bill 852 could be used by bad actors to cause damage to competitors or others, since anyone can make an anonymous tip to the Office of Legislative Audits.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant House Bill 852 an unfavorable report.

Respectfully submitted,

Pilar Helm
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Maryland Department of Transportation
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