

Department of Legislative Services  
Maryland General Assembly  
2000 Session

**FISCAL NOTE**

Senate Bill 739 (Senator Haines)

Economic and Environmental Affairs

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**Procurement - Construction Contracts - Progress Payments**

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This bill requires progress payments, if a construction contract requires them, to be made at least monthly, or more often if the contract so stipulates. If a contractor has furnished payment security or performance security, the amount retained by the primary procurement unit from each progress payment may not exceed 5% of the total amount of each payment, and amounts retained by a primary procurement unit must be deposited into an interest-bearing escrow account. A contractor must be paid the full amount retained, with interest, within 30 days of final acceptance of the work. A contractor that has a percentage of progress payments retained may not retain a greater percentage of payments due to a subcontractor than are retained from the contractor. A subcontractor that has a percentage of progress payments retained may not retain a greater percentage of payments due to another subcontractor than are retained from the subcontractor.

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**Fiscal Summary**

**State Effect:** Potential increase in expenditures to set up and maintain escrow accounts.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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**Analysis**

**Current Law:** Before the State awards a construction contract exceeding \$100,000, the contractor must provide payment security and performance security in the form of a bond, a cash equivalent, or other security. The payment security must be at least 50% of the total amount payable under the contract. The contract may set the performance security at an adequate amount.

**State Expenditures:** Legislative Services assumes that State agencies entering into construction contracts requiring progress payments would be required to set up and maintain escrow accounts. The cost of setting up and maintaining the escrow accounts cannot be accurately estimated at this time, because it depends on the number of construction contracts an agency enters into and the number and complexity of escrow accounts required. The State Highway Administration (SHA) processes approximately \$20 million in progress payments monthly. The SHA estimates that the cost of escrow accounts for these payments could be as much as \$10,000 annually. *The Department of General Services did not respond to requests for information on this bill.*

**Small Business Effect:** It is assumed that most contractors and subcontractors on State construction contracts are small businesses. Subcontractors, when a general contractor has a percentage of progress payments retained by a primary procurement unit, could receive timely payment of progress payments in at least the same percentage as the contractor, with interest. Contractors could receive more timely payment for State construction contract work, with interest, and could have smaller payment for performance security requirements.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 600 (Delegate DeCarlo) - Commerce and Government Matters.

**Information Source(s):** Department of Health and Mental Hygiene, Maryland Department of Transportation (State Highway Administration), University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2000  
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