

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 162 (Chairman, Commerce and Government Matters Committee)
(Departmental - General Services)
Commerce and Government Matters Referred to Economic and Environmental Affairs

Procurement - Security on Construction Contracts

This enrolled, departmental bill provides that performance security on a construction contract may include the granting of a mortgage or deed of trust on real property located within the State. The bill specifies that (1) the face amount of the mortgage or deed of trust may not exceed 75% of the contractor's equity interest in the property; and (2) a mortgage or deed of trust must be recorded in the land records of the county where the real property is situated.

Fiscal Summary

State Effect: Indeterminate effect on expenditures. Potential decrease in revenues.

Local Effect: Potential effect on expenditures. Potential decrease in revenues.

Small Business Effect: The Department of General Services has determined that the bill has minimal or no impact on small businesses (attached). Fiscal Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Fiscal Analysis

State Effect: The Department of General Services (DGS) advises that expenditures on construction contracts could decrease since the cost of surety bonds (up to 3% of the value of the bond) is passed on to the State in the bid price of a contract. Granting a mortgage or deed of trust in lieu of a bond will save the price of the fee; this savings could be passed on to the State through the bid price. However, the savings could be offset to some extent by administrative costs, such as recording fees.

As a point of reference, the State spent about \$970 million on about 1,700 construction contracts in fiscal 1995, the latest year for which such information is available.

It is noted that the fiscal impact on the State would depend to some extent on any regulations promulgated to implement this bill. Some expenditures could be incurred if the agency bidding the contract chooses to dispute the value of the property submitted. In addition, if the contractor did default, there would be expenditures associated with liquidating the property. Further, if the assessed value of the property did not reflect the actual market value of the property (for instance if the property had a hidden problem such as pollution), then the revenues accruing to the State in the event of a default would decrease.

The clerks of the circuit court are authorized to collect recording fees. These fees are \$10 for a release of nine pages or less in length, \$20 for any other instrument of nine pages or less, \$20 for an instrument solely involving a principal residence, regardless of length, and \$75 for an instrument of ten pages or more. This bill could increase the fees that are collected by the clerks of the court for recordation of documents. The increased number of documents that would be recorded and the amount of additional fees that would be collected by the clerks cannot be reliably determined at this time.

Local Effect: To the extent that local jurisdictions follow State procurement guidelines, expenditures and revenues could be affected as discussed above.

Information Source(s): Department of General Services, Department of Public Safety and Correctional Services (Division of Capital Construction and Facilities Maintenance), Department of Transportation (State Highway Administration, Mass Transit Administration), Department of Fiscal Services

Fiscal Note History: First Reader - January 27, 1997
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